

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 5, 2018

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:40 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LESYLLEE M. WHITE, Board Member  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
STEVE COCHRAN  
ELISA VITALE  
CRYSTAL MYERS  
JONATHAN KIRSCHENBAUM  
ANNE FOTHERGILL

The transcript constitutes the minutes from the  
Public Hearing held on December 5, 2018.

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

9:40 a.m.

BZA CHAIR HILL: Good morning, everybody. The hearing will please come to order.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4thStreet, Northwest.

This is the November -- no, this is the December 4th Public Hearing of the Board of Zoning Adjustment, December 5th, thank you, Public Hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is, I'm sorry, joining me today is Lorna John and Lesylee White, Board Members. And, representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you and located in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly, we must refrain -- 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 are finished speaking, please turn your

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1 microphone off so that your microphone is no longer picking  
2 up sound or background noise.

3 All persons planning to testify either in favor  
4 or in opposition must have raised their hand and been sworn  
5 in by the Secretary.

6 Also, each witness must fill out two witness  
7 cards. These cards are located on the table near the door  
8 and on the witness table.

9 Upon coming forward to speak to the Board, please  
10 give both cards to the reporter sitting at the table to my  
11 right.

12 If you wish to file written testimony or  
13 additional supporting documents today, please submit one  
14 original and 12 copies to the Secretary for distribution.

15 If you do not have the requisite number of copies,  
16 you can reproduce copies on an office printer in the Office  
17 of Zoning located across the hall.

18 Please remember to collate your set of copies.

19 The order of procedures for -- the order of our  
20 procedure for special exceptions and variances and appeals  
21 is also listed as you come in the hall and/or in the Office  
22 of Zoning across the hall.

23 These time constraints, there are time constraints  
24 that we will adhere to.

25 The record shall be closed at the conclusion of

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1 each case except for any materials specifically requested by  
2 the Board. The Board and the staff will specify at the end  
3 of the hearing exactly what is expected and the date when the  
4 persons must submit the evidence to the Office of Zoning.

5 After the record is closed, no other information  
6 shall be accepted by the Board.

7 The Board's agenda including cases set for  
8 decision after the Board adjourns, the Office of Zoning in  
9 consultation with myself will determine whether a full or  
10 summary order may be issued.

11 A full order is required when the decision  
12 contains adverse to a party including an affected ANC. A  
13 full order may also be needed if the Board's decision differs  
14 from the Office of Planning's recommendation.

15 Although the Board favors the use of summary  
16 orders whenever possible, an Applicant may not request the  
17 Board to issue such an order.

18 The District of Columbia Procedures Administrative  
19 Act requires that the public hearing on each case be held in  
20 the open before the public pursuant to Section 405(b) and 406  
21 of that Act.

22 The Board may, consistent with its rules and  
23 procedures and the Act, enter into a closed meeting on a case  
24 for purposes of seeking legal counsel on a case pursuant to  
25 D.C. Official Code Section 2-575(b)(4) and/or deliberating

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1 on a case pursuant to D.C. Official Code Section 2-575(B)(13)  
2 that only after providing the necessary public notice and in  
3 the case of an emergency closed meeting after taking a roll  
4 call vote.

5 The decision of the Board in cases must be based  
6 exclusively on the public record. To avoid any appearance  
7 to the contrary, the Board requests that persons present not  
8 engage the Members of the Board in conversation.

9 Please turn off all beepers and cell phones at  
10 this time so as not to disrupt the proceeding.

11 Preliminary matters are those which relate to  
12 whether a case will or should be heard today such as requests  
13 for postponement, continuous or withdrawal or whether proper  
14 and adequate notice of the hearing has been given.

15 If you are not prepared to go forward with the  
16 case today or if you believe that the Board should not  
17 proceed, now is the time to raise such a matter.

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

19 MR. MOY: Good morning, Mr. Chairman, Members of  
20 the Board.

21 The only major preliminary that I have before the  
22 Board is attendant to Case Application Number 19828 of 3423  
23 Holmead Place, LLC.

24 There was a filing yesterday from the Applicant  
25 requesting -- it's their motion to continue the hearing to

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1 January 16th or later. And, that's under your case records  
2 under Exhibit 50.

3 So, that's for the Board to address either sooner  
4 or later.

5 And, that's all I have for the Board.

6 BZA CHAIR HILL: Okay. Well, with regard to that  
7 preliminary matter, Mr. Moy, and also fellow Board Members,  
8 as you probably recall in that case, 19828 which we had, I  
9 think the meeting case was last week, we determined that we  
10 were going to deny in part and approve in part.

