

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

WEDNESDAY, NOVEMBER 28, 2018

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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  
CARLTON E. HART, Vice-Chairperson (NCPC)  
LORNA JOHN, Member  
LESYLLEE M. WHITE, Member

ZONING COMMISSION MEMBER PRESENT:

PETER G. MAY, Commissioner (NPS)

FEDERAL REPRESENTATIVE:

MARCEL ACOSTA, Executive Director, National Capital  
Planning Commission

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
SARA A. BARDIN, Director, Office of Zoning

**NEAL R. GROSS**

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
KAREN THOMAS  
MAXINE BROWN-ROBERTS  
STEVEN COCHRAN  
ELISA VITALE

The transcript constitutes the minutes from the  
Public Hearing held on November 28, 2018.

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

(9:40 a.m.)

CHAIRPERSON HILL: All right. Good morning, everyone. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest.

This is the November 28th public hearing of the Board of Zoning and Adjustment of the District of Columbia convening to act on a chancery application pursuant to the Foreign Mission Act 22 USC 4301-4316 and Chapter 10 of the Zoning Regulations.

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

Copies of today's hearings agenda are available to you and located on the wall bin near the entrance door. Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board please turn on and speak into the microphone first stating your name and home address.

When you're finished speaking please turn your

1 microphone off so that your microphone is no longer picking  
2 up sound or background noise. All persons planning to  
3 testify either in support or in opposition are to fill out  
4 two witness cards. These cards are located on the table near  
5 the entrance door and on the witness table.

6           Upon coming forward to speak to the Board please  
7 give both cards to the reporter sitting to the table at my  
8 right. The order of procedures for the Foreign Mission Case  
9 as well as party status chancery applications are also listed  
10 as you come walking into the door.

11           Time constraints may be applied due to questions  
12 the Board may have. The Board may place further reasonable  
13 restrictions on or permit additional time for testimony as  
14 it deems appropriate.

15           Because this is a rulemaking procedure there are  
16 no parties and therefore there is no cross examination. The  
17 record will be closed in conclusion of each case except it  
18 will remain open for any material specifically requested by  
19 the Board.

20           The Board and the staff will specify at the end  
21 of the hearing exactly what is expected and the date when the  
22 material must be submitted to the Office of Zoning. After  
23 the record is closed no other information will be accepted  
24 by the Board.

25           The District of Columbia Procedures Act requires

1 that the public hearing on each case be held in the open  
2 before the public pursuant to Section 405(b) and 406 of that  
3 Act.

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

12 The decision of the Board in this legislative  
13 proceeding must be based exclusively on the public record.  
14 To avoid any appearance to the contrary the Board requests  
15 that the persons present not engage members of the Board in  
16 conversation.

17 Please turn off all beepers and cell phones at  
18 this time so as not to disrupt the proceeding. Preliminary  
19 matters are those which relate to whether a case will or  
20 should be heard today such as requests for a postponement,  
21 continuance or withdrawal or whether proper and adequate  
22 notice of the hearing has been given.

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

1 have any preliminary matters?

2 MR. MOY: Good morning, Mr. Chairman and Members  
3 of the Board. There are preliminary matters on two cases  
4 today. But I would suggest that the Board address those  
5 matters when I call the case.

6 Other than that there are three cases I would like  
7 to have into the record with respect to today's docket.  
8 There are three cases that have been postponed and  
9 rescheduled.

10 The first is Appeal Number 19777 of Hillary Dove.  
11 And that has been rescheduled to December 5, 2018.  
12 Application Number 19860 of District Properties.com  
13 rescheduled to January 9, 2019. And Application Number 19866  
14 of Serengeti, LLC rescheduled to January 9, 2019, also and  
15 that's it, Mr. Chairman.

16 CHAIRPERSON HILL: All right, thank you. All  
17 right, thank you, Mr. Moy. Just to be clear again in terms  
18 of the chancery applications. So the time constraints that  
19 we have are, you know, we'll be working through the  
20 application with the Applicant including all of their  
21 witnesses.

22 And then persons planning to testify in support  
23 or opposition they'll be permitted three minutes each except  
24 for the ANC and we'll kind of see how that goes when we work  
25 through this case. Again, I was just pointing out that

1 because it's rulemaking procedures there's no parties and  
2 therefore there's no cross examination.

3 Good morning, everybody. Hope everyone had a nice  
4 Thanksgiving and you're prepared to be here with us today.  
5 Some are going to be here longer than others. Let's see, if  
6 you plan on testifying if you would please stand and take the  
7 oath administered by the Secretary to my left.

8 MR. MOY: Good morning.

9 (Witnesses Sworn)

10 MR. MOY: Ladies and gentleman, you may consider  
11 yourselves under oath.

12 CHAIRPERSON HILL: Okay. And then finally in  
13 terms of the order, we're going to jump around just a little  
14 bit. We're going to do the foreign missions case first.  
15 Then we're going to call the appeal and see where we are.

16 And then probably after that we're going to do  
17 decision cases. So, Mr. Moy, I'll turn it over to you.

18 MR. MOY: Thank you, Mr. Chairman. So if the  
19 Board can have parties to the table to case Application  
20 Number 191875 of the Embassy of the Republic of Nepal,  
21 caption advertised to, this is to relocate a chancery use to  
22 the existing ambassador's residence in the R12 District at  
23 premises 2730 34th Place NW, Square 1939, Lot 33.

24 CHAIRPERSON HILL: Okay, good morning. If you  
25 could please introduce yourselves for the record.



1 MR. PUDNER: Stephen Pudner with the law firm of  
2 Baker Donelson here as the agent and attorney for the  
3 Republic of Nepal.

4 DR. KARKI: Dr. Arjan Karki, Ambassador of Nepal  
5 to the United States of America.

6 CHAIRPERSON HILL: Welcome, Mr. Ambassador.

7 MR. SANDERLANDS: Matthew Sanderlands, Department  
8 of State.

9 CHAIRPERSON HILL: Okay, Mr. Pudner, I guess  
10 you're going to be presenting to us.

11 MR. PUDNER: Yes.

12 CHAIRPERSON HILL: Okay, just before you start.  
13 So I guess, you know, you've obviously read the record and  
14 know everything that's in it in terms of also some concerns  
15 that the community has.

16 If you want to kind of like as you kind of go  
17 through the application just tell us a little bit about what  
18 you're trying to accomplish and what your client is trying  
19 to accomplish and then also how you think you're meeting the  
20 criteria for us to grant the application.

21 And also, I guess, if you want to speak a little  
22 bit to the whole analysis in terms of the 50 percent mixed  
23 use. And then I'm going to put 15 minutes on the clock just  
24 so I know where we are and you can begin whenever you like.

25 MR. PUDNER: Thank you for your time and good

1 morning. As a little background, the Embassy of Nepal or the  
2 government of Nepal has owned this property for 60 years and  
3 it has been used for diplomatic purposes that entire time,  
4 most recently as the Ambassador's residence for a number of  
5 years.

6 In that role it is not simply the place the  
7 Ambassador sleeps but it's where he performs his diplomatic  
8 role both during the day time, the evening and whenever else  
9 he is needed. Where he entertains guests, where he performs  
10 personal and official diplomacy.

11 What this application seeks is to use that same  
12 property now as the chancery. And there are no constructions  
13 anticipated, no renovations. The Embassy of Nepal has a very  
14 small presence.

15 They have a very small daily visitor count and as  
16 a practical matter we do not see the neighborhood being  
17 affected much at all by the change in use. In fact one  
18 benefit to the neighborhood is because the Ambassador has,  
19 is relocating to a new residence those evening social  
20 functions that previously were hosted at this address will  
21 no longer be hosted there.

22 So there are no anticipated evening social  
23 functions. And from talking to some neighbors one concern  
24 was when the neighbors come home after work would there be  
25 parking problems, would there be concerns.

1           And so we believe those should be lessened by this  
2 change in use as opposed to exasperated. There's no  
3 anticipated change in character of the property. Again, no  
4 interior or exterior renovations planned.

5           This will simply be a small handful of workers  
6 with a small handful of visitors each day to come seek a Visa  
7 or otherwise. When you visit Nepal which you all should do  
8 one day, it is a beautiful country, you can obtain your Visa  
9 in the airport in Kathmandu.

10           So this is not something where there are a stream  
11 of visitors each day seeking Visas to visit Nepal. We  
12 believe that we've satisfied all of the criteria for this  
13 application for the change in use, for the use as a chancery  
14 in an R-12 district.

15           I believe the only aspect that's really faced any  
16 challenge to date is the definition of our surrounding area  
17 and its mixed use nature. As background, we have attempted  
18 in good faith over the last two months to reach out to the  
19 community and the ANC to work with them.

20           October 30th we hosted a meeting with the  
21 Ambassador at the residence at which approximately ten  
22 neighbors appeared. And we tried to work through their  
23 concerns.

24           Following that meeting I personally had over 100  
25 emails back and forth with neighbors and the ANC attempting

1 to address any concerns they raised. We even offered to the  
2 ANC to issue a letter agreement agreeing to certain  
3 constraints on the use of the property if they were to  
4 recommend approval of the application.

5 In the end it became clear that it was this mixed  
6 use character was really the concern of the neighbors because  
7 all other attempts to assuage their concerns or agree to  
8 limitations did not get the support of certain neighbors.  
9 I do want to point out that there was a letter filed into the  
10 case by certain neighbors.

11 That letter was from the owners of one-third of  
12 the lots in the Square 1939 in which the residence is  
13 located. It had more signatories from outside of that square  
14 than from inside and two-thirds, the owners of two-thirds of  
15 the parcels in this square did not oppose this application  
16 in any way.

17 In fact, of the four adjacent neighbors to the  
18 residence three of them are non-residential diplomatic or  
19 religious and none of them opposed the application. And the  
20 fourth immediate neighbor is a residential property and they  
21 also did not oppose the application.

22 They came to the meeting and notably did not sign  
23 onto the opposition letter. So we believe that it's a small  
24 handful of neighbors that, as a practical matter that argue  
25 that Nepal is attempting to change the character of this

1 neighborhood.

2 But as a practical matter Nepal has owned this  
3 property for 60 years and performed diplomatic functions from  
4 this property. And the collective total of all the  
5 signatories of that letter, as far as we could tell from the  
6 public record, is less.

7 So the longest tenured owner of property in the  
8 Square 1939 that signed that letter was ten years. So Nepal  
9 has been here performing diplomatic functions for 50 more  
10 years than any of the signatories of that letter have owned  
11 property in 1939 as far as the public records reveal.

12 To the merits of the surrounding area. We believe  
13 that we've defined the appropriate surrounding area.  
14 Contrary to what the neighbor's letter and subsequently the  
15 ANC resolution seemed to put forth the surrounding area is  
16 specifically not limited to the arbitrary square boundaries  
17 and that's, the regulations clearly state that.

18 And if the drafters of the regulations had  
19 intended to it to be the square that would have been very  
20 easy language to draft into the regulations. They notably  
21 did not.

22 They specifically left the door open for any  
23 surrounding area, if it's appropriate, to count not simply  
24 the square in which property is located. We believe we've  
25 defined an appropriate surrounding area as set forth in our

1 application and as subsequently slightly modified or the area  
2 was not modified in our letter I wrote and filed into the  
3 case two weeks ago.

4 But we had left out one non-residential use  
5 designation. So whereas we previously said it was 59 percent  
6 mixed use it is actually 61 percent. We under-reported the  
7 non-residential use aspect which in fact now I believe our  
8 application is better or stronger because of it.

9 The surrounding area we've defined is the Square  
10 1939 in which the residence is located plus parts of the  
11 adjacent Square 1922. And the reason we did that is the same  
12 reason that the Embassy of Norway in a recent case this  
13 summer used a similar surrounding area because that more  
14 appropriately fits what is the area surrounding this  
15 property.

16 Square 1939 has an awkward, the bottom left corner  
17 is actually cut off by Massachusetts. So it's not a square.  
18 It is the top portion of a square and then cut off almost  
19 like the District of Columbia is cut off by the Potomac.

20 And so Square 1939 is not in and of itself, it  
21 does not capture the surrounding area accurately for this  
22 residence. This residence is immediately adjacent, as I  
23 mentioned, across an alleyway to three non-residential  
24 diplomatic and religious use properties.

25 And then from there it's a nearly uninterrupted

1 line straight down to Embassy Row, straight down  
2 Massachusetts Avenue. There's only one property that is not,  
3 that is residential that interrupts what would otherwise be  
4 a continuous string of diplomatic, religious, non-residential  
5 uses.

6 So we looked at the surrounding area. And we did  
7 use what Norway had defined as our starting point because  
8 that seemed appropriate. And for the same reasons we used  
9 one here except we made one adjustment to account for the  
10 fact that the Nepal property is slightly to the west of the  
11 Norway property.

12 They're both located in the square just one block  
13 apart. And because Nepal is slightly to the west of Norway  
14 we cut off the furthest east property from Norway's  
15 surrounding area which was the Finland property which of  
16 course if we had left that in would have made it even more  
17 of a mixed use area.

18 But we did not. We wanted to be appropriate and  
19 accurate. We've been accused of gerrymandering the  
20 surrounding area which is not our intent at all. We believe  
21 we've proposed an accurate and appropriate surrounding area.

22 We've set forth in our application as slightly  
23 modified in by my letter two weeks ago that area is clearly  
24 above the 50 percent threshold of mixed use. And that is why  
25 we proposed that area.

1           We've attempted again to cooperate and work in  
2 good faith with the ANC, with the neighbors. And we believe,  
3 again, two-thirds of the neighbors have not opposed our  
4 application.

5           And we were hopeful that the ANC would also  
6 support our application. Obviously they filed their  
7 resolution deciding otherwise last week.

8           But we believe that our application has  
9 established all the criteria have been satisfied, that we've  
10 established a surrounding area as appropriate and that it's  
11 mixed use in nature.

12           And we've, of note, the Office of Planning,  
13 Department of Transportation and the State Department have  
14 all supported our application. And so three objective bodies  
15 have already decided that our application is appropriate and  
16 we believe that the Board should do likewise.

17           CHAIRPERSON HILL: Okay, Mr. Pudner, I'm just  
18 going to end you there. Is there anything that you would  
19 like the Ambassador to add or also we'd like to hear from the  
20 State Department?

21           MR. PUDNER: Yes, so we would like the Ambassador  
22 to introduce himself briefly. And then we would like the  
23 State Department to speak.

24           DR. KARKI: Good morning, Mr. Chairman,  
25 Commissioner, neighbors. Thank you very much for the



1 opportunity. As our attorney stated that we are the longest  
2 inhabitant of that area.

3 We have been doing diplomatic work from this very  
4 place for the last 60 years. Nothing we are planning to  
5 change. In fact, in terms of activity or movement of people  
6 there will be less than what it used to be because we are  
7 going to use this property only for the office time work.

8 So we have presented what is a larger property for  
9 the use of residence because we do political activities,  
10 diplomatic work on the weekend, in the evening, morning from  
11 my residence. So we have a new residence at this moment.

12 So we have been a good neighbor to everyone in  
13 this area. We never had a problem. We had a good  
14 development partner with the United States. United States  
15 is a very important country for us.

16 It is the second oldest bilateral diplomatic  
17 relation established country for us. So we never had a  
18 problem. We are a good partner, good diplomatic relations.  
19 We are supporting each other in various diplomatic work.

20 And we have a similar kind of diplomatic reason.  
21 We are supporting each other. We have supported the United  
22 States government to establish a larger, bigger diplomatic  
23 mission, embassy in Kathmandu very recently.

24 And also we are getting very good support from the  
25 State Department. Thank you very much. We are very much

1 hopeful that you will support, encourage us to perform our  
2 diplomatic work from this area which is planning to be  
3 converted essentially. Thank you very much.

4 CHAIRPERSON HILL: Thank you, Mr. Ambassador.  
5 Thank you for coming also.

6 MR. SANDERLANDS: Good morning, Mr. Chairman. You  
7 already have my letter in the record regarding the  
8 requirements of the Foreign Missions Act. And this  
9 application definitely meets all of the requirements of the  
10 Foreign Missions Act.

11 And I would just like to briefly speak to the  
12 importance and the federal interest in this case which is  
13 significant. The government of Nepal was extremely helpful  
14 to the Department of State when we created our new embassy  
15 compound in Kathmandu which was a large undertaking.

16 And all of my colleagues here and in Kathmandu  
17 are, have extremely high morale and they're very pleased  
18 because they have that facility there. I'd like to thank the  
19 government of Nepal for their support with that.

20 And for that reason and the other reasons outlined  
21 in my letter that is in the record we support this  
22 application.

23 CHAIRPERSON HILL: Okay, great. Thank you, sir.  
24 Does the Board have any questions for the Applicant? Okay,  
25 then I'm going to turn to the Office of Planning.

1 MS. THOMAS: Good morning, Mr. Chair, Members of  
2 the FMBZA, Karen Thomas with the Office of Planning. I'd  
3 just like to be brief and state that this property falls  
4 within the R-12 zone.

5 And that is the former R-1 Naval Observatory  
6 Diplomatic Overlay Zone. That zone establishes chancery as  
7 a special exception use per Subtitle U-203.1. Looking at  
8 this the Office of Planning has taken into account municipal  
9 interests for the District.

10 And in doing so we found that with respect to any  
11 impacts the impact on the neighborhood would be less than  
12 what currently exists with respect to the Ambassador's  
13 residence. There would be limited activity after evening  
14 hours because the embassy, the chancery would be closed at  
15 5:00 in the evening.

16 So it's anticipated that when workers come in it's  
17 most likely, the neighborhood would be at work and then at  
18 evening times they would, the chancery offices would be  
19 closed when they return home. They park, DDOT found no  
20 issues with parking and any aspects of traffic in the  
21 neighborhood.

22 It is just one property away from Massachusetts  
23 Avenue where there is adequate bus service along that route.  
24 So we don't see any impact. There's parking on site. Cars  
25 could also park in tandem at the rear as well.

1           So you could have, there is space for two cars and  
2 I think four cars could actually fit. So with that we do not  
3 anticipate any adverse impacts to the neighborhood and that  
4 is how we looked at the municipal interests.

5           With respect to the, and with respect to the area  
6 requirement generally as again, I said before this area was  
7 mapped as a diplomatic zone formerly. We just changed the  
8 name to the R-12 zone.

9           So it still functions as a diplomatic zone where  
10 we do have these embassies in this area. It is considered  
11 the northernmost area of the diplomatic embassy, what we  
12 consider Embassy Row in the District.

13           So with that we take no issue with the area  
14 defined by the Applicant. And I rest on the record of our  
15 report. Thank you.

16           CHAIRPERSON HILL: Thank you. Does the Board have  
17 any questions for the Office of Planning? Okay, does the  
18 Applicant have any questions for the Office of Planning?

19           MR. PUDNER: No.

20           CHAIRPERSON HILL: Okay, all right. Is there  
21 anyone here wishing to speak in support of the application?  
22 Is there anyone here wishing to speak in opposition of the  
23 application?

24           Okay, if you could come forward. And I see the  
25 ANC is here as well, okay. So you guys have been sworn in,

1 correct? Okay, all right. So first let's go ahead and  
2 introduce ourselves.

3 MR. WENTWORTH: My name is Bruce Wentworth. I  
4 live at 2705 34th Place NW. I've been in my house for 18  
5 years.

6 CHAIRPERSON HILL: Okay.

7 MS. DALY: Colleen Daly, 2808 34th Place, NW.

8 MS. MACWOOD: Nancy MacWood, Chair of ANC 3C.

9 CHAIRPERSON HILL: Welcome, Ms. Commissioner.  
10 You've been busy. This --

11 MS. MACWOOD: Yes, I have.

12 CHAIRPERSON HILL: -- is two hearings in a row.  
13 You know, you just skipped Thanksgiving and you had to come  
14 right back.

15 MS. MACWOOD: I'm trying to find another case next  
16 week.

17 CHAIRPERSON HILL: Okay, all right. Well good,  
18 well let's try to ride it all the way out until the end of  
19 the year. Let's see, so Mr. Wentworth, Ms. Daly, you'll both  
20 get three minutes each as members of the public.

21 And, Commissioner, you will get five minutes as  
22 an ANC rep. There's three minutes on the clock there, Mr.  
23 Wentworth, and you can begin whenever you like.

24 MR. WENTWORTH: I'll give my three minutes to  
25 Colleen Daly.

1 CHAIRPERSON HILL: Okay, sure.

2 MS. DALY: I don't think I'll need them, but just  
3 in case. My name is Colleen Daly. I reside at 2808 34th  
4 Place, NW and I'm speaking on behalf of the many neighbors  
5 whose homes are nearby the proposed site.

6 I just want to say I think it's a  
7 mischaracterization to say that two-thirds of the people in  
8 that area do not, to say that two-thirds approve of the  
9 application because that's just simply not the case.

10 CHAIRPERSON HILL: Okay, Ms. Daly, I have to  
11 interrupt you and I'm not trying to be argumentative.

12 MS. DALY: Okay.

13 CHAIRPERSON HILL: Do you have a letter or  
14 anything that says that you represent all these other people?

15 MS. DALY: I could get one.

16 CHAIRPERSON HILL: Okay, all right, go ahead.

17 MS. DALY: That would be pretty easy to do.

18 CHAIRPERSON HILL: No, that's all right. It's for  
19 the record.

20 MS. DALY: Okay. And these people would be  
21 adversely affected if the application is granted. We are  
22 particularly concerned that the FMBZA not create a precedent  
23 by granting this application on the basis of the 50 percent  
24 criterion and thus creating an arbitrary mixed use area which  
25 we feel would destroy the residential character of our

1 neighborhood.

2           We are a neighborhood. We are not a mixed use  
3 area. The application itself makes this clear as in order  
4 to meet the definition of a mixed use area the Applicant has  
5 proposed to either cobble together lots from other squares  
6 or crop the existing square to eliminate most of the  
7 residential lots.

8           Please note this is in the attachment which I  
9 passed out these. I know you've seen some version of this.  
10 But this is what I'm talking about. The ANC has made it  
11 clear that the proper area to be considered is the square  
12 itself and the neighbors agree.