11 And, the Applicant, we weren't clear as to what  
12 the Applicant was going to do with the part of the request  
13 that was approved.

14 And, they, the Applicant, has now asked for, I  
15 don't know if it's postponement, continuance, I mean, you  
16 know, I'd be -- so that they can determine how they're going  
17 to change the plans, if they're going to move forward and  
18 then also have an opportunity to go back before the ANC with  
19 their revised plans.

20 So, I would also be, depending upon how my fellow  
21 Board Members feel, and Chairman Hood was on this as well,  
22 so it's appropriate that he is here at this time, but I would  
23 go ahead and agree to a postponement for a continued hearing.

24 So, in other words, we would have a continued  
25 hearing. We would just have it on the limits of the changes

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1 to the plans as they would be provided for the I guess the  
2 approval in the part of the application that we were  
3 approving, but we would just be limiting to those plans and  
4 discussion to those plans. We won't be opening the record  
5 to other things outside of that.

6 But, I would -- that's what I would suggest we do.  
7 Does anyone have any thoughts?

8 MEMBER WHITE: Mr. Chairman, I would agree with  
9 that. I'm looking at Mr. Sullivan's letter dated December  
10 4th and I think it's reasonable to allow him time to revise  
11 the plans and submit them to the Board with respect to the  
12 remaining item of relief that -- regarding the height for the  
13 particular application.

14 It sounds like they are -- want the time to revise  
15 the plans so that it would be hopefully in line with some of  
16 the other recommendations that were submitted by entities  
17 like OP.

18 So, I don't have a problem with the proposed  
19 postponement. And, it also gives them time to share it with  
20 the ANC as well.

21 MEMBER JOHN: I have no objection, Mr. Chairman.

22 BZA CHAIR HILL: All right, Mr. Moy, then we're  
23 going to go ahead and when do you think would be a good time  
24 to -- when was the Applicant actually asking for and does  
25 that work for our calendar?

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1 MR. MOY: Yes, thank you, Mr. Chairman.

2 I have two options. The January 16th docket is  
3 doable for the Board in terms of the number of cases.

4 The second option is that, if Mr. Hood wanted to  
5 participate, the next time that we see him full-time would  
6 be February the 6th.

7 So, it's your choice.

8 ZC CHAIR HOOD: Mr. Chairman, I can do like I did  
9 previously. I can send an absentee ballot in at the time on  
10 that if you want to do the 16th.

11 BZA CHAIR HILL: Okay, let's just go with the 16th  
12 then as requested.

13 MR. MOY: Okay, done.

14 BZA CHAIR HILL: Okay, great.

15 So, after that, just to everyone here, a couple  
16 of things, we're going to go in the order in which the agenda  
17 has us over there as you kind of came walking into the room.

18 And then, secondly, if you come -- if you are  
19 coming here to testify either in support or in opposition to  
20 anything or just want to testify, if you'll please stand and  
21 take the oath administered by the Secretary to my left.

22 MR. MOY: Good morning.

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

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1 (CHORUS OF AYES)

2 MR. MOY: All right, ladies and gentleman, you may  
3 consider yourselves under oath.

4 BZA CHAIR HILL: Okay, all right, Mr. Moy, you can  
5 go ahead and call our first case.

6 MR. MOY: Thank you, Mr. Chairman.

7 So, if we can have party to the table, this is to  
8 Appeal Number 19777 of Hillary Dove and Ranieri, I'm not sure  
9 I'm pronouncing that correctly, but Cavaceppi.

10 This is from the determination made on October  
11 6th, 2018 by a program analyst in the Office of Zoning  
12 Administrator, Department of Consumer Regulatory Affairs that  
13 the placement of three air conditioning compressor units in  
14 a side yard did not violate the side yard setback  
15 requirements and was not a cause for zoning enforcement  
16 action.

17 This is in the R-1-B Zone at premises 4400  
18 Albemarle Street, Northwest, Square 1590, Lot 43.

19 BZA CHAIR HILL: Okay, good morning, let's see,  
20 I'll let this gentleman get a seat. Sure, no problem.

21 All right, if you'd please introduce yourselves  
22 from my right to left.

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

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1 MR. LEGRANT: Good morning, Matthew LeGrant,  
2 Zoning Administrator, DCRA.

3 MS. CHANLETT-AVERY: Good morning, I'm Emma  
4 Chanlett-Avery, homeowner.

5 BZA CHAIR HILL: I'm sorry, could you say your  
6 last name again?

7 MS. CHANLETT-AVERY: Chanlett-Avery.

8 BZA CHAIR HILL: Chanlett-Avery? That's the last  
9 name?

10 MS. CHANLETT-AVERY: Yes.

11 BZA CHAIR HILL: Could you spell it for me?

12 MS. CHANLETT-AVERY: C-H-A-N-L-E-T-T, hyphen,  
13 Avery, A-V-E-R-Y.

14 BZA CHAIR HILL: Okay, great, thank you.

15 MR. OGDEN: Good morning, Peter Ogden, homeowner.

16 MR. LETTERI: Good morning, Mr. Chairman, John  
17 Letteri with the law firm Antonoplos & Associates on behalf  
18 of the Appellants.

19 MS. DOVE: Good morning, Hilary Dove, 4404  
20 Albemarle Street.

21 MR. CAVACEPPI: Ranieri Cavaceppi, 4404 Albemarle  
22 Street.

23 BZA CHAIR HILL: Could you spell your last name,  
24 please, sir?

25 MR. CAVACEPPI: C-A-V-A-C-E double P like Peter

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1 and Paul, I.

2 BZA CHAIR HILL: Okay, great, thank you.

3 All right, so I guess Mr. Letteri?

4 MR. LETTERI: Letteri.

5 BZA CHAIR HILL: Letteri, Letteri, thank you. All  
6 right, Mr. Letteri, so you're going to start with I assume?  
7 Are you going to be presenting?

8 MR. LETTERI: Yes, Your Honor.

9 BZA CHAIR HILL: Okay, all right.

10 MR. LETTERI: Mr. Chairman, what I thought I could  
11 do is a brief opening statement and then Ms. Dove has some  
12 testimony she'd like to present.

13 BZA CHAIR HILL: Sure, okay. So, just so  
14 everybody knows how this kind of goes, so we're going to go  
15 in order with the Appellant first in terms of doing your  
16 testimony.

17 Then, the DRCA and the property owners can have  
18 an opportunity to question any of your testimony.

19 And then, we'll go over to DCRA, they'll give  
20 their testimony.

21 Then the property owners will give their testimony  
22 and you'll also have an opportunity to basically ask  
23 questions of each other.

24 And then, they're going to go ahead and there'll  
25 be rebuttal in terms of the Applicant will have an

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1 opportunity to rebut, you know, the testimony. The other  
2 people will also have an opportunity to question the rebuttal  
3 and then there'll be a conclusion from the Applicant.

4 So, just to kind of let you know how we're going  
5 to go through this.

6 And, let's see, Mr. Letteri, how much time do you  
7 think you're going to need?

8 MR. LETTERI: At the most, Mr. Chairman, 20  
9 minutes.

10 BZA CHAIR HILL: Okay, great, because everybody  
11 gets the same amount of time. So, you can go ahead, Mr. Moy,  
12 and put 20 minutes on the clock and you can begin whenever  
13 you like.

14 MR. LETTERI: All right, thank you.

15 Good morning, again, Mr. Chairman and Members of  
16 the Board. My name is John Letteri and I'm with the law firm  
17 of Antonoplos & Associates and I'm representing Hilary Dove  
18 and Ranieri Cavaceppi in their appeal of the April 6th, 2018  
19 decision by this Zoning Administrator that found there is no  
20 cause for a zoning enforcement action concerning the  
21 placement of three large self-contained air conditioning  
22 compressor units in the three-foot side yard that runs  
23 between 4404 Albemarle Street and the home next door, the  
24 Chanlett-Avery lot located at 4400 Albemarle Street.

25 A copy of Mr. Reid's decision is attached as

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1 Exhibit Number 1 to our opening brief.

2 Now, the side yard between the Dove lot and the  
3 Chanlett-Avery lot is 11 feet wide, running east to west from  
4 Albemarle Street to the rear of both lots.

5 It is located on the south side of the Dove lot  
6 and the north side of the Chanlett-Avery lot.

7 Eight feet of the 11-foot side yard is within the  
8 Dove lot and three feet of that is within the Chanlett-Avery  
9 lot.

10 Now, the original permit that Ms. Chanlett-Avery  
11 obtained in September 2017 for an extensive renovation of the  
12 home there, included electrical drawing labeled E001 and E002  
13 approved by the DCRA which show placement of the air  
14 conditioning compressor units in the rear yard of the lot  
15 where there is ample space for the three units and they are  
16 more than eight feet from the property line.

17 Copies of the original permit and architectural  
18 drawings are attached to our opening brief as Exhibit 2.  
19 And, if you look down in the lower right-hand corner of the  
20 drawings labeled E001 and E002, you'll see the placement of  
21 the units.

22 Now, Ms. Dove and Mr. Cavaceppi have no complaints  
23 with respect to any of the planned renovation per the  
24 original permit.