13           This approach is consistent with D.C. zoning  
14 regulations. When the zoning regulation rewrite was done the  
15 Office of Planning recommended, this is a quote, recommended  
16 that the square within which the proposed chancery is to be  
17 located should be the area within which the Board should  
18 focus its mixed use inquiry.

19           While the ZRR gave the Board flexibility to  
20 consider a larger area if it "provided a more accurate  
21 depiction of the mix of adjacent uses," the Office of  
22 Planning plainly did not intend to endorse areas that look  
23 like a gerrymandered Congressional district, areas created  
24 by stitching together disparate parcels across major arteries  
25 to meet an artificial objective.

1           And that's what we feel strongly is happening  
2 here. This is what the Applicant has done. The areas  
3 created by the Applicant draw extensively upon properties on  
4 Massachusetts Avenue and 34th Street.

5           One is an artery and the other is a collector.  
6 And they do not regard the character of the residential block  
7 upon which the chancery would be located. The lot in  
8 question is in the middle of the block on 34th Place.

9           It is a small residential property fronting onto  
10 a quiet residential street and facing other homes. We  
11 believe that the use of this property should continue to be  
12 consistent with the nature of the neighborhood which is not  
13 part of the mixed use parcels on Massachusetts Avenue or 34th  
14 Street which again I'll say are major thoroughfares that do  
15 contain a mixture of residential and institutional use.

16           As noted above, Zoning Order 08-06A on Page 11  
17 indicates that an application should be determined with a  
18 focus on the whole square and not an arbitrary part of a  
19 square or squares added in order to increase the percentage  
20 of non-residential use. If the square is used to determine  
21 the area here the application fails to meet the 50 percent  
22 criteria and the application should be, we feel, denied.

23           We do understand, of course, that the zoning order  
24 FMBZA apparently does have discretion to grant an application  
25 even if less than 50 percent of the relevant area is non-



1 residential. But that discretion should not be exercised,  
2 we feel, to alter the fundamental character of our  
3 neighborhood.

4 If the Board decides at its discretion to grant  
5 the application despite the low density residential nature  
6 of the square, and we hope that doesn't happen, we urgently  
7 request that the Board minimize the impact on the  
8 neighborhood and take the greatest steps possible to protect  
9 the many homes in the immediate vicinity in order to ensure  
10 that the proposed use does not create a higher level of  
11 activity than is currently present.

12 And I just have to say I've heard mixed messages  
13 that it's, there's not going to be more activity from  
14 different people because not very much is going to happen  
15 here. But they have a big beautiful new residence in Kent  
16 because there is so much going on and they have to be  
17 available in the evenings and different times of the day.

18 And there's also another chancery that's in  
19 Kalorama so, anyway, accordingly if the Board grants the  
20 application we implore that it does so on the following  
21 basis.

22 One, that the Board's ruling expressly states that  
23 the application is granted on the basis of its discretion not  
24 by fulfillment of the 50 percent criterion and that the  
25 application does not constitute a precedent by finding that

1 the identified area is greater than 50 percent non-  
2 residential use thereby opening the door to other non-  
3 residential uses.

4 Two, that the application is granted on the basis  
5 of the Embassy of Nepal having owned the property for 58  
6 years, having maintained a cordial relationship with the  
7 immediate neighbors and all of us and the anticipated low  
8 impact of the small chancery staff.

9 Three, that the application is granted and the  
10 special exception will remain valid on these following  
11 conditions. A, the chancery will operate during normal  
12 business hours of weekdays nine to five p.m. and with limited  
13 staff, limited number of staff.

14 B, the chancery will provide a public  
15 transportation plan for staff that provides for no increase  
16 in the number of street parking spaces and stipulates no use  
17 of chancery address for applying for residential parking  
18 permits either through DDOT or the OFM.

19 C, that the chancery maintains -- agrees to  
20 maintain the property in good repair, of course, including  
21 appropriate waste management which is really important to us.  
22 D, that the chancery shall operate as a business with no one  
23 residing there permanently or temporarily.

24 E, that the property will revert to residential  
25 use upon lease or transfer of ownership or breach of the

1 conditions. I would like for the record to state that this  
2 presentation, as well as my presentation to the ANC, will be  
3 sent to Mr. Moy and hopefully included in the record. And  
4 I will also say please do not create a vehicle for new  
5 purchases and larger chanceries in our neighborhood.

6 CHAIRPERSON HILL: Okay.

7 MS. DALY: We recently worked with the Embassy of  
8 Norway for the request for their renovation area and it feels  
9 now that's being used against us. And I'd like in closing  
10 to thank the Board for the opportunity to appear before all  
11 of you and for the consideration of our concerns and our  
12 position.

13 CHAIRPERSON HILL: Okay, great. All right, thank  
14 you, Ms. Davis.

15 MS. DALY: Daly.

16 CHAIRPERSON HILL: Daly, sorry.

17 MS. DALY: It's okay.

18 CHAIRPERSON HILL: Commissioner. And, Mr. Moy,  
19 if you could put five minutes up on the clock for me as well.

20 MS. MACWOOD: I won't take that much time. Good  
21 morning. I'm Nancy MacWood, the Chair of ANC 3C and I'm  
22 authorized to represent the Commission on the application of  
23 the Embassy of the Republic of Nepal to relocate a chancery  
24 use to the existing ambassador's residence in the R-12 zone  
25 at 2730 34th Place, Square 1939, Lot 33.

1           At the noticed regular monthly meeting of ANC 3C  
2 on November 19, 2018, the Commission approved a resolution  
3 to oppose the Applicant's proposed mixed use area. The ANC  
4 considered the Applicant's submitted area that reproduced the  
5 area used by the Embassy of Norway in Case 19788 which  
6 involved the renovation and expansion of its chancery.

7           Per Section 301.7 of Subtitle Y, we looked for an  
8 explanation of the basis for using that area. It appeared  
9 to us that the sole reason for using the area was its  
10 acceptance by the FMBZA in the Embassy of Norway case.

11           Several other alternative area configurations  
12 involving squares adjacent to Square 1939 were suggested to  
13 the ANC by the Applicant. Each of them resulted in a  
14 majority mixed use area.

15           None of them were accompanied by a rationale other  
16 than it resulted in a majority mixed use area. ANC 3C has  
17 several embassies and chanceries within our boundaries. And  
18 when opportunities arise for us to work closely with the  
19 Foreign Mission and its neighbors on a matter we devote as  
20 much time and resources as are necessary to reach a good  
21 outcome for all.

22           In this case we believe the zoning regulations  
23 intend to prevent the incursion of chancery uses into  
24 residential neighborhoods and that the mechanism of  
25 determining the existence or not of a mixed use area is meant

1 to be implemented fairly and without bias.

2 We cannot therefore work this out as we have on  
3 past issues with foreign missions. The Square 1939 outlines  
4 a low density residential neighborhood with foreign missions  
5 and a church located on two sides of its perimeter.

6 There is an arterial roadway and a collector  
7 street adjacent to that perimeter. There are several uses  
8 along those roadways in other squares. But the Applicant's  
9 property is not located along those roadways or in the  
10 adjacent squares.

11 It's on a local street with only single family  
12 houses on the block and in the remainder of the square.  
13 Accounting for all the uses in Square 1939 there is no mixed  
14 use area in this square.

15 The only way to achieve a mixed use area that  
16 includes the Applicant's property is to draw an area that  
17 picks only certain properties and eliminates other properties  
18 in order to achieve the desired mixed use area.

19 There is no rational basis, rationale based on  
20 zoning or an accurate depiction of uses adjacent to the  
21 Applicant's property to choose any area other than Square  
22 1939 which accurately shows a mix of uses with the majority  
23 of those being residential.

24 The ANC urges the FMBZA to find that the accurate,  
25 fair and unbiased area is Square 1939 and since it is

1 majority residential that the application must be  
2 disapproved. Thank you.

3 CHAIRPERSON HILL: Okay. Does the Board have any  
4 questions for the witnesses? Sure.

5 COMMISSIONER MAY: So just to be clear, all of you  
6 who are opposed to this application were okay with the  
7 Embassy of Norway definition of area in that case. Is that  
8 right?

9 MS. MACWOOD: The ANC was. And that was --

10 COMMISSIONER MAY: It was a yes or no question.

11 MS. MACWOOD: Yes.

12 MS. DALY: We were trying to be good neighbors.

13 COMMISSIONER MAY: Also a, yes, then. Right,  
14 okay. And then it does prompt one question for the Applicant  
15 if I could which is did you, we don't see a lot of analysis  
16 of sort of alternative areas in the application or in the  
17 record.

18 Did you look at, I mean and I think there was  
19 evidence of what would happen if it was just that square.  
20 But did you look at just that block as well?

21 MR. PUDNER: We've looked, at the ANC's request  
22 we looked at and proposed at least two or possibly three  
23 alternative surrounding area designations which is why we  
24 submitted this. We believe our initial surrounding area is  
25 appropriate.

1           After talking with the ANC it was suggested that  
2 we submit alternative surrounding areas which we did. And  
3 two of those were attached to a letter I filed into the case  
4 two weeks ago.

5           COMMISSIONER MAY: But was one of those just the  
6 block?

7           MR. PUDNER: It was --

8           COMMISSIONER MAY: Like, in other words half of  
9 the square?

10          MR. PUDNER: It was approximately half of the  
11 square, yes, sir. There were two different -- One was if you  
12 look at the Square 1939 Nepal is very close to the western  
13 boundary of it.

14          We proposed, one of our alternative surrounding  
15 areas was half, approximately half of Square 1939 in an  
16 attempt to work with the ANC and address neighbor's concerns  
17 about precedent or about extending the surrounding area found  
18 in Norway.

19          The other one we proposed, which was Exhibit B to  
20 our, my letter of November 14th, was a larger rectangle that  
21 has Nepal directly in the middle of the rectangle which  
22 includes, because of the odd shape of Square 1939 it would  
23 include a smaller portion of Square 1922 as well as a portion  
24 of the squares on the western boundary of 1939.

25          We would be happy with any of these proposed

1 surrounding areas. We believe the one we initially proposed  
2 is the most appropriate and most accurate. We only submitted  
3 the other ones --

4 COMMISSIONER MAY: Okay, thank you. I'll look  
5 again at Exhibits A and B to your November 14th letter. I  
6 did look at it. I don't think I fully understood it so I may  
7 have more questions on it. Thank you.

8 CHAIRPERSON HILL: Okay. Anyone else? Okay,  
9 Commissioner, I have a question for you. So now how long  
10 have you been a Commissioner there?

11 MS. MACWOOD: Since 2001.

12 CHAIRPERSON HILL: Okay, so quite some time. And  
13 I guess then the ANC or at least what I'm getting the gist  
14 of is that, I mean you know the regulations and you know  
15 that, you know, what the Board is able to do in terms of  
16 deciding whether or not the area is the appropriate area to  
17 choose.

18 And even beyond that under, you know, X-201.5 it's  
19 still, it's even notwithstanding before going to the Board  
20 of Adjustment they find that an area with less than or equal  
21 to 50 percent of non-residential uses is a mixed use area.

22 So meaning that we have the flexibility and  
23 however, the ANC, I guess what I'm getting from you guys  
24 because you did the, so when you did the application for the  
25 Norwegians it was, you know, this was the area that they



1 defined and you think that you just didn't want, you don't  
2 want this to continue is kind of your, the ANC's kind of  
3 position to it in terms of the definition.

4 And I'll finally get to my question which is that  
5 in terms of, you know, you've read the report from the Office  
6 of Planning. You've read the State Department's letter. But  
7 the Office of Planning even thinks that this would be less  
8 of an impact in terms of this change of use than what it  
9 currently is.

10 Do you disagree with that or, first let's answer  
11 that question. I'm sorry. Do you think that this would be  
12 less of an impact to the ANC or was the ANC just concerned  
13 about the way the map was drawn?

14 MS. MACWOOD: I think it's difficult to project  
15 exactly what the intensity of the use would be. We don't  
16 have any reason to disagree with the representations of the  
17 Embassy of Nepal as to how much the, what the intensity of  
18 use would be.

19 But I think the larger question for us was  
20 permitting an office use, a chancery use in a low density  
21 residential neighborhood and then transforming that property  
22 into a mixed use property, a non-residential property for  
23 future considerations of additional chancery uses in the  
24 neighborhood.

25 The properties along Massachusetts Avenue and

1 along 34th Street as the other witness explained, are very  
2 different than the properties on 34th Place. This is a two  
3 block street in a very dense, low density residential area.

4 It's very much a compact neighborhood.  
5 Massachusetts Avenue uses do really not affect the residences  
6 in that particular neighborhood. Placing a chancery now in  
7 the neighborhood which is very different than a residential,  
8 than an ambassadorial residence use, could alter the  
9 neighborhood in a negative way.

10 CHAIRPERSON HILL: I was just trying to understand  
11 in terms of what you think the ANC's opposition was. And I  
12 think I understand it a little bit more. I guess my counter  
13 to it is that, you know, that whole area has always been  
14 mapped as a diplomatic zone.

15 And like, you know, the whole area is full of  
16 embassies and residences and chanceries. And that's what  
17 makes that area also somewhat appealing to a certain extent.  
18 And I mean I've lived here in the city my whole life as well  
19 and not as long as the embassy has been there.

20 But where the Nepali Embassy -- or not the embassy  
21 but the ambassador's residence had been there. So I'm just  
22 trying to understand what, so I got it. But I was trying --

23 MS. MACWOOD: We don't have any chanceries on  
24 local streets.

25 CHAIRPERSON HILL: Okay, all right. Has anybody

1 got anything else? Okay, thank you all very much. So, Mr.  
2 Pudner, do you have anything else you would like to add in  
3 closing?

4 MR. PUDNER: No, thank you for your time.

5 CHAIRPERSON HILL: All right. I'm going to go  
6 ahead and close the hearing. Is the Board ready to  
7 deliberate, okay?

8 I mean I can start. I mean I'm disappointed that  
9 obviously there are some members of the community that are  
10 not, you know, what's it called, supportive of this  
11 application.

12 And so, but in terms of what I think the Applicant  
13 has put forward I, you know, would agree with the boundaries  
14 that they have proposed. I would agree with the analysis  
15 that the Office of Planning has also proposed and provided  
16 in terms of their analysis.

17 So, you know, I think that it is a mixed use area.  
18 I think that the area has always been this type of a use.  
19 And I think that, you know, in terms of we're talking about  
20 like diplomatic uses.

21 It's not, this isn't a store or something like  
22 that. So, you know, I think that again the Office of  
23 Planning has provided their rationale. I think that their  
24 analysis is sound.

25 I think that the Applicant putting forward the

1 boundaries is appropriate. I think that the support that the  
2 State Department has added and also that the Nepali  
3 government has been helping us in their country in terms of  
4 their needs and diplomatic needs I think that is also  
5 supportive.

6 But that's not what I'm basing my decision off of.  
7 I'm basing my decision primarily again on the regulations and  
8 what I believe that has been an accurate analysis by the  
9 Office of Planning.

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

12 MEMBER WHITE: I'll add just a couple of notes.  
13 After reviewing the record I also think that the criteria  
14 under mixed use area determination for chancery use as well  
15 as the criteria under the Foreign Missions Act criteria, I  
16 found it, the facts to support this particular request.

17 I'm also very familiar with that area. I've lived  
18 in the area a very, very long time. I haven't heard any  
19 evidence that you haven't been a good neighbor.

20 And I think you're over the 50 percent threshold  
21 and the fact that there is not going to be any construction  
22 either interior or exterior I don't think that there's going  
23 to be any negative impacts to the neighborhood. So I would  
24 with OP's information as well as the testimony that we've  
25 received, you know, obviously respectful of the neighbor's

1 opinions as well.

2 But I found just based upon the criteria that I  
3 think they met it. Thank you, Mr. Chair.

4 COMMISSIONER MAY: Mr. Chair, I agree. I think  
5 that the definition of the area for this application is  
6 reasonable. It certainly would be reasonable to draw it in  
7 some other ways.

8 But I don't think we need to do an exhaustive  
9 examination of every single configuration that could be done.  
10 I think that what they proposed is reasonable for how this  
11 would be treated.

12 And I think that the, you know, when we make this  
13 decision we have to consider the totality of evidence that  
14 has been presented. And so I'm also not concerned about the  
15 setting a precedent for other cases elsewhere in the  
16 neighborhood or elsewhere where there are largely residential  
17 uses that one might actually have to gerrymander.

18 I mean I would never call this gerrymandering.  
19 That's just not a logical description of what's been proposed  
20 here. So I'm supportive. And again, I'm not concerned about  
21 the precedent that this particular case could set.

22 MR. ACOSTA: And I also support this application.  
23 I appreciate the testimony brought by the community, forward  
24 by the community but also find the evidence compelling in  
25 terms of meeting the criteria in the Foreign Missions Act

1 with respect to approving or not disapproving this property.

2 If there was an issue with respect to the  
3 boundaries as drawn, I think there mentions the Office of  
4 Planning originally stating the square being the unit of,  
5 they could have brought that up as part of their report.

6 In fact, they had supported the Applicant's  
7 boundaries and it is the discretion of this Board to make  
8 that determination with respect to what is an appropriate  
9 area for designation for mixed use. So again, I would  
10 support this application as stated.

11 MEMBER JOHN: Mr. Chairman, I am also in support  
12 of the application. I thought the record was fairly clear  
13 and I also appreciate the testimony of the neighbors. I do  
14 not believe there is any intent in the regulations to limit  
15 the surrounding area to a particular square.

16 And I do agree with the Applicant's argument that  
17 it would have been very easy to do that in the regulations  
18 and that was not done. And based on the testimony there will  
19 be much less activity, you know, as proposed than what is  
20 there currently, than the level of activity that is currently  
21 there now.

22 And so based on the record, the testimony today  
23 and the well written analysis of the Office of Planning and  
24 the recommendation of the State Department I would approve,  
25 I would support the application.

1 CHAIRPERSON HILL: Okay, all right. Then I'm  
2 going to go ahead and make motion to not disapprove  
3 Application Number 19875 as captioned and read by the  
4 Secretary and ask for a second.

5 MR. ACOSTA: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All  
7 those in favor say aye.

8 (Chorus of ayes.)

9 CHAIRPERSON HILL: All those opposed? Motion  
10 passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as five to  
12 zero to zero. This is on the motion of Chairman Hill to not  
13 disapprove the application. Second the motion, Mr. Acosta.  
14 Also in support Ms. White, Ms. John and Mr. Peter May. The  
15 motion carries, Mr. Chairman.

16 CHAIRPERSON HILL: All right, thank you, Mr. Moy.  
17 Thank you all very much. We're going to take a quick few  
18 minute break just to switch out a Commissioner.

19 (Whereupon, the above-entitled matter went off the  
20 record at 10:30 a.m. and resumed at 10:39 a.m.)

21 CHAIRPERSON HILL: All right, Mr. Moy, whenever  
22 you like.

23 MR. MOY: Thank you, Mr. Chairman. The hearing  
24 is reconvening and it's about 10:39. So I see the parties  
25 are at the table. This is to Appeal Number 19818 of Stephen

1 Cobb captioned and advertised.

2 This is the, pursuant to, from the decision made  
3 on May 18, 2018, by the zoning administrator, Department of  
4 Consumer and Regulatory Affairs to issue Building Permit  
5 Number B1804093 to construct a third floor and a three story  
6 rear addition and convert the existing principal dwelling  
7 unit to a flat in an RF-1 zone.

8 This is at 1267 Penn Street, NE, Square 4060, Lot  
9 233. And, Mr. Chairman, as you're aware in the record there  
10 is a motion to postpone or reschedule this appeal.

11 CHAIRPERSON HILL: Okay, great. If we could just  
12 introduce everybody my right to left please.

13 MS. LORD-SORENSEN: Good morning. Adrienne Lord-  
14 Sorensen, Assistant General Counsel with the D.C. Department  
15 of Consumer and Regulatory Affairs.

16 MR. LEGRANT: Good morning. It's Matthew Legrant,  
17 the Zoning Administrator DCRA and I do need to be sworn.

18 CHAIRPERSON HILL: Okay, we'll get you in one  
19 second, Mr. Legrant.

20 MR. SULLIVAN: Good morning. Marty Sullivan with  
21 Sullivan and Barros on behalf of the property owner.

22 MR. COBB: Good morning. Stephen Cobb, Appellant  
23 appearing pro se.

24 MS. TELLE: Shelby Telle, the next door neighbor  
25 at 1265 Penn Street. I was named an intervener with my



1 husband two months ago.

2 CHAIRPERSON HILL: Okay, great. All right, if  
3 there's anybody here who needs to be sworn in and didn't get  
4 sworn in if you could please stand if you plan on testifying.  
5 Mr. Legrant, if you could get sworn in by Mr. Moy, thank you.

6 (Witnesses Sworn)

7 MR. MOY: Thank you, you may be seated.

8 CHAIRPERSON HILL: Are you with the ANC? I'm  
9 sorry, you have to speak in the microphone. But go ahead and  
10 sit down and just if you could introduce yourself on the  
11 microphone there, Commissioner. Just push the button there.

12 MR. LEE: Clarence Lee, Chairman of Commission 5D.

13 CHAIRPERSON HILL: All right, Mr. Commissioner,  
14 thank you. Okay, so well first of all I would just like to  
15 say I was really glad to see like handshaking going on at the  
16 beginning of this.

17 This was very nice. You know, everybody shook  
18 hands and that's great. Like, you know, and then I just  
19 realized that this actually just continues to be a  
20 controversial job, you know.

21 And so for whatever that was worth, there you go.  
22 Mr. Sullivan, you have a request before us to postpone. Is  
23 that correct?

24 MR. SULLIVAN: Yes.

25 CHAIRPERSON HILL: Would you explain it to us?

1 MR. SULLIVAN: Yes. So during construction a  
2 routine wall check performed as part of DCRA's inspection  
3 protocol exposed an issue with the plan in which the  
4 architect had essentially shifted the building back three  
5 feet.

6 So the plans were approved showing a 21 foot rear  
7 yard and a compliant parking space. But in reality it was  
8 not. The building was built actually beyond, a little bit  
9 beyond where it existed previously which was around 19 feet.

10 And so when this issue was spotted we were  
11 instructed and consulted with the Zoning Administrator to  
12 revise the plans and to begin fixing the foundation which was  
13 constructed out at the first line that was approved which was  
14 incorrect. And so we're in the process of correcting that  
15 and we're in the process of revising the plans.

16 So the Zoning Administrator thought it best that  
17 we should postpone the hearing and he asked me to file that  
18 and they consented to that. And I think it's a chronology  
19 thing.

20 The revised plan is not yet in. And then the  
21 Board could hear in theory the rear yard argument. But the  
22 plan is not currently approved by DCRA at this point as part  
23 of the permit.

24 CHAIRPERSON HILL: Okay, Mr. Sullivan, you were  
25 just hired recently. Is that correct?

1 MR. SULLIVAN: That's correct, yes.

2 CHAIRPERSON HILL: And how long ago was that?

3 MR. SULLIVAN: About two weeks ago.

4 CHAIRPERSON HILL: Okay, all right. So, Mr.  
5 Commissioner, you're here, the Appellant is here, the  
6 intervener is here. What are your thoughts on the  
7 postponement and let's start with the Commissioner?

8 Well I guess, I'm sorry, Mr. Cobb, you can go  
9 first.

10 MR. COBB: The interveners and I are in opposition  
11 to the Motion to Continue in large part because of how long  
12 this case which is a relatively simple case has already been  
13 going on. I filed it on May or back in May.

14 Our first hearing was in late September. The  
15 Appellee still had not retained counsel at that point. You  
16 advised that they do and they did. But here we are. It's  
17 been, let's see it's been many months and we're still hearing  
18 this case.

19 And there is no telling when the Board will next  
20 be able to hear this case. On top of that I think it would  
21 also work somewhat in the Appellee's favor to go ahead and  
22 decide the issues today because if they are in the process  
23 of revising their plans then the Board can make its decision  
24 and offer its guidance that way which the Appellees can then  
25 incorporate into the plans that they are currently revising

1 and will submit to DCRA.

2 CHAIRPERSON HILL: Okay, all right.

3 MS. TELLE: And as the intervener we, we're the  
4 next door neighbor. We have attempted since March since we  
5 got the neighbor notification to notify 1267 of issues that  
6 we saw with the construction.

7 And this has been going on since March. We've had  
8 ten weeks since our last hearing before you and today. And  
9 so to get a request on Wednesday of last week to postpone  
10 after ten weeks to us feels a little problematic.

11 To make matters worse my husband and I, our yard  
12 collapsed into the next door property, the construction.  
13 There was a massive pit and our whole side yard collapsed.  
14 We're not able to fix that and every single day we delay  
15 we're not able to have that fixed and we have no use of our  
16 side yard because of it until decisions are made about the  
17 side yard usage.

18 CHAIRPERSON HILL: Okay, Commissioner.

19 MR. LEE: I'm just in support of my constituents.  
20 Like I said, they explained everything.

21 CHAIRPERSON HILL: Okay, well that's kind of you  
22 to come down. Yes, Mr. Cobb, there's nothing simple about  
23 appeals, I've got to tell you.

24 So I mean the problem that I'm having really is  
25 that like, you know, there was a, I don't have anything like

1 supplemental from DCRA concerning the information that's been  
2 provided by the Appellant.

3 And then there's also nothing from, in other  
4 words, I'm still waiting for information from DCRA concerning  
5 the things that you guys put into the record. And then Mr.  
6 Sullivan, he just was hired a couple weeks ago.

7 And it sounds like there's a lot of moving parts  
8 that still are things we're going to have to listen to. I  
9 mean I understand it's a patience thing. I mean like,  
10 believe me I've been involved in a lot of things in the city  
11 and it just takes a long time to get through stuff.

12 But I don't know how, I would be in agreement to  
13 the postponement and try to set a date to get this wrapped  
14 up as soon as possible so that we can get to this as quickly  
15 as possible and hear the case. Does the Board have any  
16 thoughts?

17 MEMBER JOHN: Mr. Chairman, I would support  
18 granting the continuance. It looks as if there is some  
19 effort to revise the plans and perhaps during that process  
20 some of the other issues, if there are any, should be  
21 addressed as well I would think.

22 CHAIRPERSON HILL: Mr. Commissioner.

23 COMMISSIONER MAY: So, yes, I don't believe we  
24 have enough information or can we extract enough information  
25 to be able to make decisions today based on what's in the

1 record or what we think can be submitted today.

2 But I do have questions about the case because  
3 this is another, this is a case where there are issues that  
4 are being raised that relate to the zoning of the property.  
5 But there are also issues that are being raised having to do  
6 with the construction and how things have actually been  
7 executed.

8 And so I wonder if I might, if it's possible for  
9 me to ask a couple of questions to the Zoning Administrator  
10 to see if, I mean, I'm hoping that some of these things  
11 actually could be resolved before it comes back if we ask  
12 some of these questions.

13 CHAIRPERSON HILL: Sure, that's fine, sure.

14 COMMISSIONER MAY: So the, Mr. Legrant, I mean the  
15 first one Mr. Sullivan testified that there was a or stated  
16 that there was an issue that was discovered at wall check.  
17 I mean is that your understanding of what happened as well?

18 MR. LEGRANT: Yes. So the standard process is  
19 after a building permit is approved or approved plans are  
20 issued and then the construction proceeds at the point in  
21 which the footprint, in this case like the foundation there  
22 is portions of the building that are being retained, some  
23 existing walls.

24 And then a new portion of the perimeter they  
25 removed the old foundation and put in a new foundation. And

1 after that was poured DCRA's process, sort of a cooperative  
2 process between the Permit Operations Division, the Office  
3 of the Surveyor and the Office of Zoning Administrator used  
4 to do a wall check.

5 The wall check is basically just to see is that  
6 footprint consistent with the approved plans, in this case  
7 the plat. The plat shows the footprint of the building in  
8 relation to the property lines.

9 And so we can be able to ensure that the setbacks  
10 and the lot occupancy that are required in the minimum  
11 standards and zoning regulations are adhered to. So when  
12 this wall test came in we looked at it and said wait a  
13 second, it doesn't match the approved plat.

14 And we brought it, we worked with the Applicant  
15 and his counsel brought this to their attention. Now this  
16 is an issue. It's not an issue with the approved plans.  
17 It's that the construction deviated.

18 At that point the Applicant seemed very interested  
19 in correcting that. Said, okay, we want to make sure it's  
20 consistent with the approved plat. So at that point because  
21 I think this happened just I think in the last couple of  
22 weeks ago, Mr. Sullivan is correct.

23 My advice was you have to submit a revised  
24 building permit to go, because to do this correction of this  
25 footprint construction they have to apply for a revised

1 building permit that will address that. It would have to go  
2 through our process, not only Zoning Office but the Permit  
3 Operations Division to ensure that it complies with the  
4 building regulations.

5 That would have to be issued. Then I think we  
6 would be in a better position to address the issues of the  
7 appeal.

8 COMMISSIONER MAY: Okay, thank you. That was more  
9 information then I was really looking for at this moment.  
10 But that's fine.

11 MR. LEGRANT: Okay.

12 COMMISSIONER MAY: I think that's helpful for  
13 other people who might need to understand this. There was  
14 an issue that was raised with part of the building that  
15 extends into the side yard.

16 MR. LEGRANT: Yes.

17 COMMISSIONER MAY: And typically when that side  
18 yard, I mean if you're retaining something that exists that  
19 predates the zoning or predates a regulation or whatever that  
20 can be retained.

21 But it seems pretty clear from the photographs  
22 that all of that was demolished and then rebuilt essentially  
23 in the same place. Is that your understanding as well?

24 MR. LEGRANT: Okay. So that does go into some of  
25 the issues of the merits of the case.



1 COMMISSIONER MAY: Right.

2 MR. LEGRANT: Which I can work with my counsel.  
3 You know, I am happy to speak to and we thought we would  
4 address that at the merits of the case.

5 COMMISSIONER MAY: Okay, and that's fine. We can  
6 put that off. But I just wanted to highlight that particular  
7 issue because that's something that stuck out and it's not,  
8 I mean people often look at that as if it is a zoning issue.

9 But it is a matter of the enforcement of the  
10 zoning regulations more so than it is what's, I mean if they  
11 showed that on paper we're going to demolish this and  
12 building something new then they would need relief to do it.  
13 But that's not what was --

14 MR. LEGRANT: Right, and so we'll be well prepared  
15 to put forth our arguments about that and the nature of the  
16 non-conformity.

17 COMMISSIONER MAY: Right, so and in fact they are,  
18 what they are proposing is something that is contrary to the  
19 zoning regulations then you would, you know, give us a letter  
20 saying that they need relief from the following things or you  
21 could work with them to actually fix those things.

22 So if they fix those things they might not have  
23 to come back and seek relief. They may also have a path to  
24 resolve things with the neighbors.

25 MR. LEGRANT: Again, we will be happy to in the

1 merits of the case address that issue specifically.

2 COMMISSIONER MAY: Okay, and I appreciate that.  
3 And I think the last thing is, and again this is far afield  
4 of zoning, but the damage to the neighbor's yard is something  
5 that I would think that DCRA could act to --

6 MR. LEGRANT: Yes, and we have.

7 COMMISSIONER MAY: -- on with the owner.

8 MR. LEGRANT: We have. So what --

9 COMMISSIONER MAY: I mean there's no reason why  
10 we have to resolve the zoning case for the yard to be fixed.

11 MR. LEGRANT: We would be happy to speak to that  
12 because Adrienne can speak to a little bit more detail with  
13 that.

14 COMMISSIONER MAY: Okay, thank you.

15 MS. LORD-SORENSEN: So when we were here last we  
16 noticed, well, I guess we received photographs of the, I  
17 guess, apparent collapse in the neighbor's yard. And so when  
18 that information was brought to our attention we submitted  
19 the information to DCRA. And we asked for an inspector to  
20 go out. And on or around October 31, 2018, they did visit  
21 the property and they met with, I believe, the property  
22 owner. I'm not sure if it was Mr. Telle.

23 But it was communicated that Mr. Telle, as well  
24 as the property owner for 1267 Penn Street, were going to  
25 work things out. That was the information that was conveyed

1 to the inspector. But he didn't observe, according to his  
2 notes, he did not actually observe a collapse at the  
3 property.

4 COMMISSIONER MAY: Yes, but it seemed pretty  
5 obvious from the photographs that there's been a collapse.  
6 I mean I guess somebody might argue that it's not due to the  
7 construction immediately next door.

8 But it's kind of hard to argue that. And, well  
9 whatever, I think that it requires some further attention  
10 because it's, you know, if the intervener in this case is  
11 arguing that the urgency has to do with the fact that is not  
12 repaired it seems to me to indicate that in fact they are not  
13 working it out.

14 And so I think it is incumbent upon DCRA to assist  
15 in that matter.

16 MS. LORD-SORENSEN: If I may --

17 CHAIRPERSON HILL: Just give me one second. Go  
18 ahead, Ms. Sorensen.

19 MS. LORD-SORENSEN: Okay, we'll look into that  
20 further.

21 COMMISSIONER MAY: Okay, very good. Thank you.

22 CHAIRPERSON HILL: Go ahead.

23 MS. TELLE: When DCRA came out on October 10th  
24 they didn't know who had sent them. They didn't know what  
25 they were out to look for. They spoke to my husband and they

1 told my husband you called us to come out and my husband told  
2 him, no.

3 So the DCRA inspector had no idea why they were  
4 visiting the property.

5 CHAIRPERSON HILL: Okay, that's fine, okay. So  
6 what Mr. May is trying to do is help clarify or rectify the  
7 situation in between now and the time you're back here again.  
8 And what the Zoning Administrator and Zoning Administrator's  
9 counsel and because they have some sway over at DCRA they can  
10 possibly help follow up with things. Okay, let's see,  
11 anybody else?

12 MEMBER WHITE: I would agree with you that I think  
13 it's appropriate to postpone at this point. This would be  
14 what, the third postponement. Obviously this will also give  
15 Attorney Sullivan time to pull everything together as well.

16 But I don't think that we have a full record to  
17 be able to decide the case today. So we'll have to figure  
18 out when the next date is.

19 CHAIRPERSON HILL: Okay, all right. So let's see,  
20 Mr. Sullivan, how much time do you think we're going to need  
21 for this to get back with us in your, with the property  
22 owner?

23 And again, as we've already mentioned and as  
24 Commissioner May has already mentioned, you know, there seems  
25 to be an issue with the side yard there. And I don't know

1 if your Applicant is here or not and it doesn't matter to me  
2 right now.

3 But if you could please work with your client to  
4 have that issue addressed so that we don't have to talk about  
5 that when we're back here.

6 MR. SULLIVAN: So we asked for December 12th  
7 because we believe, we have no interest in extending this any  
8 further either of course. And so we think we can get the  
9 revision in by the 12th.

10 And the problem was the Board would be hearing an  
11 appeal on something that doesn't exist. So that revision has  
12 to be in by the 12th. We understand there was an appeal  
13 scheduled for that day that might go away and that's the  
14 original --

15 CHAIRPERSON HILL: Mr. Sullivan, are you like  
16 psychic down there. You're like doing Mr. Moy's job. So,  
17 Mr. Moy --

18 MR. SULLIVAN: This is what the Zoning  
19 Administrator told me. And on the point of the side yard I  
20 would like nothing more than to come back here and have it  
21 resolved. I didn't realize it wasn't and we will be working  
22 on that.

23 CHAIRPERSON HILL: Okay, all right, great. So  
24 before I ask Mr. Moy, so there's the 12th and that would get  
25 us back here faster than I thought we would be back here.

1 But also even though it's not, I suppose necessary  
2 that Commissioner May is back here, when are you back here?

3 COMMISSIONER MAY: The 19th.

4 CHAIRPERSON HILL: The 19th of December.

5 COMMISSIONER MAY: Yes.

6 CHAIRPERSON HILL: Perfect. So then I suggest the  
7 19th of December. I didn't think you were going to be back  
8 here then. We get to see you twice before the holidays.

9 COMMISSIONER MAY: It was a surprise to me too  
10 when I checked my schedule.

11 CHAIRPERSON HILL: The Vice Chair is asking me  
12 what's on the 19th. So, Mr. Moy, what is on the 19th?

13 MR. MOY: There's no appeals on that day. And we  
14 have five applications so this is very doable.

15 CHAIRPERSON HILL: That's my wife's birthday.  
16 I've got to like, yes, like I can't be here late.

17 MR. MOY: You can invite her to the hearing.

18 CHAIRPERSON HILL: That's great. That will work  
19 out well. I'm glad she doesn't watch these things. Okay,  
20 all right. Let's come back on the 19th. Yes, Commissioner.

21 MR. LEE: Will the ANC have to do another letter  
22 of support for the Appellant?

23 CHAIRPERSON HILL: I guess you would have to. I  
24 don't, I mean I read through your letter. I thought your  
25 letter was very good. I don't know what will change between

1 what submissions come forward and whether or not you need to  
2 submit a change in the letter.

3 I mean, you know, you kind of detail all of the  
4 different issues that you're in agreement with. And so if  
5 some of those issues change, I mean that's the only reason  
6 why we would need a different letter from you.

7 So I guess, Mr. Sullivan, when do you think you  
8 would have information in the record so that the ANC could  
9 at least take a look at that information?

10 MR. SULLIVAN: We'll do it as soon as possible.  
11 And we can send them the information before it gets approved  
12 as well, as soon as it's drafted. So hopefully within a  
13 week.

14 CHAIRPERSON HILL: Okay. So, Mr. Commissioner,  
15 you can make a judgment call as to that once you get the  
16 information, okay.

17 MR. LEE: Okay.

18 CHAIRPERSON HILL: And you're always welcome,  
19 Commissioner, to come by. But, you know, and the ANC is  
20 always welcome to submit information any time. So, all  
21 right, so that's it then.

22 We'll see you guys on the 19th, okay. Good luck  
23 with that side yard, okay.

24 So just to let everybody what we're going to do  
25 now. So we're going to do our decision portion of the

1 hearing because we haven't made decisions yet today.

2 And then we'll see how far along we get. At some  
3 point we're going to have lunch and then we'll just see how  
4 it goes. All right, yes, actually before we do the decisions  
5 I guess there's one more possible administrative issue we're  
6 going to try to see if we can work our way through.

7 So I'm going to, we are going to call the next  
8 case which is the Staples LLC case. But I'll wait until Mr.  
9 Moy does it.

10 MR. MOY: Thank you, Mr. Chairman. That would be  
11 Case Application Number 19757 of 1201 Staples LLC as amended  
12 for special exception under the residential conversion  
13 requirements, Subtitle U, Section 320.3 which would convert  
14 an existing non-residential building to a three unit  
15 apartment house, RF-1 zone.

16 This is at 1201 Staples Street, NE, Square 4067,  
17 Lot 2. And as the Chairman just mentioned there is a request  
18 from the ANC, I believe, for what, for a postponement, yes,  
19 for a postponement, ANC 5D.

20 CHAIRPERSON HILL: Okay. Will the parties come  
21 to the table? All right, Mr. Commissioner, I see why you're  
22 here today. Okay, let's go ahead and introduce ourselves  
23 please right to left.

24 MS. VIALPANDO: Good morning. My name is  
25 Jacqueline Vialpando Strickland. I live at 1122 Staples



1 Street.

2 CHAIRPERSON HILL: I'm sorry, could you spell the  
3 last name please?

4 MS. VIALPANDO: Sure.

5 CHAIRPERSON HILL: Just push it once.

6 MS. VIALPANDO: Vialpando, V-I-A-L-P-A-N-D-O.

7 CHAIRPERSON HILL: Thank you.

8 MR. LEE: Clarence Lee, Chairman of Commission 5D.

9 CHAIRPERSON HILL: Okay, Ms. Vialpando, could you  
10 just turn off your microphone? Just like it feeds back. I  
11 can only have one microphone on at a time. Sir.

12 MR. STILP: My name is Mark Stilp. I'm a party  
13 to the case and I live at 1203 Staples Street.

14 MR. TEASS: Good morning. My name is Will Teass,  
15 the principal at Teass Warren Architects here on behalf of  
16 the Applicant, 1201 Staples LLC.

17 MR. GRASS: Good morning. Edward Grass, I'm  
18 counsel for 1201 Staples LLC.

19 CHAIRPERSON HILL: Okay, great, thank you. So,  
20 Commissioner, you guys have asked, the ANC has asked for a  
21 postponement. Is that correct?

22 MR. LEE: Yes.

23 CHAIRPERSON HILL: And why are you asking for a  
24 postponement?

25 MR. LEE: We weren't aware of the revised plans.

1 And the neighbors at our last ANC meeting weren't aware of  
2 the plans. So we just wanted time to review the plans and  
3 meet with the neighbors to see if they want to accept it or  
4 not accept it. Right now they don't know what the new plans  
5 are.

6 CHAIRPERSON HILL: Okay. Mr. Grass, are you  
7 speaking on behalf of, Mr. Teass, are you speaking on behalf  
8 of the Applicant?

9 MR. TEASS: I am. And so we had filed a letter  
10 objecting to the postponement. We had attended the ANC  
11 meeting on November 13th where we had presented an update to  
12 the ANC and members of the community as to what the revisions  
13 were.

14 The revisions were a result of the extensive  
15 negotiations that we've had with the adjacent neighbor and  
16 getting to a place where he, the adjacent neighbor who is  
17 here at the dais with me today is in support of the project.

18 CHAIRPERSON HILL: Okay. So now I'm just a little  
19 confused. So you're the adjacent neighbor, sir. Is that  
20 correct?

21 MR. STILP: Yes.

22 CHAIRPERSON HILL: And you're here in support of  
23 the project. You just need to say yes. Is that correct?

24 MR. STILP: Yes.

25 CHAIRPERSON HILL: Okay. And so the Commissioner

1 here, you're here trying to get us to postpone it. And then,  
2 Ms. Vialpando, who are you here with?

3 MS. VIALPANDO: I'm the owner of the home at 1122  
4 Staples Street. I'm diagonal from the project.

5 CHAIRPERSON HILL: Okay. And you're here in  
6 opposition?

7 MS. VIALPANDO: In opposition.

8 CHAIRPERSON HILL: Okay. So you're just here as  
9 a member of the public in opposition?

10 MS. VIALPANDO: Yes, sir.

11 CHAIRPERSON HILL: Okay, all right. Okay, yes,  
12 does anyone have anything they would like to comment on?

13 COMMISSIONER MAY: I'm sorry. Are you inviting  
14 us to discuss the question of whether you postpone?

15 CHAIRPERSON HILL: Yes, I'm inviting you to  
16 discuss the postponement.

17 COMMISSIONER MAY: So it seems to me that the  
18 record is fairly complete with the exception of the ANC's  
19 report. And so to me that means that we could go ahead and  
20 hear the case and then wait to hear what the ANC has to say  
21 when they, you know, come to some, I mean you have a meeting  
22 on it or I don't know when the next meeting might be when it  
23 would be considered.

24 But we could wait to hear that report before we  
25 make a decision about it. But in the meantime I don't see

1 a reason not to hear the case as it is.

2 CHAIRPERSON HILL: Okay. So we have an opinion  
3 to go ahead and move forward since everyone is here, hear the  
4 case and then wait to keep the record open for the feedback  
5 from the ANC.

6 And I would be in agreement with that, I supposed.  
7 Does anyone else have a thought?

8 MEMBER JOHN: Mr. Chairman, I'm in agreement with  
9 that proposal as well.

10 CHAIRPERSON HILL: Okay, all right. Well see, Mr.  
11 Moy, this didn't work out for me. I thought, you know, you  
12 got, I was all, okay, I'm not following your lead ever again,  
13 okay.

14 So, all right, so we're going to go ahead and hear  
15 this case. And so, Mr. Teass, are you going to be  
16 presenting?

17 MR. TEASS: Yes, sir.

18 CHAIRPERSON HILL: Okay, wait one second.  
19 Commissioner, you had a question, comment.

20 (Off microphone comment.)