25 However, on March 6th, 2018, DCRA issued a new

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1 permit which purports to amend the original permit to allow,  
2 among other things, the relocation of the three large self-  
3 contained air conditioning units at grade level in that  
4 three-foot space of the Chanlett-Avery portion of the side  
5 yard between the two properties. And, a copy of the March  
6 6th, 2018 permit is attached as Exhibit Number 3 to our  
7 opening brief.

8           Now, upon learning of the planned relocation of  
9 the units from construction workers who were on the Chanlett-  
10 Avery lot, Ms. Dove and Mr. Cavaceppi quickly contacted Mr.  
11 Rohan Reid in the Office of Zoning Administration on March  
12 19th, 2018 prior to installation of the units to request a  
13 review of the proposed relocation on grounds that the new  
14 location in the side yard violated at least the eight-foot  
15 setback rule for the neighborhood and the two-foot setback  
16 rule for protecting self-contained air conditioning units.

17           On April 6th, 2018, Mr. Reid decided that because  
18 the air conditioning units were less than four feet tall,  
19 they were exempt from the setback rules and he found no cause  
20 for zoning enforcement action.

21           Now, the three compressors now are in place and  
22 the width of one of them takes up literally the entire three  
23 feet of that -- the Chanlett-Avery portion of the side yard  
24 and a fence that runs along the side yard between the two  
25 lots.



1           One of the units abuts both the Chanlett-Avery  
2 home and comes right up to the fence and is literally  
3 squeezed into that space.

4           If you'll take a look at the photographs that we  
5 attached as Exhibit Number 4 to our opening brief, you'll see  
6 pictures of the units.

7           In addition, the noise generated by the units  
8 already --

9           BZA CHAIR HILL: Wait a second, Mr. Letteri, I'm  
10 trying to figure out which exhibit you're in.

11           MR. LETTERI: Yes.

12           BZA CHAIR HILL: Which -- do you know the exhibit  
13 number?

14           MR. LETTERI: It's Exhibit Number 4 to our opening  
15 brief.

16           BZA CHAIR HILL: Okay, great, we're with you now.  
17 Go ahead.

18           MR. LETTERI: Okay.

19           So, if you take a look there, you can see how  
20 those units are squeezed in.

21           Now, for the reasons that I previously mentioned,  
22 Ms. Dove and Mr. Cavaceppi appealed the Zoning  
23 Administrator's decision. Now, the grounds for the appeal  
24 are as follows.

25           First, the placement of the units in the side yard

1 violates the eight-foot setback rule for the neighborhood.

2           Second, the placement of the units violates the  
3 two-foot setback rule for self-contained air conditioning  
4 units projecting from a building.

5           Third, the noise generated by the three units  
6 apparently exceeds the permissible 60 decibel limit for the  
7 neighborhood set by the District of Columbia Noise Control  
8 Ordinance.

9           Now, after several requests, Mr. Chairman, from  
10 Ms. Dove and Mr. Cavaceppi, DCRA conducted a noise test  
11 yesterday and the noise generated by the machines apparently  
12 exceeds that 60 decibel level.

13           BZA CHAIR HILL: Okay, Mr. Letteri, just to let  
14 you know, like noise, that kind of air, that is not actually  
15 within our purview. The other zoning issues are zoning  
16 issues, but as far as the noise issue, that's not something  
17 that would be within our purview, so it's really something  
18 that you don't need to argue about here. It would be  
19 something that you would continue to work with DCRA about.

20           MR. LETTERI: All right, understood, Mr. Chairman.

21           And, I was going to say, actually, but the reason  
22 we are here is because the machines should not be in that  
23 side yard at all under the zoning regulations.

24           Now, in his April 6th, 2018 decision, the Zoning  
25 Administrator incorrectly found, in our view, that as long

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1 as the units were less than four feet in height, the setback  
2 rules did not apply and the units could be placed in any open  
3 yard.

4 Now, in order to get there, the Zoning  
5 Administrator apparently ride on Title 11, Subchapter B,  
6 Chapter 3, Section 324.1(a) which contains the four-foot  
7 exemption.

8 However, Section 324.1(a) only applies to  
9 structures which is defined in Title 11, Chapter 1, Section  
10 191 -- 199.1 to specifically exclude mechanical equipment.

11 Structure is anything constructed including a  
12 building, the use of which requires permanent location on the  
13 ground or anything attached to something having a permanent  
14 location on the ground and including, among other things,  
15 radio or television towers, reviewing stands, platforms, flag  
16 poles, tanks, bins, gas holders, chimneys, bridges and  
17 retaining walls.

18 And, the term structure shall not include  
19 mechanical equipment. That's right in 324.1(a)(1). But  
20 shall include the supports for mechanical equipment.

21 Now, in our view, large air conditioning  
22 compressor units are mechanical equipment. And, they are not  
23 structures for the purposes of the four-foot exemption from  
24 the setback requirements.

25 In fact, they are defined as mechanical equipment

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1 by the District of Columbia Noise Control Ordinance at  
2 Section 2801.2.

3 And, I would emphasize here that each of the  
4 examples given in Section 324.1(a) for what's included as a  
5 structure, are -- do not include any kind of mechanical  
6 operating thing. They're quiet inanimate objects, a flag  
7 pole, reviewing stands, tanks, bins, gas holders, et cetera.  
8 None of those things make noise. None of those things  
9 operate like a machine.

10 So, based on the plain language of 324.1(a),  
11 structure cannot include mechanical equipment and, in  
12 addition, to the plain language specifically stating that.

13 Now, as a result, because Mr. Reid based his  
14 decision on the four-foot exemption and called these units  
15 structures, we think that's incorrect and placement of the  
16 air conditioning units is, in fact, in violation of the  
17 setback rules and cannot stand.

18 Ms. Dove and Mr. Cavaceppi respectfully submit  
19 that the Zoning Board of Adjustments should grant their  
20 appeal, reverse Mr. Reid's decision, find that placement of  
21 the air conditioning units violates the District of Columbia  
22 zoning rules and regulations and issue an order for the  
23 relocation of the units to the side yard in compliance with  
24 the original permit issued in September 2017.

25 Now, that concludes my opening statement, Mr.

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1 Chairman. And, what I'd like to do now is Ms. Dove and I  
2 will go through some of the other exhibits in our opening  
3 brief.

4 BZA CHAIR HILL: Okay, great.

5 You just have to push it once, now it's on.

6 MS. DOVE: Okay.

7 BZA CHAIR HILL: That's okay.

8 MR. LETTERI: All right, Ms. Dove, can you tell  
9 the Board -- the Members of the Board when you first noticed  
10 workers in the side yard?

11 MS. DOVE: Yes, I think it was February, they were  
12 doing some work on the side of their house and they were  
13 cutting open the wall, so to speak, and throwing a lot of  
14 debris on our drain there which historically has backed up  
15 and flooded our basement. So, I was a little concerned.

16 I went out and I asked them, can you please be  
17 more careful of that? Maybe put a tarp over it so we don't  
18 have problems.

19 And, that's when they let us know that they were  
20 thinking of putting the HVAC units there.

21 MR. LETTERI: Okay. Were you ever notified by the  
22 owners of 4400 Albemarle about the change in plans?

23 MS. DOVE: No.

24 MR. LETTERI: I mean, how did you -- in addition  
25 to talking to the construction workers, what other steps did

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1 you take to find out about the new plans?

2 MS. DOVE: So, I contacted their construction  
3 company. We started to talk about it, and I said, I don't  
4 think that this is legal. I don't think there's enough  
5 space. And so, we had some conversations about that.

6 They said they would talk to the homeowners and  
7 then they just kept going forward.

8 MR. LETTERI: All right. And, now, just for  
9 purposes of authentication, the pictures we have included in  
10 Exhibit 4 in our opening brief, did you take those pictures?

11 MS. DOVE: Yes.

12 MR. LETTERI: Okay. And, when did you take those  
13 pictures?

14 MS. DOVE: I've taken many pictures through the  
15 process.

16 MR. LETTERI: Right.

17 MS. DOVE: Because I tried to let Mr. Reid know  
18 what he was saying yes to. And then, I wanted to document  
19 sort of what was happening.

20 MR. LETTERI: All right. Now, on March 19th,  
21 2018, did you and Mr. Cavaceppi write an email to Rohan Reid?

22 MS. DOVE: Yes.

23 MR. LETTERI: All right. And, that email is  
24 attached to our opening brief as Exhibit Number 6. And, if  
25 you could take a look at that with me.

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1 And, what was the purpose of this email, Ms. Dove?

2 MS. DOVE: Can you give me a moment just to look  
3 it over again?

4 MR. LETTERI: Sure.

5 MS. DOVE: I was asking how the compressors were  
6 moving since the original plans had said it was going to be  
7 in the back yard. And, I was very suspicious of about if  
8 they had approval on this front.

9 MR. LETTERI: Okay. And then, on March 20, Mr.  
10 Reid wrote you back?

11 MS. DOVE: Correct.

12 MR. LETTERI: All right. And, can you explain  
13 what that's about, that email is about? And that is Exhibit  
14 Number 7 to our opening brief.