21 CHAIRPERSON HILL: No, we're just going to go  
22 ahead and do this now. We're going to go ahead and, because  
23 everybody is here. We're all ready to go. I got introduced.  
24 And so now who is presenting? I forget now, you said, Mr.  
25 Teass, you're presenting.

1 MR. TEASS: Yes. I have a presentation. I can  
2 keep it relatively brief. I think most of the issues that  
3 we had were related to the neighbor at 1203 and he is --

4 CHAIRPERSON HILL: Okay, well, Mr. Teass, we'll  
5 see what's going on. I've got somebody here in opposition.  
6 I've got the ANC who wanted to postpone. So if I were to  
7 wager how fast things are going to be they're not as fast as  
8 I would have thought they were going to be when I was first  
9 given this suggestion to do this case first.

10 So I'm going to go ahead and put 15 minutes on the  
11 clock. Mr. Teass, as always, you've been here before, if you  
12 could please just kind of walk us through the project and  
13 again, just highlight what it is you're trying to do as well  
14 as the standards in which you're meeting for us to grant the  
15 application. And we'll go ahead and start with that.

16 MR. TEASS: Thank you very much. So what I've got  
17 put on the screen is a presentation that we uploaded that  
18 really is material that's been previously submitted to the  
19 Board.

20 I would say just in the interest of time about  
21 half of that material, starting from Page 16 onward we're not  
22 going to cover today because it's no longer relevant now that  
23 we're in agreement with the neighbor to the northeast at  
24 1203.

25 But to begin with we are seeking special exception

1 relief from U-320.3(e) which is related to modifications to  
2 the existing architectural rooftop feature. I would like to  
3 say that this case has been postponed several times and we've  
4 spent a lot of time and energy on our part working with the  
5 neighbor to come up with a solution that we believe best  
6 serves both the neighbor, ourselves and the community at  
7 large.

8           The project itself is located at the intersection  
9 of Staples and Morris Street in the Trinidad neighborhood.  
10 It is shown here in the, as indicated by the red arrow. It  
11 is in a semi-attached or semi-detached rather, row structure  
12 that has a side yard but it also has a building restriction  
13 line on both Morris and the Staples Street elevations.

14           What you're seeing here in the existing conditions  
15 on Page 3 are the character of the street. And the street  
16 really has a series of very similar row houses that have what  
17 I would consider sort of faux Dutch gable rooftop feature.

18           You can also see in the images in the upper right  
19 and the images in the lower right that the project  
20 immediately across both at 1200 Staples and 1123 Staples,  
21 both of those projects have been approved. They were  
22 approved, I believe, under the previous zoning regulations.

23           They were permitted as a matter of right. Those  
24 projects added a second story. Those modified the rooftop  
25 features and it really, I think, forms the basis for the

1 project that we're bringing before the Board today.

2 Just some more context, looking down towards the  
3 subject property at 1201 Staples and then you're seeing in  
4 the foreground the project at 1203, I'm sorry, 1200 Staples  
5 across the street. And I think that's important for us to  
6 look at these due to the fact that what we're proposing is  
7 visually very similar and that it's part of a larger urban  
8 context that we're responding to.

9 The existing site plan as you see here on Page 5  
10 shows the Staples and Morris Streets respectively to the east  
11 and to the south. As we discussed, the property, currently  
12 improve with a two-story plus cellar structure.

13 It is currently used as a church. There's a  
14 certificate of occupancy for its use as a church which has  
15 been submitted into the record. Therefore, we are proceeding  
16 under the regulations as they relate to converting a non-  
17 residential structure to a residential structure.

18 The revised proposal or what we call the revised  
19 design which is from the negotiations that we've undertaken  
20 with the adjacent neighbor, illustrate the overall building  
21 footprint in green. What you're seeing here is a third story  
22 addition with modification to that rooftop feature which is  
23 part of the relief that we're seeking today.

24 We are proposing a rear addition at the lowest  
25 level in the cellar. That rear addition will extend nine

1 foot ten and a half or nine foot, 11 inches to meet the  
2 minimum 20 foot rear yard setback, setback rather.

3 But once you move from the ground second and third  
4 floors we have actually pulled the building back. And so the  
5 addition is only three feet. And we did that really to  
6 improve the light and privacy and visual access of the  
7 adjacent neighbor at 1203 to more street and to the alleyway.  
8 And so that was very much a --

9 CHAIRPERSON HILL: Mr. Teass, are these the plans  
10 now that are in your PowerPoint? I'm just trying to make  
11 sure I have the right plans.

12 MR. TEASS: They are in the PowerPoint and they  
13 were also submitted in Exhibit, they were uploaded  
14 supplemental materials.

15 CHAIRPERSON HILL: Fifty-six?

16 MR. TEASS: Yes, in --

17 CHAIRPERSON HILL: Okay, got it, okay.

18 MR. TEASS: These are the plans that were  
19 submitted as part of --

20 CHAIRPERSON HILL: These are the new, revised  
21 plans that the ANC hasn't had a chance to look at?

22 MR. TEASS: This is what we presented to the ANC.  
23 We uploaded this on, early in November and we brought these  
24 drawings to the ANC at their November 13th meeting.

25 CHAIRPERSON HILL: So then what is it that the ANC



1 still needs to take a look at?

2 MR. TEASS: I don't know.

3 CHAIRPERSON HILL: Commissioner, I'm just curious.  
4 Which plans are they that --

5 MR. LEE: Well I was made aware that they were  
6 revised plans they wanted to present at the ANC meeting for  
7 November 13th. But they weren't reviewed by the community  
8 in the single member district meeting.

9 CHAIRPERSON HILL: Okay, I got it. All right, Mr.  
10 Teass, you can keep going.

11 MR. TEASS: So on Slide 7 here it just shows the,  
12 on the upper row or the upper drawing shows the proposed  
13 elevation along Staples. You can see on the right hand side  
14 here the existing structure that was already, that's in place  
15 now at 1123.

16 And it really speaks to the bookend condition that  
17 was developed there. We are proposing to mirror that image  
18 across the street again with the idea that we're providing  
19 essentially a bookend for both ends of these row houses.

20 And I think that was part of a conscious decision  
21 architecturally to embrace the character of the neighborhood  
22 and character of the rooftop features but treat the ends a  
23 little bit differently.

24 Just some specifics about that elevation. So what  
25 you're seeing here on the left is what's proposed for the

1 street elevation and the alley elevation. We are proposing  
2 to replicate the, what we call the Dutch gable feature but  
3 at a slightly higher elevation.

4 We are proposing as part of our comments from DDOT  
5 to restore the porch roof and the porch, and really match the  
6 porch language that exists further on down the street. As  
7 you turn the corner on Morris you're seeing both there's a  
8 dash line that indicates the profile of the existing  
9 structure and then the addition above.

10 There is an existing bay with chamfered corners.  
11 We would be extending that up one story and then adding a  
12 second bay. And those fall within the limits prescribed by  
13 the projections into public space.

14 You can also start to see here where we set the  
15 building back at the rear in order to preserve light and  
16 visual access from the adjacent neighbor at 1203. The  
17 building sectioning also really highlights how the building  
18 has changed.

19 And so really, you know, in terms of the changes  
20 from what was originally proposed really the only change here  
21 is we've cut the building back so that instead of the full  
22 addition going approximately 9'11" the bulk of that addition  
23 only goes about three feet back and it's only the cellar.

24 So in essence we're actually building less  
25 building area than we had when we first brought this to the

1 ANC. The floor plans are fairly straightforward. We have  
2 a unit that's split between the cellar and the ground floor,  
3 another unit that's split between the ground floor and the  
4 second floor.

5 And we have a third floor unit that has access to  
6 the roof. We are providing a small roof deck at the rear of  
7 the property with stairs that go down to the unit below.

8 I think one of the aspects of the agreement with  
9 the neighbor because the, there is a solar panel array on the  
10 existing structure at 1203, was that we are putting, we're  
11 agreeing to put solar panels on 1201 not so much to mitigate  
12 the impact on his array as much as to compensate for the  
13 overall, if you think about sort of the grid at large we're  
14 putting electricity back into the grid via solar panel which  
15 is a goal that the neighbor that the neighbor at 1203 has  
16 shared.

17 And with that I think there is some information  
18 that we had submitted that really at this point because we've  
19 reached an agreement with the neighbor is no longer relevant  
20 I was not planning on covering in my testimony.

21 I think in summary what I wanted to just reinforce  
22 is that the nature of these changes were actually fairly  
23 minimal. We have done extensive outreach to the ANC after  
24 the last time we here before you in the 3rd of October you  
25 had asked us, you specifically scheduled this hearing after

1 we could back to the ANC and we did go back to the ANC.

2 We also reached out to the single member district.  
3 So the policy within that ANC is to have a single member  
4 district commission review this at a meeting. The day that  
5 you rescheduled the hearing we reached out to that single  
6 member district.

7 And I think Commissioner Lee was copied on that  
8 correspondence to say when is your next meeting we would like  
9 to come present. We never received a response. We attended  
10 the hearing, the ANC meeting on the 13th of November. We  
11 were requested to consider postponement.

12 We were, at that time we were not told when the  
13 next SMD meeting was. Nobody seemed to, unfortunately the  
14 SMD Commissioner was not there. But nobody seemed to  
15 understand when that meeting was going to take place or where  
16 it was going to take place.

17 So I would argue that we have made a good faith  
18 effort to keep the ANC apprised.

19 CHAIRPERSON HILL: Okay, Mr. Teass, I got it.  
20 Okay, is that it?

21 MR. TEASS: That is it.

22 CHAIRPERSON HILL: Okay. Does anybody have any  
23 questions for the Applicant?

24 MEMBER WHITE: Just the one question was whether  
25 or not the actual agreement was in the record with Mr. Stilp?

1 MR. STILP: It's not in the agreement but I  
2 believe he's willing to testify that it's been executed.

3 MEMBER WHITE: Okay, thank you.

4 VICE CHAIRPERSON HART: And Mr. Stilp is still a  
5 party. But you are not a party in opposition, you're just  
6 a --

7 MR. STILP: I am now in support of this  
8 application.

9 VICE CHAIRPERSON HART: Okay. So do we have to  
10 do anything to change that? Okay.

11 MS. LOVICK: I mean he could withdraw his  
12 opposition. But he is, currently he's a party in opposition.

13 MR. STILP: I am happy to withdraw that. If I  
14 need to do it in writing I will do that.

15 CHAIRPERSON HILL: Okay, great. That would be  
16 helpful, thank you.

17 MR. STILP: I did submit a submission late last  
18 night indicating that I anticipated supporting today. I  
19 apologize that was late.

20 CHAIRPERSON HILL: That's okay. The reason why  
21 is that it limits some of the things that we can or can't do  
22 moving forward. And so if you can provide that into the  
23 record that you're withdrawing your opposition, I'm sorry,  
24 you're withdrawing your party status then that would clean  
25 things up.

1 MS. LOVICK: No, just withdrawing your opposition,  
2 specifically your opposition. You're a party still.

3 MR. STILP: Right.

4 CHAIRPERSON HILL: Okay. Was there questions?  
5 Sure, Mr. May.

6 COMMISSIONER MAY: Yes. So just to be clear on  
7 the, how the access to the roof works. That stairway, just  
8 leave the section up there, that stairway that leads up to  
9 the roof that's just open to the elements and there's some  
10 sort of interior drainage or something like that?

11 MR. TEASS: That's correct. So when you step  
12 outside of the door that you're seeing in the section there  
13 it would be open to the sky above --

14 COMMISSIONER MAY: Right.

15 MR. TEASS: -- and then we would have a drain at  
16 the bottom of those stairs.

17 COMMISSIONER MAY: Okay, all right. That's good.  
18 I mean that's one of the solutions that's available in RF-1  
19 neighborhoods that don't require relief. So that makes sense  
20 to me.

21 Then the next question I had has to do with the  
22 solar panels and the requirements when it comes to the relief  
23 that would be granted in this circumstance. And there was,  
24 I think, some disagreement about whether that existing solar  
25 panel installation on Mr. Stilp's, is that right?

1 MR. STILP: Stilp like Stilt with a "p" at the  
2 end.

3 COMMISSIONER MAY: Thank you. Mr. Stilp's house,  
4 whether that, it exists now but did it exist when the  
5 application was filed. And there was disagreement on that  
6 question.

7 And I think it needs to be clear on the record  
8 whether in fact there is agreement that it exists and  
9 therefore we have to have documentation that you're in  
10 agreement or whether you're just coming to agreement because  
11 you're nice people and it doesn't, it's not required.

12 So is there clarity? I mean have you come into  
13 agreement on whether it exists or not?

14 MR. STILP: I hesitate, clearly.

15 MR. GRASS: I could jump in on that, I'm sorry.  
16 I think the agreement is that assuming everything is approved  
17 as we hope and anticipate with this plan that the, we've  
18 agreed that his solar system is existing but he's also agreed  
19 that there will be some shading and that's okay with him.

20 In part what we're doing is of course we're  
21 putting a brand new system, again as part of the overall  
22 thing to make up for that in terms of the grid. Mr. Stilp  
23 is a very environmentally conscious individual and his  
24 concern, not to speak for him, but our concern was we didn't  
25 want to hurt the overall.

1           So I think that the summary is we'll just agree  
2 that the timing I suppose doesn't matter in that sense except  
3 for your record purposes. But we can agree that his solar  
4 was preexisting as long as this is approved.

5           COMMISSIONER MAY: So I'm not sure how we do that,  
6 whether there has to be some sort of stipulation or, sorry,  
7 I think we do, the solar panel criteria is not applicable.  
8 I have to understand that a little bit better, but we will  
9 by the time we make a decision. So, thank you.

10          MR. GRASS: And I would just add that was our  
11 understanding it wasn't applicable. But given the, it  
12 doesn't matter in a sense to the parties how you do it. So  
13 if you say the solar panel rule was inapplicable it doesn't  
14 matter because his system will stay.

15          It will be partly shaded and the new system will  
16 go in regardless.

17          COMMISSIONER MAY: Right, but my only concern is  
18 being sure that it's documented properly because we don't  
19 want people pointing at this case in the future saying, hey,  
20 you walked away from this requirement here.

21          CHAIRPERSON HILL: Okay, anyone else? All right,  
22 going to turn to the Office of Planning.

23          MS. VITALE: Good morning, Mr. Chair, Members of  
24 the Board. Elisa Vitale with the Office of Planning. The  
25 revised design addresses the concerns that OP had raised in



1 its earlier June 29th report.

2 The penthouse relief request is now no longer part  
3 of the application and OP can now support the requested  
4 special exception relief for the conversion of an existing  
5 non-residential building to a three unit apartment house.  
6 This concludes my report and I'm happy to answer any  
7 questions. Thank you.

8 CHAIRPERSON HILL: Okay. And does the Board have  
9 any questions for the Office of Planning? Okay, Commissioner  
10 Lee, I forgot to mention this. So as an automatic party you  
11 have the opportunity to ask any kinds of questions.

12 I don't know whether you have any because like you  
13 still have to get presented to. I'm a little confused on  
14 that aspect of it. But do you have any questions for the  
15 Applicant or the Office of Planning?

16 MR. LEE: Only that we do have a meeting scheduled  
17 for December 13th and for the SMDs to present to the  
18 neighborhood. And we do have one of the neighbors here that  
19 are in opposition.

20 It's not knowing. You know we can't support  
21 something that we really haven't had time to digest and do,  
22 you know, we're not architects. We're just --

23 CHAIRPERSON HILL: Sure, I understand.

24 MR. LEE: So, we just want to get it clear because  
25 all of the other presentations under the old plans so we have

1 revised plans. We are glad to hear that Mr. Stilp agrees  
2 with the new revised plans.

3 But we just want to make sure all the other  
4 neighbors get a chance to weigh in --

5 CHAIRPERSON HILL: Sure, of course.

6 MR. LEE: -- within that 200 feet.

7 CHAIRPERSON HILL: No, that's great. And so I  
8 suppose if you did have any questions also or anything you  
9 could just put those into the record for us if after you've  
10 had a chance to, because what the plan is at this point and  
11 we'll see what happens as we continue to do this, we're going  
12 to have the hearing and then we're just going to wait to hear  
13 what the ANC has to say.

14 And then we're going to have an opportunity to  
15 look at the record again and deliberate. And so if you did  
16 have any questions about anything you could maybe put those  
17 into the record and then we'll see what we do with it after  
18 that.

19 But at this point you don't have any questions of  
20 the Applicant or the Office of Planning?

21 MR. LEE: No, I do not. Well, can the --

22 CHAIRPERSON HILL: No, she can't answer any  
23 questions. Mr. Commissioner, I am going to just stop you  
24 because like that person is not a party. And so they are  
25 actually not supposed to be asking any questions.

1 But if you as an ANC person have questions later  
2 you can go ahead and submit it into the record for us, okay.

3 MR. LEE: Okay.

4 CHAIRPERSON HILL: All right.

5 VICE CHAIRPERSON HART: One question for,  
6 Commissioner Lee. So you said that or at least I've heard  
7 and I don't know if it was from Mr. Teass or from you  
8 describing earlier, you have to, there is a process that you  
9 have to have an SMD meeting before you, before the full ANC  
10 hears it or votes on something. Is that the process in your  
11 ANC?

12 MR. LEE: Yes. Our ANC the other commissions who  
13 are not in the area would like to know that it has been  
14 vetted with the community and what the community supports or  
15 is opposed to.

16 So as we did, you know, this process this was a  
17 long and arduous process because we have been looking at  
18 these plans since May. But we have just, haven't seen the  
19 revised plans at that time to, you know, getting with the  
20 holidays and people's personal calendars we haven't had a  
21 chance to meet and a chance to digest the information to see.

22 We haven't even heard from Mr. Stilp as the  
23 adjacent --

24 VICE CHAIRPERSON HART: Sure, no, I understood  
25 that. The question I have was really when do you anticipate

1 having the SMD meeting that in advance of the ANC meeting?

2 MR. LEE: Our next ANC meeting is the 13th. Our  
3 next SMD meeting is the, that third Saturday in December.  
4 Look on my calendar.

5 VICE CHAIRPERSON HART: Well your next SMD meeting  
6 would be after the ANC meeting you're saying?

7 MR. LEE: Yes.

8 VICE CHAIRPERSON HART: So --

9 MR. LEE: Because we typically don't discuss --

10 VICE CHAIRPERSON HART: So the ANC meeting doesn't  
11 really matter in December because you're not going to be able  
12 to give them any heads up or any thumbs up or thumbs down  
13 because you wouldn't have had your meeting, the SMD meeting  
14 prior to that?

15 MR. LEE: Right.

16 VICE CHAIRPERSON HART: And so I'm also assuming  
17 that because of the way November worked you may not have had  
18 your November meeting for the, your SMD meeting?

19 MR. LEE: Right. Well the SMD meeting, this one  
20 is scheduled for Saturday the 15th. And our ANC meeting is  
21 December 13th.

22 VICE CHAIRPERSON HART: So we wouldn't really  
23 expect to get anything until after your January meeting and  
24 that would then mean that we wouldn't be able to hear this  
25 until after that?

1 MR. LEE: January 9th.

2 VICE CHAIRPERSON HART: Yes, but I'm saying we  
3 would have, if we're waiting for the ANC meeting and the ANC  
4 report we would have to wait until after that period.

5 MR. LEE: Unless there's no opposition to the new  
6 plans.

7 VICE CHAIRPERSON HART: No, we would have to wait  
8 anyway because we wouldn't know otherwise. There would be  
9 no way for us to, so I'm saying if we wait for this, that's  
10 what I was trying to parse out. I just wasn't sure what the  
11 timing was.

12 But it sounds like because of the SMD meeting in  
13 the mid to late December the ANC meeting wouldn't be,  
14 wouldn't meet until this and actually take this up until  
15 January and then we would, I think, schedule something after  
16 that.

17 MR. LEE: Well I will try and get with the, when  
18 I spoke to the Commissioners last night they gave me the  
19 15th, the single member district.

20 CHAIRPERSON HILL: If you can, Commissioner, if  
21 you can do that before your 13th meeting because then just  
22 as how this whole timing thing is going again, you were here  
23 for the earlier case, right.

24 MR. LEE: Right.

25 CHAIRPERSON HILL: Commissioner May is back here

1 on the 19th. And so if you could have your SMD meeting  
2 before that and then the full ANC could take it up on the  
3 13th, right, then we would still be able to get something  
4 before you by the 17th.

5 MR. LEE: I totally agree with you.

6 CHAIRPERSON HILL: So if you could do that, that  
7 would be obviously most efficient for us. But I'll let you  
8 think about that while we keep going through this, okay. So  
9 did any have, nobody had any questions for the Office of  
10 Planning.

11 Okay. Is there anyone here wishing to speak in  
12 support? Great, that's right, sure.

13 MR. STILP: I'd like to speak up. Again, my name  
14 is Mark Stilp.

15 CHAIRPERSON HILL: Okay, Mr. Stilp, just to  
16 understand so I'm going to put three minutes on the clock for  
17 you. And, Mr. Moy, if you would and you can begin whenever  
18 you like.

19 MR. STILP: Great, thank you. Thank you all for  
20 having me here today. I would just like to explain a little  
21 bit about my support. Again, I'm the immediately adjacent  
22 neighbor.

23 I was initially in opposition. But based on the  
24 revisions to the plans and the agreement with the solar  
25 panels I'm now in support. Although I support these plans

1 I completely respect and understand the opposition of the  
2 neighbors.

3 But that does not affect my support. I maintain  
4 my support, but I completely respect and acknowledge the  
5 opposition. I don't want that to be mistaken.

6 I was initially in opposition due to the size of  
7 the building and the impact on my solar panels and the loss  
8 of solar generated electricity, renewable electricity in the  
9 District. I've been working with the Applicant for many  
10 months now and I believe we have both made concessions and  
11 believe we've come to a true compromise.

12 I don't think either one of us sits here before  
13 you with everything that we wanted. So I do think we've  
14 worked together to find a compromise.

15 These plans I support for a whole host of reasons  
16 but three primary reasons that I'd like to put on the record.  
17 Again, the renewable solar energy production added to 1201  
18 Staples, the Applicant's property, will more than make up for  
19 the lost solar at my home.