15 MS. DOVE: This is his reply just saying he thinks  
16 it's within the four feet ruling.

17 At some point, we had conversations about  
18 mechanical units, but he never answered those questions.

19 MR. LETTERI: All right.

20 MS. DOVE: So, that was specifically just -- he  
21 answered his own.

22 MR. LETTERI: Now, Exhibit 8 to our opening brief  
23 is an email that you wrote back to Mr. Reid and included,  
24 there are a couple of additional pictures, well, at least one  
25 with Exhibit Number 8. And, what were you trying to do

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1 there?

2 MS. DOVE: Here again, just trying to show what  
3 he was approving.

4 MR. LETTERI: And, what did the picture show  
5 that's attached to --

6 MS. DOVE: How close. So, because that is three  
7 feet and one unit is literally three feet, how are they going  
8 to walk over it? How are they going to maintain it? How is  
9 this legal with any sort of just the zoning issues? I don't  
10 know how else to answer it.

11 MR. LETTERI: All right. And then, the last  
12 exhibit we have is Exhibit Number -- well, the last exhibit  
13 I'd like to discuss with you is Exhibit Number 9 to our  
14 opening brief.

15 And, this looks to be an email that you wrote to  
16 Mr. Donald Sullivan. Take a look at that.

17 MS. DOVE: We were given suggestions on how to go  
18 through this process to talk to people to see if this was a  
19 correct judgment.

20 And so, we were given advice to talk to Mr.  
21 Sullivan to see if this was legal. Because it took us a  
22 while to even get a permit to show that the permits had  
23 changed.

24 So, it was hard to get paperwork to find out what  
25 was happening, that's what this is.

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1 MR. LETTERI: All right. And then, I believe on  
2 or about April 6th, 2018, Mr. Reid issued his decision and  
3 then you filed your appeal, correct?

4 MS. DOVE: Yes.

5 MR. LETTERI: Okay.

6 MS. DOVE: And so, as soon as he put his opinion  
7 and we had to live with the opinion, we told all parties that  
8 we would appeal the decision. And then, within the appeal,  
9 or during the appeal, I should say, if we had to live with  
10 that while waiting to have our day here, we expected them to  
11 live within his ruling.

12 So, one point, one of their units was taller than  
13 four feet, so we had to get DCRA to come out and check. That  
14 had to be moved.

15 And then, we've been dealing with the noise issue  
16 for a while, which you say is not your purview, but so we've  
17 been sort of addressing it on all fronts.

18 I hope that's clear enough for you.

19 MR. LETTERI: All right, Mr. Chairman, unless you  
20 had any questions for us, we -- that's our presentation.

21 BZA CHAIR HILL: Okay, okay, great.

22 Let's see, does the Board have any questions of  
23 the Applicant at this point?

24 ZC CHAIR HOOD: I did have a question, I read it  
25 but he mentioned it and it sparked something I remembered.

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1           Your counsel, you mentioned that the development  
2 -- the house in question, we're talking about the side yard,  
3 was that a BZA case prior to do away with the side yard for  
4 the extensions or was that a matter of right?

5           MS. DOVE: I don't know what you're talking about,  
6 I'm sorry.

7           ZC CHAIR HOOD: The house next -- they did some  
8 construction, right?

9           MS. DOVE: Correct, they --

10          ZC CHAIR HOOD: Right.

11          MS. DOVE: -- blew out the back and added on.

12          ZC CHAIR HOOD: So, they didn't do any  
13 construction on the side?

14          MS. DOVE: No.

15          ZC CHAIR HOOD: Because it looks like there's a --  
16 from the pictures you took, it looks like there's a shorter  
17 side yard. Is it a shorter side yard than the house in  
18 question?

19          MR. LETTERI: Yes.

20          MS. DOVE: That's the whole point. So, we own the  
21 eight feet, they own three feet. Is that what you're --

22          ZC CHAIR HOOD: So, it was nothing done to get  
23 that side yard like that? Three yards -- three feet and  
24 eight feet? There was nothing done like no additional  
25 development or anything?

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1 MS. DOVE: No, they just took, you know, the  
2 outside of the house out to put the pipes in, that's it. Is  
3 that what you're talking about?

4 ZC CHAIR HOOD: Yes, because I see some work  
5 there, some -- the pictures look like --

6 MS. DOVE: Right.

7 ZC CHAIR HOOD: -- there was some work done there.

8 MS. DOVE: That's because they took just the, I  
9 don't know what it's called, the stucco, they took the stucco  
10 off and they also put in two windows.

11 ZC CHAIR HOOD: So, it was never an extension done  
12 or anything of that nature on that side yard?

13 MS. DOVE: No.

14 ZC CHAIR HOOD: Okay, all right.

15 MS. DOVE: No.

16 ZC CHAIR HOOD: Okay, thank you.

17 BZA CHAIR HILL: Okay. What I'd like to do,  
18 actually, is just kind of move through and see where other  
19 questions might kind of come up.

20 But, at this point, does DCRA have any questions  
21 of the Appellant?

22 MS. LORD-SORENSEN: No.

23 BZA CHAIR HILL: Okay. Does the property owner  
24 have any questions of the Appellant?

25 MS. CHANLETT-AVERY: No.

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1           BZA CHAIR HILL: Okay. So, Ms. Lord-Sorensen, I'm  
2 going to turn to you. You'll get the same amount of time in  
3 terms of 20 minutes. Oh, you need to get the laptop? Okay,  
4 great, sure.

5           Okay, great. Let's see, and I appreciate you all  
6 being here. I know that it took a while for you guys to  
7 finally get here and we, you know, everybody had a  
8 postponement. We got stuck until 11:30 that night, so that's  
9 why that happened. So, I mean, you could have -- we could  
10 have tried to do you, but then it would have been like 1:00,  
11 2:00 in the morning and so, I don't think it would have been  
12 very effective.

13           And so, again, you know, while -- why we are here,  
14 we understand, you know, what the different opinions are  
15 about even just the practical opinions about having, you  
16 know, noise issues, even though that's not under our purview,  
17 but I understand the practical issues and what you're kind  
18 of doing here.

19           And, what we're basically here for is really just  
20 how the Zoning Administrator determined whether this is or  
21 isn't code compliant within the regulations, I should say.

22           And so, that's basically why we're here. And so,  
23 we'll get through this together.

24           So, Ms. Sorensen, you can begin whenever you like  
25 and particularly, you know, addressing the specific questions

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1 that the Appellant is putting forward for the Zoning  
2 Administrator.

3 MS. LORD-SORENSEN: Certainly.

4 Well, good morning, again, Chairman Hill and  
5 Members of the Board.

6 Just very briefly, I know we already addressed the  
7 fact that noise is not within the purview of the BZA.  
8 However, I did want the Board to know that DCRA, in light of  
9 the findings from yesterday, DCRA does plan to issue a notice  
10 of violation and we're going to continue to monitor the noise  
11 situation at the property.

12 So, we're here today because the Appellants,  
13 Hilary dove and Ranieri Cavaceppi allege that the Zoning  
14 Administrator erred when he permitted property owner, Emma  
15 Chanlett-Avery, to place air conditioning units in the side  
16 yard of her property located at 4400 Albemarle Street,  
17 Northwest.

18 Now, there are just really two issues before this  
19 Board. One, the placement of the A/C units.

20 And, two, whether the placement of the A/C units  
21 violates the two-foot setback rule for self-contained air  
22 conditioning units.

23 Now, after hearing today's testimony, DCRA  
24 respectfully requests that the Board uphold the Zoning  
25 Administrator's decision and deny this appeal.

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1 Now, I would like to ask the Zoning Administrator  
2 a few questions regarding 4400 Albemarle Street.

3 (OFF MICROPHONE COMMENTS)

4 MS. LORD-SORENSEN: Good morning.

5 MR. LEGRANT: Good morning.

6 MS. LORD-SORENSEN: Could you please tell the  
7 Board which zone 4400 Albemarle Street, Northwest is located?

8 MR. LEGRANT: Yes, it's located in the R-1-B Zone.

9 MS. LORD-SORENSEN: Is there a minimum side yard  
10 requirement for an R-1-B Zone?

11 MR. LEGRANT: There is, it's an eight-foot setback  
12 standard for a side yard in an R-1-B Zone.

13 MS. LORD-SORENSEN: Okay. Are structures  
14 permitted in the yard of a property located in an R-1-B Zone?

15 MR. LEGRANT: Well, as was noted, there is a  
16 provision that deals with structures, allowable structures  
17 in a required yard, a structure, not including a building,  
18 no part of which is more than four-feet about the grade at  
19 any point may occupy any yard as per Section B of 324.1 of  
20 the zoning regulations.

21 MS. LORD-SORENSEN: Now, the Appellants mentioned  
22 in their filings, and it specifically in its reply in support  
23 of appeal that the A/C units are not structures. Do you have  
24 an opinion on that statement?

25 MR. LEGRANT: Well, yes. The -- as was noted,

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1 there is a definition of structure in the definitions section  
2 of the zoning regulation B-100. And, I think it was already  
3 covered.

4 But, I'm going to highlight the point that in the  
5 bold that we've bolded that provision. The term structure  
6 shall not include mechanical equipment, but shall include  
7 supports for mechanical equipment.