20 And so there will be a net increase of solar  
21 generated renewable electricity in the District. The overall  
22 footprint is significantly smaller and allows a more open  
23 appearance from the roadways as well as from the rear of my  
24 home and I'm grateful for that concession.

25 My view and light will be much less impacted with

1 these plans than they were originally. Additionally, from  
2 my front door I now have the ability to see one block over  
3 on 1120 Orrin Street, a corner property that has a third  
4 floor addition that is a quote 'by right' addition of the  
5 third floor where the facade of the front is not visible, I'm  
6 sorry, not altered or changed.

7 And quite frankly that has changed my opinion  
8 about how the aesthetics of this proposal would appear. And  
9 I think the option before us today is better than that kind  
10 of cake look of plopping the third floor on top.

11 So for those primary reasons I support the plan.  
12 For the past six months I've immersed myself in the  
13 regulations and the law and have come to the conclusion that  
14 at this point it's in everyone's best interest to proceed  
15 with my support and agreement.

16 And so I thank you for your time. I thank the  
17 ANC. I respect their opinion and I respect my neighbors and  
18 everyone's voice here today.

19 CHAIRPERSON HILL: Okay.

20 MR. STILP: I'm in support.

21 CHAIRPERSON HILL: Okay, great, thank you. I  
22 guess, Mr. Teass, also before we come back in if you could  
23 put something into the record in terms of what the agreement  
24 is and so we can just take a look at that because, you know,  
25 I'd like to see that as well.



1 All right, so are there people wishing to speak  
2 in opposition? I know that there's one person here. Is  
3 there anyone else that wishes to speak in opposition? Okay,  
4 all right. Then, Ms., and I apologize I'm trying to it's,  
5 Vialpando?

6 MS. VIALPANDO: It's Vialpando-Strickland. You  
7 can use my married name Strickland is fine.

8 CHAIRPERSON HILL: Vialpando, that's okay,  
9 Vialpando. I can say Vialpando. So, all right, so, Ms.  
10 Vialpando, we're going to go ahead and put three minutes on  
11 the clock for you and, Mr. Moy, and you can begin whenever  
12 you like.

13 MS. VIALPANDO: Thank you. My name is Jacqueline  
14 Vialpando-Strickland. I live at 1122 Staples Street. I've  
15 been living there for 15 years. According to my neighbors  
16 I'm the new neighbor on the block because I am not of the  
17 same character of the neighborhood.

18 And I mention that because the character of the  
19 neighborhood is about community. And this character of the  
20 neighborhood is about community with elderly families that  
21 have been there for over four generations on the same block.

22 This four generations of community have not had  
23 the opportunity to speak or been presented the information  
24 because unfortunately our ANC member, Ms. Evampas had, from  
25 the 5D-06 had a death in the family so she could not have the

1 meetings.

2           So for that reason since the only communication  
3 we have in the neighborhood from my block over, that is 1122  
4 over to, towards Florida Avenue, has been a letter which is  
5 the letter that was sent. I thank you because you were, you  
6 took the time for the community and communicated what was  
7 happening.

8           CHAIRPERSON HILL: Ms. Vialpando, you just have  
9 to look up here. You don't have to talk to anybody at the  
10 desk. Thank you.

11           MS. VIALPANDO: Okay, thank you. And so my  
12 concern is that we didn't have a voice to see and those  
13 individuals that are elderly do not have a digital access to  
14 the letter that the digital site that was indicated in the  
15 letter.

16           So more or less it's been me sharing the  
17 information with Ms. Rosemary across the street and I have  
18 a letter that we wrote together. And she lives at 1117  
19 Staples Street.

20           It's on the record. It's Exhibit Number 37. So  
21 and she's the voice on the block. And so we've communicated  
22 with the elderly people through Ms. Rosemary who is Ms.  
23 Rosemary Richardson.

24           She is unable to come today because she had  
25 surgery and it's cold today outside. So because of that I

1 also spoke last night to Mr. Jack Giles.

2 But it was at 7:30 after we had communicated with  
3 Chairman Lee about the time for this meeting today. So I was  
4 unable to go in the cold to interrupt --

5 CHAIRPERSON HILL: Ms. Vialpando, I'm going to  
6 interrupt you. Like you have a minute left. I'm just trying  
7 understand what's your objection to the project?

8 MS. VIALPANDO: Yes. The objection to the project  
9 is families, the density, the amount of density that the  
10 three condos could bring in which is, I know that they have  
11 parking spaces available. But it brings additional people.

12 The other one is the character of the  
13 neighborhood. Thank you for the Office of Planning because  
14 they just deleted the penthouse. Also it was about the air  
15 quality that this new construction will bring in.

16 The two designated locations that were in the  
17 PowerPoint that demonstrated the two new condo sites which  
18 is at 11, I forget, 1200 Staples and 1123 Staples, are not  
19 the character of the community. And that just came in, in  
20 the last five years.

21 And the community did not get an opportunity to  
22 know about those because they didn't do necessarily a BZA  
23 application but it was a permit process by right that's  
24 what's allowed. And so I just want the community to get  
25 voice and to see those plans at the ANC meeting.

1 CHAIRPERSON HILL: Okay, great. Thank you. Does  
2 anybody have any questions for Ms. Vialpando? Okay, thank  
3 you very much.

4 All right, so, Commissioner, support, opposition.  
5 Mr. Teass, do you have anything else you would like to add  
6 at the end here?

7 MR. TEASS: If I could have just a few minutes to  
8 summarize. I think that what we're hearing and this is some  
9 of the sentiments that were shared at the November 13th  
10 meeting that the neighborhood opposition to the project  
11 really relates to density and really relates to the idea that  
12 three units are coming in to where a church was.

13 You know, she talks, the neighborhood I think is  
14 concerned about change, I think concerned about family and  
15 about air quality. All of those things are not what we're  
16 asking relief for.

17 We're asking for a very small amount of relief in  
18 terms of the rooftop structure. I would just like to  
19 emphasize that the conversion of a non-residential structure  
20 to three dwelling units is permitted as a matter of right and  
21 that we could very well have gone through a process by which  
22 we had set back from the rooftop feature and developed a  
23 matter of right project and that we chose to go through and  
24 work with the neighbors to develop what we think is an  
25 architecturally better product for the neighborhood.

1           And I just want to remind the Board that's, the  
2 criteria that we're looking at is really about the rooftop  
3 addition, not about the density.

4           CHAIRPERSON HILL:   Okay, great.   Does the Board  
5 have any final questions for anyone?   Okay, so this is what,  
6 Mr. Teass, you had, I'm sorry.

7           MR. GRASS:   I'm sorry, if I could be heard on the  
8 procedural matter.   I was a little bit confused.   My  
9 understanding was that this project was in fact presented to  
10 the ANC, the one that's up for approval today and that there  
11 was an attempt even after that to meet with the SMD as Mr.  
12 Teass pointed out.

13           And so procedure, we had also been told not to ask  
14 for any further extensions because we have taken so long in  
15 good faith with the neighbor trying to work to accommodate  
16 everybody's concerns.   And so the developer has really been  
17 exemplary.

18           And I appreciate the Board is clearly concerned  
19 about our holding costs and delay and everything else and  
20 also of course to make sure everybody is heard.   But  
21 procedurally I believe that the ANC did --

22           CHAIRPERSON HILL:   Okay, Mr. Grass.   So what I  
23 think is going to happen is, as I mentioned before, the  
24 Commissioner is going to be very helpful in trying to get the  
25 SMD meeting to happen before the next full ANC meeting.

1           And then we're going to try to get something from  
2 the full ANC after the December 13th meeting so that when we  
3 come back here when Mr. May is here, if you were here earlier  
4 this morning, he's going to be back here on the 19th of  
5 December and we could have a decision case or a continued  
6 hearing which is actually what I'm depending upon what the  
7 Board has to say here.

8           I don't need anything else for the record in terms  
9 of what I would be interested in seeing. I mean, but except  
10 for input from the ANC. So there was, I would be interested  
11 I suppose and maybe the Board can tell me one way or the  
12 other because if having a continued hearing for the 19th just  
13 in order to hear if the ANC has any questions.

14           So in other words you're going to have a chance  
15 now basically as a party you have an opportunity to ask  
16 questions, Mr. Commissioner. And so, you know, I'm not  
17 exactly sure how, you know, there seems to be a difference  
18 of opinion as to what the ANC has seen, what they haven't  
19 seen.

20           Regardless you wanted or you had requested for a  
21 postponement. And so in ability to try to make sure we hear  
22 from the ANC and make sure there's every opportunity the ANC  
23 has to participate I would go ahead and if you do want to  
24 come back on the 17th of December you can ask some questions  
25 on the 17th of December based upon the additional information

1 that you may be getting from the, I'm sorry, 19th of  
2 December, thank you.

3 The 19th of December based upon the additional  
4 information that you might be getting from the SMD meeting  
5 as well as your full ANC meeting on the 13th. If however,  
6 you don't have any questions then you can just go ahead and  
7 submit your report or letter to the record and then we'll go  
8 ahead and just, you know, move forward on the 19th in terms  
9 of how the Board is going to deliberate and move forward one  
10 way or the other. So did that make sense?

11 MR. LEE: Yes, I'm clear. I'm in full agreement  
12 with that. Hopefully that's the way we're going to process.  
13 We're going to try meet on December 8th. I've already sent  
14 out a request for it for Saturday December 8th which is prior  
15 to the December 13th meeting.

16 And hopefully we'll get the plans and the  
17 neighbors will come out and give their, and we can work  
18 something out on even those issues of air quality.

19 CHAIRPERSON HILL: Okay. And you are aware  
20 however, Commissioner Lee, kind of what they are asking for  
21 right and what they can do by matter of right and why they're  
22 actually here?

23 MR. LEE: Yes.

24 CHAIRPERSON HILL: Okay, all right. So I'm going  
25 to go ahead and propose that we do that. I'm going to

1 propose that we close the record except for information that  
2 we're going to receive from the ANC either in the form of a  
3 report or if you have further questions that you would like  
4 to ask here from the Applicant when we come back for a  
5 continued hearing on the 19th.

6 And in addition to that if you could submit, Mr.  
7 Teass, into the record the agreement concerning Mr. Stilp and  
8 then that would be it. Does the Board have anything else?

9 VICE CHAIRPERSON HART: Just one thing.

10 CHAIRPERSON HILL: Sure.

11 VICE CHAIRPERSON HART: It seems that Ms.  
12 Vialpando-Strickland said that because the neighborhood is  
13 elderly or at least there are some folks that have been there  
14 for many years that accessing the information via some  
15 online, something may have been a difficulty.

16 Mr. Teass, I would just encourage you to maybe get  
17 hard copies of information to be able to hand out to folks.  
18 And I don't know if you done that or not. But that may be  
19 helpful for them to be able to actually see, okay, you know,  
20 the actual documents themselves as opposed to sending them  
21 to some site.

22 I know that, you know, it's hard sometimes to do  
23 that because it's easy to kind of send an email out and say  
24 just look at this. But, you know, I know in talking to my  
25 family members that are older than I am they don't always



1 look at email and figure out how to do, you know, attachments  
2 and go to this website.

3 All that stuff is, it can be difficult. So I  
4 would just encourage you to continue working and I think  
5 you've done a good job so far from what I'm understanding.  
6 But maybe a hard copy.

7 CHAIRPERSON HILL: Mr. Stilp, I don't think you  
8 need to comment on it at all.

9 MR. STILP: If I may.

10 CHAIRPERSON HILL: We don't need to hear it. It's  
11 okay.

12 MR. STILP: I would be happy to deliver those.  
13 I owe Ms. Rosemary a conversation. I would be happy to take  
14 those to her.

15 CHAIRPERSON HILL: Okay, great. So however you  
16 guys get that information that's fine. So, all right, so  
17 great. So we're clear.

18 MR. GRASS: My only question would be if for  
19 whatever reason the ANC decides not to take action we would  
20 still go forward on the 19th.

21 CHAIRPERSON HILL: We will come back here on the  
22 19th and we'll see where we are. And if, you know, we're  
23 going to have as I mentioned a continued hearing just so we  
24 can hear from the ANC.

25 I'm not going to take any more public testimony.

1 We're not going to hear support or opposition. This was the  
2 opportunity for the public for this Board. However, at the  
3 ANC meeting, you know, the public can come to the ANC meeting  
4 and voice their concerns, impressions, what have you.

5 And the Commissioner, you know, has been here now  
6 several times and is aware of what is actually before us in  
7 terms of the request. So, okay, so then we'll go ahead and  
8 do that.

9 We'll set this back, Mr. Moy, for the 19th of  
10 December with Commissioner May.

11 MR. MOY: Yes, sir.

12 CHAIRPERSON HILL: Okay. All right, thank you all  
13 very much.

14 MR. LEE: Thank you.

15 CHAIRPERSON HILL: Okay, so I guess what we're  
16 going to try to do is do decisions and then we'll probably  
17 break for lunch after that or we'll see what happens. If you  
18 are, the next case is Application 19808, Application 19809.

19 I think probably we're not going to get to  
20 Application 19865. But you might want to hang around and see  
21 if we get to you before lunch.

22 (Whereupon, the above-entitled matter went off the  
23 record at 11:42 a.m. and resumed at 12:52 p.m.)

24 CHAIRPERSON HILL: Thank you. So Mr. Moy, what  
25 I want to try to see is if there are anyone here for -- I'll

1 wait until you're ready.

2 MR. MOY: I'm ready.

3 CHAIRPERSON HILL: Is there anybody here for  
4 Application 19808 or 19809? Okay. So Mr. Moy, let's go  
5 ahead and call them, and then -- let's call them individually  
6 and we can talk about them.

7 MR. MOY: Yes, sir. So shall I call each one or  
8 call the first one? Okay, the first one is Case Application  
9 19808 of Marc Rogers. Caption advertised for a variance from  
10 the parking location requirements of subtitle C, Section  
11 710.2. This would permit a parking space in the front yard  
12 of an existing principal dwelling unit R-2 Zone at 1740 40th  
13 Street SE, Square 5523, Lot 31.

14 CHAIRPERSON HILL: Okay. I did tell you all we're  
15 going to lunch after these two cases, right? So no one's  
16 here. So last week we called this case again, and so I  
17 believe that we now are able to dismiss this case. Is that  
18 correct OAG?

19 MS. LOVICK: Yes, that's correct.

20 CHAIRPERSON HILL: Okay. Then I'm going to make  
21 a motion that we dismiss Application 19808, and ask for a  
22 second.

23 VICE CHAIRPERSON HART: Second.

24 CHAIRPERSON HILL: The motion made and seconded.  
25 All those in favor say aye.

1 (Chorus of aye)

2 CHAIRPERSON HILL: Aye. All those opposed?

3 (No audible response)

4 CHAIRPERSON HILL: All right, there you go.

5 MR. MOY: The staff would record the vote as five  
6 to zero to zero based on the motion of Chairman Hill to  
7 dismiss the application. Second the motion Vice Chair Hart.  
8 Also in support, Ms. White, Ms. John, and Mr. Peter May.  
9 Motion carries.

10 The next application is Case Application 19809 of  
11 Shamori Jennings. Caption advertised for a variance from the  
12 parking location requirements, Subtitle C, Section 710.2, to  
13 permit a parking space in the front yard of an existing  
14 principal dwelling unit R-2 Zone, at 1736 40th Street SE,  
15 Square 5523, Lot 32.

16 CHAIRPERSON HILL: Okay. As the applicant is not  
17 here, and again we called this case last week, and the Office  
18 of Zoning had an opportunity to reach out to the applicant.  
19 I'm going to make a motion to dismiss this case. I'm going  
20 to make a motion to dismiss Application 19809 and ask for a  
21 second.

22 VICE CHAIRPERSON HART: Second.

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

25 (Chorus of aye)

1 CHAIRPERSON HILL: All those opposed?

2 (No audible response)

3 CHAIRPERSON HILL: Motion passes. Mr. Moy.

4 MR. MOY: Staff would record the vote as five to  
5 zero to zero, based on the motion of Chairman Hill to dismiss  
6 Application 19804. Seconding the motion Vice-Chair Hart.  
7 Also in support, Ms. White, Ms. John, and Mr. Peter May.  
8 Motion carries.

9 CHAIRPERSON HILL: Okay great. So we're going to  
10 take a lunch break. We'll come back here, we'll try to shoot  
11 for 1:40.

12 (Whereupon, the foregoing matter went off the  
13 record at 12:55 p.m. and back on the record at 1:57 p.m.)

14 CHAIRPERSON HILL: All right, Mr. Moy.

15 MR. MOY: Thank you, Mr. Chairman. The Board is  
16 back in session. It is about 1:57 p.m.

17 I believe the next case application is Case 19865  
18 of Nform, LLC, pursuant to caption advertised for variance  
19 from the lot occupancy requirements, subtitle G, Section  
20 404.1, to construct a one-story rare addition to an existing  
21 flat. This is in the MU-4 Zone at 905 N Street NW, Square  
22 367, Lot 806.

23 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
24 Moy. Good afternoon. If you could please introduce yourself  
25 for the record. You need to push the button on the

1 microphone.

2 MR. DWIGHT: My name's Griz Dwight. I'm the owner  
3 of the property in question.

4 CHAIRPERSON HILL: All right. Mr. Dwight, did you  
5 get sworn in this morning?

6 MR. DWIGHT: I was, yes.

7 CHAIRPERSON HILL: Okay. So if you want to go  
8 ahead and walk us through your application and what you're  
9 trying to do, and also how you're meeting the test for us to  
10 approve the application. I'm going to put 15 minutes on the  
11 clock just so we know where we are, and you begin whenever  
12 you like.

13 MR. DWIGHT: Okay, sure. I'll try to be briefer  
14 than that. But I think you're all familiar with the project,  
15 so I'll walk through quickly.

16 We have a property that has two buildings, one on  
17 the south side that is a multi-unit residential apartment,  
18 and one on the north side that is currently -- I'm an  
19 architect and it's our architects' office.

20 In the middle between those two buildings we have  
21 a courtyard that has been enclosed by building on the west  
22 that has made that courtyard virtually unusable. The  
23 building blocks sun, air, light, and we also have sort of  
24 developed a kind of a major water problem in that back  
25 courtyard.

1           We are proposing the solution of enclosing that  
2 courtyard to bring in a green roof to raise that level of  
3 grade, as it were, that will allow us to get more air, get  
4 more light, and absorb some of the water that's on the  
5 property.

6           We've met with neighbors. We have letters of  
7 approval. We have worked with the Office of Planning. We've  
8 sort of coordinated with them and the DDOE to come up with  
9 alternative solutions. We looked at permeable pavers, but  
10 there are adjacent basements to the property, some of which  
11 already have water issues from the standing water that we  
12 get, so that was ruled out. Rain garden was ruled out.

13           We can tie into the Blue Plains Treatment Center,  
14 tie in the drainage to the Blue Plains Treatment Center that  
15 would solve some of the ponding issues, but wouldn't solve  
16 the lack of the light and air that we're currently getting.  
17 The courtyard, because of this western building, has become  
18 virtually unusable. Would you like me to walk through the  
19 drawings?

20           CHAIRPERSON HILL: No, that's okay. Let me just  
21 see what we have. I'm just looking through a couple of  
22 things here.

23           MEMBER MAY: Can I ask a question?

24           CHAIRPERSON HILL: Sure, of course.

25           MEMBER MAY: So you don't have a yard drain there

1 now?

2 MR. DWIGHT: No, there's not currently one there  
3 now.

4 MEMBER MAY: There's not one there at all or it's  
5 just clogged?

6 MR. DWIGHT: There's not one there at all.

7 MEMBER MAY: Wow.

8 MR. DWIGHT: We've looked for one. Previously,  
9 so the courtyard was open to the west and the courtyard was  
10 sloped to drain water; it was a vacant lot. So before my  
11 time, somebody had set that up to flow that way. When they  
12 built the western building, now it just pools up against the  
13 building.

14 MEMBER MAY: I'm still surprised there isn't  
15 anything at all. I mean, do you have stairways into the  
16 basement in the back there?

17 MR. DWIGHT: It's one of those stairways where  
18 there's a stair up and then a stair down, and so it fills up  
19 to that level. We've been trying to work at sort of trying  
20 to divert water for years.

21 MEMBER MAY: And there really isn't a drain below  
22 that?

23 MR. DWIGHT: There's a drain in the stairwell to  
24 the basement. So when it does get full enough, the water  
25 ponds to the point that it flows down the stairs. And I keep



1 that drain clear for reasons. So luckily, the basements that  
2 have had problems are not my basement. -- (Simultaneous  
3 speaking)-- You build a dam, it -- you know, it is a part of  
4 the property that can't be seen from the public, any public  
5 way.

6 It's enclosed on the southern side by a three-  
7 story building. The western side, which is the new building  
8 that's built, that's a 50-foot building. On the north side  
9 it's a two-story building, and on the east side it's a one-  
10 story building. So all we're proposing is just bringing it  
11 up to the one-story level that would fill it in, so we were  
12 not coming up above anything that's already enclosed.

13 MEMBER MAY: So I saw a reference to a green roof.  
14 Are you trying to put a green roof on top of it?

15 MR. DWIGHT: Yes, we're definitely putting a green  
16 roof on top of it. I think that helps with -- I think the  
17 zoning laws are to keep certain parts of the space open.  
18 Right now we have this pond in the middle. I think that a  
19 green roof is going to be better for the neighborhood.

20 MEMBER MAY: Right, I was just curious because I  
21 didn't see the green roof in the drawings. It was in the  
22 text somewhere. That's okay.

23 MR. DWIGHT: Yes, I think --

24 MEMBER MAY: That's all right. It's not a  
25 requirement. It's not really that relevant to the relief.

1 I was just curious.

2 CHAIRPERSON HILL: Okay. Does anybody have any  
3 questions for the applicant?

4 MEMBER WHITE: What kind of feedback did you get  
5 from the ANC and the community in general?

6 MR. DWIGHT: Sure. The ANC approved it  
7 unanimously. They liked that we're creating something that  
8 is usable. They liked that we were putting a green roof on  
9 it. They felt that if light and air and greenery is a  
10 problem in the city, this is something to solve that.

11 Their only concern was potentially setting a  
12 precedent, which they talked about that but decided that this  
13 was a unique situation.

14 MEMBER WHITE: Okay. Thank you.

15 CHAIRPERSON HILL: Anyone else? Okay. I'm going  
16 to turn to the Office of Planning.

17 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman  
18 and members of the BZA. Maxine Brown-Roberts from the Office  
19 of Planning. If you, as in or the submissions from the  
20 Office of Planning, you see that the first submission was  
21 that we didn't make a recommendation because we wanted to  
22 continue working with the Applicant and DDOE.

23 We had a concern that the load occupancy is non-  
24 conforming, and with addition it was going up to 94.4  
25 percent. And so we were trying to find a solution to the

1 problem that the Applicant had expressed. And so we worked  
2 with them and with DDOE, and realized that even with the  
3 drainage problem, there was still a problem of having a  
4 portion of that enclosed area that was dark for a significant  
5 period of the day.

6 And so we thought that was an exceptional  
7 situation, and we thought that what the Applicant has  
8 proposed is a solution that will not be detrimental to either  
9 of the adjacent properties, the communities, or to the Zone  
10 Plan, and we recommended approval. Thank you, Mr. Chairman.

11 CHAIRPERSON HILL: Okay, thank you, Ms. Brown-  
12 Roberts. Does anyone have any questions for the Office of  
13 Planning?

14 MEMBER MAY: I had a quick one. The way this  
15 addition is built, it creates a three-foot wide passage to,  
16 well, alongside it that connects presumably to a public way,  
17 a walking alley or something. But does that three-foot  
18 passage pose any other need for relief?

19 MS. BROWN-ROBERTS: No. I spoke to the Zoning  
20 Administrator about it and he said no.

21 MEMBER MAY: So it's not a --

22 MS. BROWN-ROBERTS: It is not a --

23 MEMBER MAY: It's not a court, it's not a side-  
24 yard, what is it?

25 MS. BROWN-ROBERTS: I wasn't sure, but I could

1 find out.

2 MEMBER MAY: Well I would hate to have them go  
3 through this trouble and get approval for this, and then find  
4 out later that they need to have relief for side-yard. If  
5 the Zoning Administrator says it's good, then I guess we'll  
6 trust that. I would want to get that in writing. I don't  
7 know.

8 CHAIRPERSON HILL: Okay. Mr. Dwight, I'm looking  
9 at -- which ones do you own again? Do you own both?

10 MR. DWIGHT: Yes, both. The one property has two  
11 buildings. So the property goes between Naylor Court and N  
12 Street.

13 CHAIRPERSON HILL: And how long have you been  
14 there?

15 MR. DWIGHT: We've been there for about six years  
16 now.

17 CHAIRPERSON HILL: Six years?

18 MR. DWIGHT: Yes.

19 CHAIRPERSON HILL: You just buy it six years ago?

20 MR. DWIGHT: Yes.

21 CHAIRPERSON HILL: Okay.

22 MR. DWIGHT: And we have our on the Naylor Court  
23 side of it.

24 CHAIRPERSON HILL: All right. Do you have any  
25 questions for the Office of Planning?

1 MR. DWIGHT: I don't, no. Thank you for your  
2 time.

3 CHAIRPERSON HILL: Is anybody here wishing to  
4 speak in support? Is there anyone here wishing to speak in  
5 opposition? All right. Mr. Dwight, is there anything you  
6 have to add?

7 MR. DWIGHT: I don't think so, no.

8 CHAIRPERSON HILL: Okay. I just thought if you  
9 bought it earlier than six years ago, I was going to  
10 congratulate you. But like in six years, you're still okay,  
11 but still, yes, like 10 years, that would have been a little  
12 bit better. Does anybody have anything? No? I'm going to  
13 go ahead and close the record. Is the Board ready to  
14 deliberate? Okay, I can start.

15 I was just kind of waiting to hear what the Office  
16 of Planning had provided in terms of their report. I would  
17 agree with their analysis in Exhibit 44. I also think that  
18 ANC 2F, particularly Chairman John Fanning, he's pretty  
19 particular about and very active in the community as is that  
20 ANC. So it's nice to see that they were in support of the  
21 application five to zero, but I think that they meet the  
22 requirements and our request to grant this application, as  
23 again just provided by the detailed analysis of the Office  
24 of Planning. Does anyone else have anything they'd like to  
25 add?

1           MEMBER WHITE: I would just concur with your  
2 comments, Mr. Chair. This is a courtyard surrounded by tall  
3 buildings, and you know, there was some indication of it  
4 having a moisture problem, and you know, that pervious pavers  
5 really wouldn't work here. There don't appear to be any --  
6 with respect to practical difficulties, you know, there was  
7 no light in the space. It's a very small space, and there's  
8 no community opposition, so I think they've met the area  
9 variance test, so I would be in support.

10           CHAIRPERSON HILL: Okay. Anyone else? Okay.  
11 Then I'll go ahead and make a motion to approve Application  
12 19865 as captioned read by the Secretary, and ask for a  
13 second.

14           VICE CHAIRPERSON HART: Second.

15           CHAIRPERSON HILL: Motion made and seconded. All  
16 those in favor say aye.

17           (Chorus of aye)

18           CHAIRPERSON HILL: All those opposed?

19           (No audible response)

20           CHAIRPERSON HILL: Motion passes, Mr. Moy.

21           MR. MOY: Staff would record the vote as five to  
22 zero to zero. This on motion of Chairman Hill to approve the  
23 application for the relief requested. Seconding the motion,  
24 Vice Chair Hart. Also in support, Ms. White, Ms. John, and  
25 Mr. Peter May. Motion carries.

1 CHAIRPERSON HILL: Thank you, Mr. Dwight.

2 MR. DWIGHT: Thank you very much for your time.  
3 I appreciate it.

4 MR. MOY: The next case application before the  
5 Board is 19867 of Thomas Jefferson Real Estate, LLC. Caption  
6 advertised for a special exception under subtitle H, Section  
7 1200.1. This is from the closed-court requirements of  
8 subtitle H, Section 707.1. This would construct a four-story  
9 addition to an existing apartment house in the NC-6 zone at  
10 816 Potomac Avenue SE, Square 930, Lot 22.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. If you  
12 could please introduce yourselves?

13 MR. KADLECEK: Good afternoon. I'm Cary Kadlecek  
14 from the law firm of Goulston & Storrs on behalf of the  
15 applicant.

16 MR. GOINS: Good afternoon. I'm Jeff Goins with  
17 PGN Architects.

18 CHAIRPERSON HILL: Okay. Mr. Kadlecek, I assume  
19 you're going to present to us?

20 MR. KADLECEK: Mr. Goins will. We'll give a very  
21 brief presentation. As you can see, the record is quite  
22 full.

23 CHAIRPERSON HILL: Oh, Mr. Kadlecek, this might  
24 not go as quickly as you think it is. You know, you never  
25 know.

1 MR. KADLECEK: I didn't say that, I just said it's  
2 full.

3 CHAIRPERSON HILL: It might be prolonged, it might  
4 be sparse.

5 MR. KADLECEK: We'll give a brief presentation to  
6 explain the relief.

7 CHAIRPERSON HILL: Okay. If you could do that,  
8 please tell us a little bit about the project and how you're  
9 meeting the standards, and we will let Mr. Goins start  
10 whenever you like.

11 MR. GOINS: All right, thank you. This project  
12 is an addition to an existing historic building. We've gone  
13 in front of the ANC on three separate occasions. We've gone  
14 to the Capital Restoration Society twice. I think the ANC  
15 voted twice to support this project, once for the HPRB  
16 application and the BZA application. So we do have design  
17 approval from HPRB already.

18 This started off as a stand-alone project, and we  
19 couldn't get it to work from a feasibility standpoint. The  
20 lot is 24 feet wide. So then the thought process was to  
21 combine it with the existing building, and add the additional  
22 units that way, and that's why we need the air and court  
23 relief.

24 And you can kind of see here, it's kind of an  
25 isolated pocket here. A Street hits underneath the freeway



1 on the south side. It faces the Navy yard. The retail block  
2 kind of ends right there at the freeway, and there's a new  
3 proposed building that's going right here that we were in  
4 front of you guys for about a year ago, which is 42 units.

5 This is kind of the bookend of those two new  
6 construction projects, and I think from a design standpoint  
7 that's the goal. This addition, with the new construction  
8 project, it was kind of bookend the historic building that  
9 is in the middle as you can kind of see here. The curb cut  
10 will be closed, and I think that's in the record as well, as  
11 part of this design process with the addition in HPRB.

12 This is the court that we're keeping here, and  
13 there's a couple of things that you can see from the court  
14 there. One, it provides air and light for the existing units  
15 and the existing building, and it provides air and light for  
16 the units in the addition proposed.

17 That's kind of a site plan so you can kind of see  
18 the curb cut being closed with a landscaped area in the  
19 front. This is the existing historic building. There will  
20 be 14 units in the proposed addition, which is four stories.  
21 The existing building had 19, so we will have a total of 33  
22 units in 816 with the addition.

23 The court is required to be 15 feet. We're  
24 providing nine feet and 225 square feet of area as opposed  
25 to the 350. You can see the units on both sides. The

1 existing building and the addition wrap the courtyard I just  
2 proposed.

3 I think there you can kind of see from the  
4 elevation, there is a small pop-up penthouse up there that  
5 is access only. That is not a proposed public penthouse.  
6 I think that kind of concludes. Happy to answer any  
7 questions.

8 CHAIRPERSON HILL: Sure. Does the Board have any  
9 questions for the applicant?

10 MEMBER MAY: I have one.

11 CHAIRPERSON HILL: Sure.

12 MEMBER MAY: So this isn't really that relative  
13 to the relief, but I noticed that there's -- the front units  
14 all have landlocked bedrooms. Well, not that one. There we  
15 go.

16 MR. GOINS: Yes.

17 MEMBER MAY: So how often do you do that?

18 MR. GOINS: We're doing it in more of the studio-  
19 type, it's technically a den as opposed to a bedroom. And  
20 the small studios and the efficiencies, we're doing that a  
21 fair amount.

22 MEMBER MAY: Yes. Well, I've seen that where  
23 there's a treatment where you've got like French doors and  
24 you're facing a window or something like that. But this is  
25 the first time in a long time that I've seen anything that

1 was just so clearly just a landlocked bedroom.

2 MR. GOINS: I think once we start the design  
3 development process we'll probably propose that.

4 MEMBER MAY: That you'll at least --

5 MR. GOINS: That we will have at least a sliding  
6 glass door or something like that.

7 MEMBER MAY: Make it more like a junior one-  
8 bedroom as they call it?

9 MR. GOINS: Yes. We've actually done the corner  
10 ones too that open the whole bedroom up.

11 MEMBER MAY: I mean you have -- looking at it just  
12 logically, it's like, gee, you've got a fair amount of width  
13 to the building. Why couldn't it -- couldn't there be some  
14 way to have the bedroom units, the bedroom and the living  
15 space have window frontage or something like that, but you  
16 know, that's -- sorry.

17 MR. GOINS: No, I'm saying it might even be better  
18 to leave it open with that small unit there.

19 MEMBER MAY: Yes, right. All right, that's all.

20 CHAIRPERSON HILL: Okay. Either Mr. Goins or Mr.  
21 Kadlecek, were you here for the 818 project? The one that  
22 was on the corner?

23 MR. KADLECEK: We were, yes.

24 CHAIRPERSON HILL: Did you do it?

25 MR. KADLECEK: We were the same team.

1 CHAIRPERSON HILL: You were the same team?

2 MR. KADLECEK: Yes.

3 CHAIRPERSON HILL: So like when is that going to  
4 start to happen?

5 MR. GOINS: We just finished the velocity program,  
6 so we're hopefully to get the permit very soon.

7 CHAIRPERSON HILL: Okay. Because it was really  
8 interesting. I remember the case and you guys were trying  
9 to incorporate. There was another townhouse I think that was  
10 part of the --

11 MR. KADLECEK: Yes, it had some interesting  
12 facets. There was the townhouse. It also is, I think, one  
13 of the first projects in the city to use a mechanical parking  
14 system.

15 CHAIRPERSON HILL: Oh, that's what it was. That's  
16 right.

17 MR. KADLECEK: That was a big piece of the case.

18 CHAIRPERSON HILL: Okay, okay, yes. Okay, all  
19 right. Anyone else? No? Office of Planning?

20 MS. MEYERS: Good afternoon. Crystal Meyers for  
21 the Office of Planning. The Office of Planning is  
22 recommending approval of this case and stands on the record  
23 of the staff report.

24 CHAIRPERSON HILL: Okay. Does anyone have any  
25 questions for the Office of Planning? All right. Mr.

1 Kadlecek or Mr. Goins, any questions for the Office of  
2 Planning?

3 MR. KADLECEK: No, thank you.

4 CHAIRPERSON HILL: All right. Does anyone here  
5 wish to speak in support? Does anyone here wish to speak in  
6 opposition? Mr. Kadlecek, do you have anything you'd like  
7 to add at the end?

8 MR. KADLECEK: Nothing to add, thank you.

9 CHAIRPERSON HILL: Okay, all right. I'm going to  
10 go ahead and close the record. Is the Board ready to  
11 deliberate? Okay, I can start. I thought the standard  
12 special exception criteria of X-901.2 and the special  
13 exception criteria of H-1200.1, the applicants provided the  
14 burden of proof in Exhibits 71A and A3. I thought that they  
15 have met their burden of proof. I thought that the analysis  
16 that was provided by the Office of Planning was also complete  
17 and accurate, or at least I would agree with it being  
18 accurate.

19 Also, it's nice to see that the Capital  
20 Restoration Society is in support of the application, as well  
21 as ANC 6B was in support 10 to zero to zero. I agree that  
22 they have met the criteria for us to grant the exception as  
23 I've stated from the different items on the record, and I  
24 will be in support of this application. Does anyone have  
25 anything else they'd like to add?

1           Okay, then with that, I'm going to go ahead and  
2 make a motion to approve Application 19867 as captioned read  
3 by the Secretary, and ask for a second.

4           VICE CHAIRPERSON HART:   Second.

5           CHAIRPERSON HILL:   Motion made and seconded.   All  
6 those in favor say aye.

7           (Chorus of aye)

8           CHAIRPERSON HILL:   All those opposed?

9           (No audible response)

10          CHAIRPERSON HILL: Motion passes, Mr. Moy.

11          MR. MOY:   Staff would record the vote as five to  
12 zero to zero based on the motion of Chairman Hill to approve  
13 the application for the relief requested.   Seconding the  
14 motion Vice Chair Hart.   Also in support, Ms. White, Ms.  
15 John, and Mr. Peter May.   Motion carries.

16          CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,  
17 gentlemen.

18          MR. KADLECEK: Thank you.

19          CHAIRPERSON HILL: All right, Mr. Moy.

20          MR. MOY: Thank you, Mr. Chairman. I believe the  
21 Board is at its last case of the day, but in any regards, if  
22 I can have parties to the table. This is to Case Application  
23 19869, and I believe I was corrected that it is RLP, Romeo,  
24 Lima, Papa, Investments, LLC. This caption advertised for  
25 a special exception under subtitle E, Section 2016.2, and

1 5203.3 from the upper floor addition requirements of subtitle  
2 E, Section 206.1, to construct a rare addition and convert  
3 the existing semi-detached principal dwelling unit to a flat.  
4 RF-1 Zone. This is at 4222 8th Street NE, Square 3024, Lot  
5 60.

6 Yes, and Mr. Chairman, in the record there is a  
7 request for party status under Exhibit 39.

8 CHAIRPERSON HILL: Okay, great. If you could  
9 please introduce yourselves from my right to left.

10 MS. SANDERLIN: Yes, my name is Valerie  
11 Sanderlin, real estate developer.

12 CHAIRPERSON HILL: Could you spell your last name  
13 for me? I'm sorry.

14 MS. SANDERLIN: Sanderlin, S-A-N-D-E-R-L-I-N.

15 CHAIRPERSON HILL: Okay. You need to push the  
16 button there.

17 MS. JOHNSON: Cynthia Johnson, ADG+G Architects.

18 CHAIRPERSON HILL: I'm sorry --

19 MS. JOHNSON: And I need to be sworn in.

20 CHAIRPERSON HILL: Okay, great. Thank you so  
21 much. Oh, you all need to. Okay, well let's get through the  
22 introductions. Next, please?

23 MS. TANYERI: Hi, I'm Gozde Tanyeri, I'm the  
24 architect of the record for ADG+G representing the client.

25 CHAIRPERSON HILL: All right. Next?

1 MR. PHILLIPS: Hi. My name's Mikhail Phillips.  
2 I'm the owner of RLP Investment Group.

3 CHAIRPERSON HILL: Okay. First of all let's get  
4 sworn in. Mr. Moy, if you could swear in whoever needs to  
5 be sworn in.

6 MR. MOY: Do you solemnly swear or affirm that the  
7 testimony you are about to present at this proceeding is the  
8 truth, the whole truth, and nothing but the truth?

9 ALL: I do.

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

11 CHAIRPERSON HILL: Okay, now I'm a little  
12 confused. I thought the party status person is Alexander  
13 Cohen. None of you are the party status people? Is  
14 Alexander Cohen here?

15 MR. PHILLIPS: He was here, and then he said he  
16 was heading -- I text him to let him know that the hearing  
17 is on now. He's not currently here.

18 CHAIRPERSON HILL: Okay, that's fine. All right,  
19 I got it. Mr. Phillips, you are the property owner?

20 MR. PHILLIPS: Correct.

21 CHAIRPERSON HILL: So you texted Mr. Cohen?

22 MR. PHILLIPS: Correct.

23 CHAIRPERSON HILL: So you're in communication with  
24 Mr. Cohen. All right, so let's see what happens as we kind  
25 of move along here I suppose. I mean the gentleman's not



1 here. I don't know, I guess they were here you're saying,  
2 Mr. Phillips, at one point, and so they may come back. I'm  
3 a little unclear as to how we would proceed or not at this  
4 point.

5 MEMBER MAY: Does he already have party status?

6 CHAIRPERSON HILL: He does not.

7 MS. LOVICK: No. So when someone isn't here,  
8 their request for party status is deemed withdrawn.

9 CHAIRPERSON HILL: Right, okay. All right, so  
10 there we go. As OAG has just stated, so we're going to  
11 withdraw Mr. -- I think it's Mr. -- Mr. Cohen's request for  
12 party status. So we're going to withdraw that request,  
13 right. So now who is going to present to us today? Okay.  
14 And can you pronounce your name again? I know you've been  
15 here before.

16 MS. TANYERI: It's Gozde --- Goes-day -- Tanyeri.  
17 It's G-O-Z-D-E, that's the first name. Last name, T-A-N-Y-E-  
18 R-I.

19 CHAIRPERSON HILL: Tanyeri. Thank goodness. I'm  
20 only worried about the last name. So Ms. Tanyeri, okay.

21 So if you could go ahead and tell us about the  
22 project, and tell us about what you're trying to do. There  
23 are some questions I think that we might have as we kind of  
24 go through the presentation. But in general, again, if you  
25 could tell us about, you know, what your client is trying to

1 achieve. And then in specific, how you're meeting the  
2 standards for us to go ahead and grant the special exception.

3 So I'll put 15 minutes on the clock, Mr. Moy, just  
4 so that I know where we are, and you can begin whenever you  
5 like.

6 MS. TANYERI: All right, thank you so much. We  
7 have a duplex property. It's an inner lot. It's not a  
8 corner lot. So in these sorts of circumstances, we are  
9 asking for special exception relief to remove the side  
10 mansard roof. It's an architectural element that is actually  
11 not visible from the street.

12 I'll move on to the photographs. The part we're  
13 moving is the rear and the side --

14 CHAIRPERSON HILL: Can you circle it just with the  
15 little gizmo that's there? Thanks. I think it's like on --

16 MS. TANYERI: So, yes, we're looking at this, the  
17 mansard roof here. And then the mansard roof we are removing  
18 is not visible from the street in clear view. I would show  
19 it here actually in this rendering that after this dormer  
20 that is existing. This mansard roof is existing, the front  
21 is existing and the dormer's existing. We would be removing  
22 the side of this mansard roof and the rear, which is also  
23 shown here, to add our third-floor addition.

24 We originally, so we've just revised our  
25 application yesterday with the new, I think it's Exhibit 47.

1 We were originally asking for 2'3" height change on the front  
2 of our building compared to the next door address, and that  
3 was partly what Mr. Cohen was actually opposing.

4 So we've actually lowered that to the same party  
5 wall height. You know, to gain the eight-foot ceiling height  
6 on the top floor, we ended up lowering the existing floor,  
7 a little bit lower, you know about six inches to be able to  
8 get that height.

9 So this doesn't solve the issue of what we're  
10 asking from the front in a way that we're still asking for  
11 that seven inches of a parapet to be aligned with the party  
12 wall. I'm going to scoot back to the rear here which you  
13 could see on the existing elevations.

14 So what we are essentially asking, if you can see  
15 it here, is this is the party wall height. Our house is  
16 lower. The property would need to extend a part of the roof.  
17 So now that could be like a parapet wall, coping, it could  
18 be metal, or we could actually slope it higher to add to the  
19 mansard roof. We're thinking that since it is seven inches,  
20 that we could deal with it like coping, which is also  
21 matching the color of the roofing material.

22 So that is what we are doing. So we went to a  
23 velocity meeting in DCRA to get our whole DC permitting  
24 process expedited. In this meeting, the zoning technician  
25 that is in review, asked us that we need a rear mansard roof

1 removal relief also from you guys. After talking back-and-  
2 forth with Mr. Cochran and talking to the neighborhood, it  
3 seems to us -- and I've actually discussed this with Battler  
4 Grant myself and Marty Sullivan, the zoning attorney. We are  
5 under the impression that the rear of our property mansard  
6 roof removal does not need any relief.

7 But at this point we are confused because Office  
8 of Zoning has told us originally, zoning technician has told  
9 us that we need the entire relief for the side mansard roof  
10 removal and also for the rear mansard roof removal.

11 What Matt LeGrant is saying is in corner lots,  
12 that seems to be the case, but we are not a corner lot so  
13 that is not the case. However, we're still asking for  
14 special exception relief on the side of our property to get  
15 the ceiling height to add a bedroom on the rear.

16 It is not the owner's intention in any form to,  
17 you know, add additional height. We've presented to ANC  
18 twice. We have eight to zero support from the community.  
19 Mr. Cohen has not showed up to those meetings, originally to  
20 any of the ANC meetings even though we were in constant  
21 communication throughout the design process with the ANC  
22 representative.

23 Mr. Cohen originally, and there is an exhibit, I  
24 think 39 is his opposition letter, and I think it's 40 is my  
25 response to his opposition letter. Generally, Mr. Cohen has

1 requested \$50,000 from the property owner to expand his roof  
2 and fix up his third floor as well. And he wanted us to wait  
3 and include his property with our application so we could  
4 actually go as one.

5 We've tried to explain to him that can't be  
6 possible. It's two different addresses. But Mr. Cohen  
7 insisted at that point that we pay for entirety of his third-  
8 floor renovation.

9 So that was actually the essence of the  
10 opposition. There is some sort of agreement at this point  
11 that when we lower the building down, we no longer have to  
12 ask access to his property to fix his roof. Because the  
13 issue arises if you're higher than your neighbor's property.  
14 At that time, we were two foot higher. Because of snowdrift  
15 issues and DCRA process, we've informed him to access his  
16 property to take a look at it.

17 CHAIRPERSON HILL: Okay, okay, that's all right.  
18 So -- okay, does the Board have any questions for the  
19 Applicant?

20 MEMBER JOHN: Just one question. So these new  
21 drawings are at Exhibit 46?

22 MS. TANYERI: 46 I believe. 46 or 47.

23 MEMBER JOHN: Okay, thank you.

24 CHAIRPERSON HILL: Thank you for that actually,  
25 I was looking for that. All right, anyone else? Please.

1 MEMBER MAY: Yes. So I mean I guess I'll ask the  
2 Office of Planning to explain what they think is needed in  
3 terms of relief from the modifications of the architectural  
4 features. But to understand exactly what you're doing, now  
5 your plan is to retain the existing front porch and retain  
6 the dormer, and then just do a modification to the mansard  
7 to add a coping or an extension, something like that, that's  
8 going to get you the extra seven inches?

9 MS. TANYERI: Correct. That is what we're asking  
10 for the front and half of the side.

11 MEMBER MAY: Half of the side, okay. So, let me  
12 look at these drawings again. Looking at the building  
13 section on A-502, so it's the last page of your drawings.

14 MS. TANYERI: Correct.

15 MEMBER MAY: So can you explain to me how the roof  
16 drains?

17 MS. TANYERI: Yes.

18 MEMBER MAY: Where is it sloped to?

19 MS. JOHNSON: We are using TPO insulation board.  
20 It is sloped to drains, and we show the drains on the roof  
21 plan, which is sheet A-105 I believe.

22 MEMBER MAY: A-105. Okay. So it's all -- you're  
23 draining to the center of the roof?

24 MS. JOHNSON: That is correct.

25 MEMBER MAY: And you're just building up with

1 insulation to get the slope.

2 MS. JOHNSON: That is correct.

3 MEMBER MAY: Okay. All right, that's helpful to  
4 know, because it's, typically for -- most of the stuff we see  
5 when it's a relatively flat roof, it's sloped from front to  
6 back, and that can affect the heights of parapets and other  
7 features, and so on. And when I saw the flat roof, I was  
8 wondering, you know, where's it sloping toward.

9 Okay. Let's see, I had another question. So the  
10 Office of Planning, I think, suggested that the color of the  
11 addition at the rear be darker; it's shown as just white.  
12 I mean is that intentionally just a white or light color, or  
13 are you going to do something that's darker?

14 MR. PHILLIPS: I had wanted, originally when I  
15 actually designed, I wanted some contrast but I told Office  
16 of Planning they could put that in. I'm just going to go  
17 ahead and make it dark. That was some feedback that was  
18 given, so I have no problem making that change.

19 MEMBER MAY: Okay. But you haven't picked a  
20 color, you're just going to make it darker?

21 MR. PHILLIPS: So the building is going to be a  
22 dark, close to a black, and then we're going to do a shade  
23 of gray for the addition.

24 MEMBER MAY: So you're painting the existing brick  
25 black?

1 MR. PHILLIPS: Correct.

2 MEMBER MAY: Is it unpainted now?

3 MR. PHILLIPS: It's unpainted right now.

4 MEMBER MAY: And you're going to paint it black?

5 MS. TANYERI: It's a darker gray. We wanted to  
6 contrast in the neighborhood to get a little more modern look  
7 into the front facade when we're not touching the front as  
8 much.

9 These bricks need to be painted also with a less  
10 dramatic paint because there's a lot of leakage and pointing  
11 that needs to be done to them. So --

12 MEMBER MAY: So if it needs pointing, then it  
13 needs pointing. It doesn't need paint. I mean I, you know,  
14 I'm an architect, and I have dealt with many situations with  
15 failing facades, and I've gone to lectures on how you treat  
16 facades of buildings.

17 And if you can avoid painting the brick, I mean  
18 unless the brick itself is being degraded, it's not really  
19 a good idea to paint it. Because you're just going to -- I  
20 mean it may look good when you finish it and sell it, but 20  
21 years from now the paint is going to cause problems rather  
22 save problems.

23 I mean sometimes it's unavoidable and sometimes  
24 it's perfectly fine to paint brick. But if the brick is  
25 otherwise in good shape, I think it's a mistake to paint it.



1 Of course, that has nothing to do with the relief that's  
2 granted and I understand that, but I can't help myself  
3 sometimes.

4 So the -- and I do think though that one of the  
5 things you are dealing with is how does this fit into the  
6 neighborhood, and I think the notion that the addition would  
7 not be a stark, light color like that, particularly with  
8 HardiePanel I assume is what you're using there.

9 First of all, using HardiePanel over large  
10 expanses like that is objectionable in itself, and if I were  
11 your next-door neighbor, I'd be pitching fits about that.  
12 But, you know, again, not related to the zoning relief, the  
13 look of it overall, if you could at least paint it, I think  
14 that that would help it fit into the context better.

15 You know, I would encourage you, if you were so  
16 inclined, to look at alternative treatments of the backside,  
17 because large expanses of HardiePanel they just don't look  
18 good over time, especially when they're lightly colored.  
19 They're not going to wear well. You're going to get  
20 streaking on it and stuff, so it's just going to not look  
21 very good.

22 Do we have any actual zoning-related questions?  
23 No, I mean actually the color is relevant to the zoning  
24 relief because, again, you're trying to have this fit in to  
25 the neighborhood, and that is one of the concerns that we

1 have.

2 MR. PHILLIPS: Sorry, do I say Chairperson May?

3 CHAIRPERSON HILL: Commissioner May.

4 MR. PHILLIPS: Sorry, I apologize. Sorry,  
5 Chairperson Hill. (Laughter). Commissioner May, just to --

6 CHAIRPERSON HILL: Prince May, something like  
7 that.

8 (Laughter)

9 MR. PHILLIPS: Just to clarify, the relief is only  
10 for the roof and not the addition.

11 MEMBER MAY: I understand that.

12 MR. PHILLIPS: I didn't mean to cut you off. I  
13 just want to make sure that we don't -- I don't want the  
14 addition to become a concern of what I'm not asking for  
15 relief for.

16 MEMBER MAY: I understand that. While the relief  
17 relates specifically to the roof, the project is the project  
18 and the total look of it has to do with some of the criteria.  
19 I mean if you were not seeking to go up another floor there  
20 and needing the relief related to the modification of the  
21 elements, I mean that's connected to the height of the  
22 addition at the back.

23 I think one of the things that makes the, or what  
24 some might find objectionable about the height about the  
25 addition itself, does have to do with the fact that it's

1 three stories. Right?

2 MR. PHILLIPS: Okay.

3 MEMBER MAY: So if it were shorter, you know, any  
4 time you reduce the size of it, the visual impact of it is  
5 going to be less. So that's how it relates.

6 MR. PHILLIPS: Thank you for the clarification.

7 MEMBER MAY: It's tenuous, but it's definitely  
8 there. So, and I think you're fortunate that there's nobody  
9 in the room objecting at this moment, because they might be  
10 making issues of that. Again, how far that goes in terms of  
11 effecting the relief that's requested is kind of debatable.

12 MR. PHILLIPS: Okay.

13 CHAIRPERSON HILL: Ms. White.

14 MEMBER WHITE: So the only relief that you're  
15 seeking is under E-206.1A? Correct?

16 MR. PHILLIPS: Correct.

17 MEMBER WHITE: So the issue of the chimney, how  
18 is that relevant to this application?

19 MS. TANYERI: So there is no issue with the  
20 chimney because his chimney, the operating chimneys, are on  
21 either side of the properties. There is a blocked chimney  
22 that he has told us that he wants it removed, Mr. Cohen,  
23 meaning Mr. Cohen. It's in his property. Part of it, one  
24 brick or so, that kind of straddles through our property  
25 line, but essentially that is a non-operating, what he calls

1 decorative chimney.

2 He would like that to be removed. He asked us via  
3 email, could you remove that, it doesn't look good, it serves  
4 no purpose. Other than that, there is no issue with the  
5 chimney. We told him yes, we would gladly remove it while  
6 we do the construction. He said it won't look good there.

7 CHAIRPERSON HILL: Okay. It's Mr. Phillips,  
8 right?

9 MR. PHILLIPS: Correct.

10 CHAIRPERSON HILL: Yes, Mr. Phillips, just to sum  
11 up what Commissioner May was talking about, right. He's  
12 talking about, you know, you understand everything in terms  
13 of his comments concerning the painting the brick black and  
14 also the Hardie paneling. He's making some comments and some  
15 suggestions, and you understand those.

16 MR. PHILLIPS: Correct, and I'm willing to make  
17 any changes deemed necessary.

18 CHAIRPERSON HILL: Okay. I'm going to turn to the  
19 Office of Planning.

20 MR. COCHRAN: Thank you, Mr. Chair. For the  
21 record, Steve Cochran from Office of Planning. The Applicant  
22 wishes to add seven inches to the front and the first part  
23 of the side of the south side of the house. That's to the  
24 mansard roof.

25 I'm just correcting a couple of things in the OP

1 report based on what was filed yesterday afternoon. So it  
2 takes the overall height to 31 feet 7 inches, rather than the  
3 33.2 feet that we had shown. And again in that table that's  
4 in Section 5, he changed the 2 feet 3 inches to 3.5 inches,  
5 to 7 inches period for the addition.

6           They're also demolishing the back of the side of  
7 the mansard. So those two things require that special  
8 exception from E-206.1. But they're also demolishing the  
9 back of the mansard roof, and that doesn't seem to require  
10 relief from E-206.1. Because for an interior lot, the  
11 identified rooftop architectural elements facing structure's  
12 rear and lot line are not included among those that require  
13 relief. So they're okay on that on the back.

14           The rear addition doesn't extend more than 10 feet  
15 past the adjoining principal residential building, which is  
16 the building to the north, so no relief is needed from 205.4.  
17 I would only note that the person who requested the party  
18 status had raised some concerns about the shadow that might  
19 be cast from the construction. All that shadow would be cast  
20 from the by-right portion of the construction so it doesn't  
21 seem to be relevant.

22           With respect to the color suggestion, OP had  
23 suggested that the color be darkened on the third floor,  
24 having learned from the wisdom of Commissioner May, that a  
25 darker color closer to the sky tends to disappear. And it

1 also would be more harmonious with the dark color of the  
2 existing slate that's on the -- you might have missed those  
3 zoning commission meetings, Chairman Hill, but we didn't  
4 weigh in on the color of the lower portion, although we are  
5 certainly sympathetic with the suggestions that the  
6 Commissioner has made, although not relevant to the relief.

7 And that concludes our testimony. If you have any  
8 questions, we'd be happy to answer them.

9 CHAIRPERSON HILL: Okay, great. Does the Board  
10 have any questions for the Office of Planning?

11 MEMBER MAY: So we heard several different  
12 versions of how that extra seven inches might be made. I  
13 mean, do you have an opinion about whether it should just be  
14 the mansard being continued, or whether there be a tall  
15 coping at the top or?

16 MR. COCHRAN: As long as -- no.

17 (Laughter)

18 MEMBER MAY: Right. So, I mean, I don't feel  
19 strongly either on that. Whatever it is, I think it should  
20 be a dark-colored coping. It's shown in the drawings as  
21 white, but that's only so it's visible I think in the  
22 drawings.

23 MR. COCHRAN: Actually, I believe that the coping  
24 on the property to the north may be a light color, so that  
25 shows --

1 MEMBER MAY: No, and I think that's actually very  
2 common for it to be that way. But again, I mean what I'm  
3 thinking is that because it's exaggerated in height, that it  
4 would be better for it to blend into the new shingles that  
5 are going to go on the mansard. I think it's all getting new  
6 shingles, right? Yes.

7 MS. TANYERI: We're thinking about the EcoStar  
8 that's the fake slate.

9 MEMBER MAY: Okay. And is there real slate on it  
10 now?

11 MS. TANYERI: No. It's actually shingles. It  
12 just has asphalt shingles right now that are peeling off.  
13 But we want to put something --

14 MEMBER MAY: Sure. Something with some depth to  
15 it I think is really nice.

16 MS. TANYERI: That's right.

17 MEMBER MAY: And not the ones where they, like  
18 paint the edge of the asphalt a dark color to fake it --

19 MS. TANYERI: No, these are eco-friendly plastic  
20 or slash material for lack of a better term. It's not wood.

21 MEMBER MAY: Right.

22 MS. TANYERI: But they're very durable and they  
23 look like real slate when you apply nicely.

24 MEMBER MAY: And so, Mr. Cochran, if I understand  
25 you correctly when it comes to the relief related to the

1 mansard, you're saying that the rear, I mean literally just  
2 the rear facade removal of the mansard does not require  
3 relief?

4 MR. COCHRAN: Of course I'm not the zoning  
5 administrator and OP isn't DCRA, but it's just the way we  
6 read the regulation, that our office did read it right. It  
7 does seem to say that the back for an interior lot doesn't  
8 require relief.

9 MEMBER MAY: Right. But the entire length of the  
10 side would?

11 MR. COCHRAN: Yes. And where it's most relevant  
12 to this is that roughly the last third that's to the rear of  
13 the chimney, and that's especially where we were concerned  
14 about the color.

15 MEMBER MAY: Right, okay.

16 MR. COCHRAN: But there's been some other cases  
17 where we've looked at it, and when it's behind the chimney,  
18 it tends not to be seen. Because the combination of the bay  
19 and the remnant of the chimney, it's going to block the view  
20 of anything behind that.

21 MEMBER MAY: Right. And that's fine, just so long  
22 as it's not -- the thing that got me somewhat concerned in  
23 reading the materials of the case was that somebody might  
24 have come to the conclusion that it's only the very front  
25 that matters, and not the sides. But it is the sides,



1 certainly to the extent that they are visible, but actually  
2 I think for the full length. And it's easier to grant relief  
3 when it's not visible.

4 I mean I think there were some other things of the  
5 design that I would love to make suggestions about, but I'm  
6 going to bite my tongue. But, you know, there's lots of  
7 window in-fill and even the transition from the dormer along  
8 the side to the addition. I mean areas there where at least  
9 what's in the drawings doesn't seem to be very well-  
10 developed.

11 MR. COCHRAN: And if this were an historic  
12 district, obviously there would be those kinds of comments,  
13 but it's not.

14 MEMBER MAY: Right. So I'll leave it at that and  
15 you all can work with what you hear.

16 CHAIRPERSON HILL: All right. It's Mr. Phillips?

17 MR. PHILLIPS: Correct.

18 CHAIRPERSON HILL: And also -- so you're the  
19 developer.

20 MR. PHILLIPS: Correct.

21 CHAIRPERSON HILL: And everyone else is just part  
22 of your team?

23 MS. TANYERI: Architects.

24 CHAIRPERSON HILL: Architects.

25 MR. PHILLIPS: Correct.

1 CHAIRPERSON HILL: Okay, gotcha. Okay, I'll get  
2 to you. I'll get to you. And so Mr. Phillips, you've been  
3 here before with us?

4 MR. PHILLIPS: Correct.

5 CHAIRPERSON HILL: Do you do anything by-right?

6 MR. PHILLIPS: Yes, I do.

7 CHAIRPERSON HILL: Okay. All right. Okay, not  
8 this gentlemen just came and sat down. What's your name,  
9 sir?

10 MR. COHEN: Alexander Cohen.

11 CHAIRPERSON HILL: Okay. So Mr. Cohen, you did  
12 have an application in for party status. Where have you  
13 been?

14 MR. COHEN: I'm sorry, I got held up.

15 CHAIRPERSON HILL: Okay. So unfortunately, we  
16 already dismissed your party status. You were not here at  
17 the beginning when we called you, and so we dismissed your  
18 party status. So you are going to be able to testify in  
19 support or opposition just as the public is able to. I mean,  
20 we've gone through the whole hearing, and so there's no way  
21 I can start back again. And so I'm sorry for that, but  
22 there's just no way I can start back again.

23 So we are at the point though for public  
24 testimony, but before I get to it, does the Board have any  
25 more questions for the Office of Planning? Okay, does the

1 Applicant have any questions for the Office of Planning?

2 MR. PHILLIPS: No.

3 CHAIRPERSON HILL: Okay. Is there anyone wishing  
4 to speak in support? Is there anyone here wishing to speak  
5 in opposition. Okay. Have you been sworn in? Well first  
6 of all, as a member of the public, you'll get three minutes  
7 to speak and the clock's there on the right or the left. And  
8 Mr. Moy, if you could set that clock for me? And if you  
9 could please again begin by introducing yourself for the  
10 record as well as filling out the two witness cards. Okay,  
11 great.

12 I'm sorry, you need to turn on the microphone  
13 before you speak anyway. But even if you were here for quite  
14 a long time this morning, you weren't here when you needed  
15 to be here, and there's nothing I can do about it. I can't  
16 start again. I just can't go back in time. So go ahead and  
17 again give us your name and your home address, and then  
18 you've got your three minutes. And you can begin whenever  
19 you'd like.

20 MR. COHEN: My name is Alexander Cohen. My home  
21 address is 4224 8th Street NW. I share a party wall with Mr.  
22 Phillips. And Mr. Phillips has changed his plans a number  
23 of times, most recently yesterday. He said that he was going  
24 to get me the structural plans as of this morning, I still  
25 haven't received them and had a chance to review them or have

1 a chance to have my structural engineer review them.

2 And so what I would request is that the Board  
3 extend this and issue a continuance for such a time that we  
4 can review the plans. This is my lawyer, Arthur Cohen.

5 CHAIRPERSON HILL: That's all right, before this  
6 -- let me -- so first of all Mr. Cohen, and now there's  
7 another Mr. Cohen I assume, so what I had told Alexander  
8 Cohen was that at the very beginning of the hearing we  
9 determine whether or not party status happens, right? And  
10 so when the person isn't here for party status, then we just  
11 dismiss the party status application.

12 So the party status application was dismissed.  
13 And then -- excuse me -- so then the party status application  
14 was dismissed. I can't go back in time, meaning we've heard  
15 the whole testimony. The entire application has happened.  
16 And so now we're here at the end, which it's just now for  
17 public -- whatever, thank you -- public testimony for both  
18 in support and opposition.

19 So you are a member of the public now I assume,  
20 Mr. Cohen, and you haven't -- first of all, have you been  
21 sworn in?

22 MR. COHEN: No.

23 CHAIRPERSON HILL: I forget the lawyer, so I  
24 thought you guys were related there for a second, so I'm  
25 sorry. So I'm currently in the middle of public testimony,

1 is what I'm trying to figure out. And so they have, this Mr.  
2 Cohen has three minutes for public testimony, which you just  
3 requested. I mean I don't know what the Board's going to do,  
4 but, you know, I think that it would be best to hear what  
5 your objections are as to why you're objecting to the  
6 project. And so, because we do have a lot of material in the  
7 record.

8           And Mr. Cohen, just to let you know as well as the  
9 other Mr. Cohen, it takes a lot of time to review all this.  
10 So we spent hours reviewing all this. We've reviewed all of  
11 your application. We reviewed all of the documents that had  
12 been put forward. Had you been here on time, and we talked  
13 about the party status, you probably would have been given  
14 party status in my opinion, I don't know. Meaning, the whole  
15 Board has an opportunity to think.

16           But what I would have started out with is that it  
17 seems a lot of the testimony that you guys have put forth in  
18 the record is a little bit contentious on either side.  
19 Meaning I was not going to be like, you know -- we were  
20 trying to go through this as civilly as possible to make  
21 sure that everyone got heard and we understand things.

22           I'm sorry that you weren't here at the time that  
23 we did go through this. And I really am sorry, because we  
24 would have gone through this process. And we had you at the  
25 end of the day here so that we had an opportunity to go as

1 long as this went, right?

2 But again, the problem is, we're already through  
3 the hearing. So back now to the three minutes again. So I'm  
4 going to start the clock again with three minutes. Mr. Moy,  
5 if you would start it with three minutes then, okay. And if  
6 you want to go ahead and focus on your objections to the  
7 project, I would think that's the best way to go about this  
8 for your testimony, but you're able to use your three minutes  
9 any way you like. So you can begin whenever you want again.  
10 Turn on the microphone, sorry.

11 MR. COHEN: Thank you. First of all, I really  
12 appreciate the Board taking the time to hear my testimony.  
13 Thank you, I know that I'm late, and I really do apologize  
14 for that. I'm not an expert in housing. I've lived in the  
15 Petworth area for a year and a half owning this home.

16 Before that, I've lived in Petworth for six years.  
17 I grew up in D.C. This is an issue I'm not familiar with at  
18 all. I'm trying my best to do what's right for me and my  
19 house, the house that I own with my brother who's in the  
20 Army.

21 Now, I've tried to work out a deal with Mr.  
22 Phillips a number of times to find something that would be  
23 safe for my house, and would allow him to renovate his  
24 property in a way that he wants to do so he can flip his  
25 house and operate his business.

1           What we have agreed to, and I'm willing to support  
2 his application, is for a roof that matches the height of my  
3 roof, and the rest of his application that goes in support  
4 of that.

5           As some of the other plans that he has sent me,  
6 I've had evaluated by an independent architect and engineer,  
7 and they said that there were significant issues with  
8 snowdrift and other architectural and engineering things I'm  
9 not an expert in but I trust their judgment. I want an  
10 engineer to review the plans for this plan before I support  
11 him.

12           I haven't received those engineering plans yet.  
13 When I was here this morning, he said he would send them to  
14 me before noon. Then at 2 o'clock I checked in with him, and  
15 he said that they were on their way. I still haven't  
16 received them yet.

17           My architect and engineer will also need some  
18 amount of time to review them, make sure all the documents  
19 and measurements and calculations are correct before I can  
20 support anything. So I'm in a place where I can't support  
21 his application.

22           Specifically, I'd like to object to it on the  
23 grounds that he's filing under -- he says that he's filing  
24 under subtitle 5203.3, but he actually needs to file --  
25 subject to the conditions of that subtitle, he actually needs

1 to file for relief under 206.2. So I believe he's misfiled  
2 for relief under the wrong chapter and subtitle.

3 So while that is all figured out, I would like to  
4 postpone this and have a continuance until I can review the  
5 full structural documents and have an engineer sign off on  
6 them and approve that this isn't going to provide a negative  
7 impact to my house and be a burden to me in any way. And I  
8 believe that that's justified by the way the paperwork is  
9 filed.

10 Did I miss anything or is there anything else  
11 you'd like to say?

12 CHAIRPERSON HILL: Mr. Cohen, I'm just trying to  
13 figure out what you kind of technically are right now. So  
14 if you want to be a member of the public, I'll give you three  
15 minutes and you can do whatever you want with your three  
16 minutes. And so would you like your three minutes? Okay.  
17 So did you get sworn in? I forgot, now I don't do --  
18 attorneys don't have to get sworn in.

19 Okay, all right. I'll go ahead and put three  
20 minutes -- we're probably going to come back to you, Mr.  
21 Cohen, as well. But Mr. Cohen, could you introduce yourself  
22 please and give your home address. You have three minutes  
23 as member of the public to provide your testimony, and you  
24 can begin whenever you like.

25 MR. COHEN: My name is Arthur Cohen --



1 CHAIRPERSON HILL: You need to push the button,  
2 sorry.

3 MR. COHEN: Sorry. My name is Arthur Cohen. My  
4 address is 800 17th Street NW, Washington, D.C. I'm an  
5 attorney. I thought I was here intending to represent Alex.  
6 When we asked earlier, they said we wouldn't be heard before  
7 3 o'clock.

8 What we'd done this morning, I thought, was reach  
9 a tentative agreement with Mikhail and his group that was  
10 contingent on them sending us plans. They said the plans  
11 would be over shortly. Since I still hadn't received the  
12 plans, I didn't imagine they were going to move forward with  
13 this proceeding given that this resolution is dependent on  
14 plans which they told us we'd have any minute. And the idea  
15 that they went ahead with this proceeding without sending us  
16 the plans they promised, and didn't delay anything having  
17 told us that, honestly does not seem to me to be proceeding  
18 in good faith.

19 CHAIRPERSON HILL: Okay, Mr. Cohen, I understand.  
20 Let me interrupt you for one second. Like they, how they  
21 proceed or not proceed, it's not up to them. We are here.  
22 We called the case. You know, they're here before us to get  
23 the case done. And so they have nothing to do with the  
24 timing, they have nothing to do about when this gets called  
25 so, but please continue.

1           MR. COHEN: Okay. I hear you on that, but I have  
2 been a lawyer for 40 years, and I do know that proceeding  
3 with a matter when you're not in fulfillment of conditions  
4 to a settlement and presenting it to a tribunal, is not  
5 acting in good faith. And I will tell you that as a lawyer  
6 in the District of Columbia for a very long time.

7           That said, I don't see that there's a problem  
8 proceeding because I think there is a pathway to resolution  
9 here. I think we're very close. I don't think we have a  
10 problem. But part of that resolution involves our engineer  
11 and architect looking at the plans we've been promised. We  
12 haven't gotten them. We have to look at them.

13           I will say in the past we've been promised various  
14 things, they've given us things that haven't matched what  
15 we've said. I understand this is a complicated process. I'm  
16 not suggesting that there's any problem that we can't at this  
17 point overcome. But I do think it is incumbent upon this  
18 tribunal to offer us the opportunity to let our professionals  
19 have a last look at this to be sure that the basis on which  
20 we've agreed tentatively to withdraw our opposition is  
21 satisfied in these circumstances.

22           CHAIRPERSON HILL: Okay. I'll let the Board speak  
23 to any questions they may or may not have had. Just as far  
24 as like what the clarity as to what we're charged with, we're  
25 charged with looking at what the regulations are in front of

1 us and whether or not the applicant is meeting the standards  
2 with which we can grant the application.

3 Part of that standard is not whether or not there  
4 is support from the community, whether there is the next door  
5 neighbor's support. It has nothing to with whether -- well,  
6 I shouldn't say it has nothing to do -- we are looking at  
7 criteria that we're looking at, and one of the criteria is  
8 not whether the next-door neighbor agrees or doesn't agree  
9 to what's going to happen.

10 So as far as like anything that you might be  
11 working through with the current property owner, that is not  
12 currently in our purview, or is anything that's before us  
13 right. Just let me finish for a second. And so I'm just  
14 more curious as to the questions that the Board might have,  
15 and then Mr. Cohen, I will let you go ahead and say  
16 something. But does the Board have any questions for either  
17 Mr. Cohens?

18 MEMBER WHITE: I have one quick question. Maybe  
19 Board Member John might be able to provide some feedback on  
20 this. But you were saying during your testimony that you  
21 felt, or you were arguing the subtitle E, 206.1B was the  
22 appropriate regulation, provision that should've been part  
23 of this case. But when I'm looking at that particular  
24 section, it deals with functioning chimneys, and Mr. Cohen's  
25 chimney is not a functioning chimney. So I don't really

1 understand, or maybe you could explain to me why that  
2 provision applies.

3 MR. COHEN: So sorry, I meant 206.1-A which is for  
4 the dormers and porch roofs, and all of that, which is what  
5 I believe he applied under. But my understanding was that  
6 the -- he applied for relief under 206.2, is that correct?

7 MEMBER WHITE: 206.1, then I asked them a question  
8 about was the appropriate provision E, 206.1-A and they  
9 agreed that it was. That was just before you walked in that  
10 I asked that particular question.

11 MR. COHEN: Okay. So was the original documentation  
12 filed under 5203.1?

13 MS. LOVICK: I believe it was, but that is the  
14 criteria that you utilize to assess the impacts of the  
15 relief. But the relief is for relief from E 206.1, and it's  
16 pursuant to E 206.2, which is what allows for a special  
17 exception from E 206.1.

18 And then your reference to E 5203.1, for  
19 additional criteria, as well as the standard special  
20 exception criteria under subtitle X, Section 901.2. So it's  
21 quite convoluted.

22 MR. COHEN: But it was misfiled originally,  
23 correct?

24 MS. LOVICK: So the original self-cert, yes, I  
25 think you're correct about the fact that the revised self-

1 cert did only reference E 5203.1, but sometimes that happens  
2 with these. And I believe that the Office of Zoning  
3 corrected it for purposes of the caption that was read.

4 MR. COHEN: I don't believe that they corrected  
5 it, so I'm asking for the extension on those grounds that it  
6 was filed under the wrong number, until such a time as I can  
7 review.

8 MS. LOVICK: That's not typically something that  
9 Board grants.

10 CHAIRPERSON HILL: Obviously, I'm losing control  
11 here. So I'm trying to work through this a little bit. So  
12 Mr. Cohen, again even if -- had you been here and we went  
13 through the party status, basically like the Board isn't a  
14 place, and we're not in a position where we like facilitate  
15 agreements.

16 I mean all we actually do is we look and focus on  
17 determining like the adverse impacts associated with the  
18 rooftop relief that was being sought. I mean, they're going  
19 back only 10 feet. They're going back a matter of right.  
20 So even the shadowing that might have happened from your  
21 house, that's the same shadowing that's happening by a matter  
22 of right shadowing.

23 So it's not something that -- they could do that  
24 by matter of right in terms of the shadowing. Just let me  
25 finish, okay? And so it's not -- and our position is not to

1 again facilitate agreements. It's just to determine whether  
2 or not we think that the relief being sought has met the  
3 criteria.

4 I don't know if that's the case or not yet. We're  
5 still going to have a discussion, right? But the Office of  
6 Planning, you've read the Office of Planning's report I would  
7 assume?

8 MR. COHEN: Yes.

9 CHAIRPERSON HILL: Okay. And the drawings are in  
10 the file, and they are in the exhibit right now. You can  
11 take a look at the drawings. And then there was some  
12 testimony earlier, but did you ever go to the ANC meetings  
13 when this was going on?

14 MR. COHEN: No.

15 CHAIRPERSON HILL: So now why didn't you go to the  
16 ANC meetings? You didn't know about them?

17 MR. COHEN: I wasn't made aware that they were  
18 having a meeting.

19 CHAIRPERSON HILL: Okay, so you don't go to your  
20 ANC meetings or you didn't know that this was being talked  
21 about? Okay.

22 MR. COHEN: No, I didn't.

23 CHAIRPERSON HILL: But you did see a placard that  
24 was on the house next door.

25 MR. COHEN: I received a letter saying that the

1 BZA meeting was today.

2 CHAIRPERSON HILL: So, all right. In any case,  
3 the ANC, as I'm sure you're aware, did submit something to  
4 which we're supposed to provide great weight to, and they are  
5 in approval of this application unanimously, eight to zero  
6 to zero.

7 So again, I'm just kind of giving you a little bit  
8 more as to what we're supposed to do in order to make a  
9 determination. And what is not part of the regulations is  
10 whether again the next-door neighbor is in agreement, okay.  
11 So Mr. Cohen, you had something to say?

12 MR. COHEN: Right now, as you say, they're in  
13 accord with those requirements. But yesterday, they weren't.  
14 The height that they were building was higher than his house.  
15 They changed it. They changed the height and reduced it to  
16 match just yesterday. And that's what allowed us to say we  
17 were happy to reach agreement. And had they at that time  
18 given us the structural plans, it wouldn't be an issue.

19 But what happened is they reduced the height, they  
20 filed some papers, but either they didn't file or didn't give  
21 to us the structural plans that let us confirm that the  
22 structural, the way they're doing the structure in reducing  
23 the height, is in accordance with ways that will protect our  
24 house.

25 CHAIRPERSON HILL: Okay.

1 MR. COHEN: And as soon as we see that, if we had  
2 gotten --

3 CHAIRPERSON HILL: Mr. Cohen, I'm just going to  
4 interrupt you one second again, which is that it doesn't  
5 matter, right? Like, I'm not here to -- if you were here in  
6 opposition, and you were party status in opposition, and you  
7 gave all your arguments in opposition, I'm not here, or we're  
8 not here as a Board to make sure that you guys come to an  
9 agreement that it works out. Right?

10 We would just hear your testimony, we would hear  
11 the testimony of the applicant, we would hear the testimony  
12 of the Office of Planning, and the reports that are in the  
13 record, and we've done all that. Right.

14 MR. COHEN: Can I explain that? If the height  
15 variance was still there, we had significant additional  
16 arguments that I think would have swayed the Board. We're  
17 not making those arguments; we're not wasting your time  
18 because they've changed the height to match it. They don't  
19 have the right to change that height which would require them  
20 to go into our house and provide support in our house, or run  
21 additional structural risk for us.

22 But they've changed it. We can go through and  
23 make that argument, but I think it would be a waste of  
24 everybody's time because they're no longer asking to do that.

25 CHAIRPERSON HILL: Well, you don't have an



1 opportunity to make that argument because you're not a party.  
2 And so, you're just a member of the public making your -- and  
3 then if you wanted to make an argument, really it's kind of  
4 the ANC in order to where you would make that discussion as  
5 well.

6 But nonetheless, we've heard a lot of testimony  
7 now from you well beyond being a member of the public, and  
8 it's disappointing that you weren't here at the time. I'm  
9 sorry that kind of mixup happened for you, but again, there's  
10 just nothing I can do about that.

11 All right so just one second. If you could turn  
12 off your microphones for me please because they create  
13 feedback. You have something you'd like to say?

14 MS. TANYERI: I'd like to reassure, I mean and I  
15 know to them it doesn't mean anything, but the height lower  
16 -- when we lowered this height, we did it because it was  
17 concern to them. And we sent it to them yesterday. The  
18 structural engineers are not ready working on this in one  
19 hour time frame.

20 We've asked them to certify that this will be in  
21 accordance. That certification letter came this morning.  
22 We passed this on to the Mr. Cohens.

23 CHAIRPERSON HILL: Okay, I was just going to --

24 MS. TANYERI: So the structural engineer is  
25 waiting -- just one thing.

1 (Simultaneous speaking)

2 CHAIRPERSON HILL: That's all right. That's okay.  
3 All I'm just trying to tell you about, that is between you  
4 guys. Okay? If you want to go ahead and continue to work  
5 with them, that's great. Okay?

6 So we've taken testimony, we've heard from the  
7 public, there's nobody else here. Does the Board have any  
8 questions for anybody?

9 MEMBER MAY: Yes.

10 CHAIRPERSON HILL: Okay.

11 MEMBER MAY: So for whoever on the developer-  
12 architect team, the difference now between the existing  
13 height and the finished height of the new project is just  
14 going to be seven inches, right?

15 MS. TANYERI: We will be matching the party wall  
16 height. Yes, it's the --

17 MEMBER MAY: So it's no higher than the existing  
18 party wall?

19 MS. TANYERI: No higher than existing party wall.  
20 So we longer -- here's --

21 MEMBER MAY: So there'll be no -- I'll ask  
22 questions and you can just answer my questions, and it will  
23 be the fastest way. So the drifting issue that had existed  
24 when it was two feet higher, no longer is any different from  
25 the current circumstance whatsoever?

1 MS. TANYERI: That's correct. That's our  
2 intention. Because Mr. Cohen doesn't want -- DCRA requires  
3 us -- this is a requirement of DCRA.

4 MEMBER MAY: I understand that, and that's why I'm  
5 not asking questions about that.

6 MS. TANYERI: Yes, so we are no longer --

7 MEMBER MAY: And I'm ready to move on to my  
8 questions for Mr. Cohen or Mr. Cohen. So with the height of  
9 this addition being no higher than the existing party wall  
10 that runs between the two houses, what is it that you need  
11 to examine and understand? Because it's really not changing  
12 any of that circumstance.

13 MR. COHEN: It's not just the height. It's the  
14 methodology of the construction according to our structural  
15 engineer. I'm not an engineer, but what I've been told is  
16 that there's a lot of ways to do it, some of which impact our  
17 house and some of which don't. All we want to make sure is  
18 that they're doing it in a way that doesn't pose a danger to  
19 our house. And that's all we want to do.

20 MEMBER MAY: Right. And I think all those issues  
21 are issues that are beyond the domain of the Board of Zoning  
22 Adjustment. When it comes to the means and methods of  
23 construction and all those great details, that's all DCRA and  
24 how you work with each other.

25 And they're not going to be able to make changes

1 to your property without talking to you about any of those.  
2 They're not able to, you know, step on your roof or make any  
3 modifications without that permission.

4 It really goes well beyond what our domain is.  
5 Our domain has to do with the fact that they are modifying  
6 an existing feature on the third floor and extending it  
7 really seven inches, and removing it on a portion that's  
8 toward the back of the house that's away from your building.  
9 So it's very hard to see how the concerns you have are  
10 relevant to the decision that we have to make today.

11 CHAIRPERSON HILL: In the form of a question, Mr.  
12 May.

13 MEMBER MAY: Do I have to ask questions, or can  
14 I just make statements?

15 CHAIRPERSON HILL: All right. Okay, any more  
16 questions?

17 MEMBER JOHN: Just for clarification, so Mr.  
18 Cohen, are you -- my understanding is that you requested that  
19 the applicant remove the decorative chimney. Is that  
20 accurate?

21 MR. COHEN: Yes, that's correct.

22 MEMBER JOHN: Because before you came in, the  
23 applicant testified that they would be willing to remove the  
24 chimney. I just wanted that clear for the record that that's  
25 no longer an issue of contention.

1 MR. COHEN: Yes, that's correct. With the  
2 alternative being him building against half of a chimney.  
3 I think that the alternative would be removing the full  
4 chimney.

5 MEMBER JOHN: But for their purposes, they don't  
6 need to remove the decorative chimney. They're doing that,  
7 as I understand it, to accommodate your request.

8 MR. COHEN: Well, it's one single chimney that had  
9 two flues that feed into it, both of which have been capped  
10 off. So they would have to saw bricks down the middle in  
11 order to remove their half and not my half. And then I would  
12 have a decorative chimney abutting the property after all  
13 that is done. So between those two alternatives, I said to  
14 remove it. Yes.

15 MEMBER JOHN: Okay, thank you.

16 CHAIRPERSON HILL: Okay, all right. So perhaps  
17 some of the issues that you're concerned about are no longer  
18 a concern. I would note that the ANC report I guess is dated  
19 like October 10th. And what they looked at is a much a  
20 larger project, or something that had more of possibly some  
21 of your concerns and they approved that one.

22 But I'm aware of -- I'm just kind of letting you  
23 know -- we all live in the city, at least most of us live in  
24 the city. And we all live in densely populated areas. We  
25 all have neighbors. We all have swag needs. We understand

1 your concerns. And hopefully, if this does move forward, you  
2 guys can work together.

3 Because what Mr. Phillips did mention when this  
4 first started was that you guys were here, and then he said  
5 he texted you to let you know that like this is going on.  
6 So that right there means he cared enough to send a text.  
7 Me, personally, I wouldn't send a text. But so, that's just,  
8 you know, just how well that communication seems to be  
9 possible. Just throwing that out there.

10 Okay, so does anybody have anything else they'd  
11 like to add? Okay. In closing, does the applicant have  
12 anything they'd like to say?

13 MS. TANYERI: No.

14 CHAIRPERSON HILL: Okay. All right. Thank you.  
15 So I'm going to go ahead and close the hearing. Is the Board  
16 ready to deliberate? Would somebody else like to start?

17 MEMBER MAY: Mr. Chairman, I'll go ahead. So I  
18 think that at this point, the relief that's been requested  
19 in this case has really come to the point of being very, very  
20 minimal. Like I said I could go on for a while about design  
21 issues related to this, but I will hold back.

22 But really, I mean it's seven inches of additional  
23 height on the roof. It does require some modification of the  
24 existing mansard roof. I think the modifications of a side  
25 are not visible, so I don't think that's really an issue with

1 the modification of the front. It just needs to be well  
2 done.

3 I appreciate the concerns of the abutting  
4 neighbor, however, I think that they should look at this case  
5 as a victory because essentially by persisting with their  
6 concerns, they managed to get the height of the mansard  
7 reduced down to seven inches. I mean that changed down to  
8 seven inches. I mean I think it's worked out well.

9 You still have the addition on the back, but that  
10 was a matter of right. So there is not much that would be  
11 done about that. So I think this is a pretty clear case, and  
12 I would have no problem supporting the relief that's been  
13 requested.

14 MEMBER JOHN: Mr. Chairman, I have nothing to add  
15 to that. I also agree that at this point the relief is  
16 fairly minimal and the Office of Planning has done a very  
17 good job of summarizing and analyzing what the issues are as  
18 amended by testimony today.

19 And I would just endorse what the Chairman said,  
20 that even if you were here earlier, because of what the  
21 regulations require, we would simply look at the zoning  
22 issues and we would not try to get in the middle of the  
23 property owners to resolve whatever outstanding issues that  
24 there might be outside of the pure zoning issue of whether  
25 or not this mansard roof should be allowed to be allowed to

1 be adjusted. Whether we should allow the adjustment to the  
2 mansard roof in the front and the side. That's the only  
3 thing that's before the Board right now. And that would be  
4 my recommendation.

5 VICE CHAIRPERSON HART: And I would concur with  
6 my colleagues. ANC voted eight to zero to zero, and the  
7 Office of Planning is in support. There is the suggestion  
8 about the applicant having a darker color. They're actually  
9 calling it just on the third floor in the OP report. I don't  
10 know, I think it may be better just to have darker color on  
11 the entire back portion of it. But again, I don't know. I  
12 don't think that that's necessarily a part of the relief, but  
13 it's just a suggestion for the Applicant. But I would be in  
14 support of it. I didn't have much of an issue with the  
15 project as it is.

16 MEMBER WHITE: I concur with all the comments that  
17 I've heard. I think they met the criteria for the special  
18 exception relief. The ANC's support, OP's report and  
19 clarification on the relevant provisions gives me enough  
20 comfort that they've met the criteria for this particular  
21 matter.

22 And hopefully the neighbors can continue to work  
23 together to kind of resolve some of the other issues outside  
24 of some of the zoning regulations that we were tasked with  
25 looking at today. But with respect to this application, I'm



1 in support.

2 CHAIRPERSON HILL: Okay. I don't have anything  
3 else to add. I think that everything that was said, I agree  
4 with. I'm going to go ahead and make a motion to approve  
5 Application 19869 as read and captioned by the Secretary  
6 concerning the plans actually that are in Exhibit 46, and ask  
7 for a second.

8 VICE CHAIRPERSON HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All  
10 those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON HILL: All those opposed? Motion  
13 passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as five to  
15 zero to zero based on the motion of Chairman Hill to approve  
16 the application for the relief requested. Seconding the  
17 motion Vice Chair Hart. Also in support, Ms. White, Ms. John  
18 and Mr. Peter May. Motion carries.

19 CHAIRPERSON HILL: Okay great. Thank you all very  
20 much. Mr. Moy, is there anything else before the Board  
21 today?

22 MR. MOY: Not from the staff, sir.

23 CHAIRPERSON HILL: Okay, we stand adjourned.

24 (Whereupon, the foregoing matter went off the  
25 record at 3:22 p.m.)

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: DC BZA

Date: 11-28-18

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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Court Reporter

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