8 So, that is the challenge for my offices when  
9 we're faced with a -- something that is placed in a yard and,  
10 well, is it a structure or how do we regulate it?

11 And, once -- what my office has done is once it's  
12 fixed to the ground, which is the supports in this case for  
13 the mechanical equipment, it then becomes something we  
14 regulate.

15 I'll just note that if a -- to distinguish this  
16 from a structure that's not fixed to the ground, then okay,  
17 my office is not going to regulate that. But, the -- so  
18 that's how we -- I have approached it is once it's fixed to  
19 the ground with the supports then I apply the applicable  
20 provision in this case, 324.1 which is the height limitation.

21 MS. LORD-SORENSEN: And, what is the height  
22 limitation for a structure?

23 MR. LEGRANT: Four feet above the grade at any  
24 point.

25 MS. LORD-SORENSEN: And do you know whether the

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1 air conditioning units in the side yard of 4400 Albemarle  
2 Street is more or less than four feet?

3 MR. LEGRANT: They are less than four feet as per  
4 an inspection by DCRA on April 4th, 2018. It was measured  
5 two feet, five and a half inches.

6 MS. LORD-SORENSEN: Okay. Now, 11(b) DCMR 324.1  
7 reads, every part of a yard shall be open and unobstructed  
8 to the sky from the ground up except for an example a  
9 structure may occupy any yard.

10 So, is it your opinion that the air conditioning  
11 unit at 4400 Albemarle Street, Northwest is a structure?

12 MR. LEGRANT: For this purposes, yes.

13 MS. LORD-SORENSEN: Okay. Okay, now, just now I'd  
14 like to transition to the second issue, the two-foot setback  
15 rule.

16 Now, are the air conditioning units located in the  
17 side yard subject to the two-foot setback rule?

18 MR. LEGRANT: No, they are not.

19 MS. LORD-SORENSEN: And why not?

20 MR. LEGRANT: Okay, because the provision that was  
21 noted in Section B 324 has to do with projections from  
22 buildings. The 324 governs a self-contained air conditioner  
23 that projects from the building, you know, horizontally into  
24 a yard.

25 For example, projection encroachments may encroach

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1 into these open areas such as cornices, eaves, awnings,  
2 skylights and various adornments and the extent from the  
3 building.

4 So, these features are not from the ground up,  
5 they're projections from a side of the building and that's  
6 why it's a different section, 324. It's distinguished from  
7 323 because 324 deals with things placed on the ground and  
8 that of the height limitations of four feet.

9 Here, we're talking about projections from a  
10 building wall.

11 MS. LORD-SORENSEN: Okay. I'd like to direct your  
12 attention to Table B, Section 329.2 found in 11(b) DCMR  
13 Section 327.

14 So, Mr. LeGrant, when you look at the table, it  
15 states here that a self-contained air conditioning unit has  
16 a limitation not to exceed two feet.

17 Can you explain why this particular air  
18 conditioning unit at 4400 Albemarle Street, Northwest isn't  
19 subject to the limitations found in the table?

20 MR. LEGRANT: Right. So, the overall provision  
21 here starting with the top of the page of 324 on 327, general  
22 conditions for transition regulations, have to do with those  
23 zoning districts that are subject to the transition  
24 regulations of the zoning ordinance.

25 The -- in this case, the 327, the transition areas

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1 applies to zones -- applies to the PDR Zone, it does not  
2 apply to the R-1-B Zone.

3 MS. LORD-SORENSEN: And, is the property 4400  
4 Albemarle Street, Northwest located in a PD Zone?

5 MR. LEGRANT: A PDR.

6 MS. LORD-SORENSEN: Sorry, excuse me, a PDR Zone?

7 MR. LEGRANT: It is not.

8 MS. LORD-SORENSEN: Is it located in any sort of  
9 transition zone?

10 MR. LEGRANT: It is not.

11 MS. LORD-SORENSEN: No further questions.

12 BZA CHAIR HILL: Okay, does anyone have any  
13 questions for the testimony for the Zoning Administrator?

14 ZC CHAIR HOOD: Yes, I do have a question.

15 Mr. LeGrant, this -- can we put back up the  
16 definition?

17 MR. LEGRANT: The definition of the structure?

18 ZC CHAIR HOOD: Yes.

19 MR. LEGRANT: Okay.

20 ZC CHAIR HOOD: And you specifically highlighted  
21 the bold -- the part in bold, the term structure shall not  
22 include mechanical equipment, but shall include the support  
23 for mechanical equipment.

24 Is that something that was just revisited or was  
25 that a standing definition?

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1 MR. LEGRANT: Well, my interpretation of this is  
2 longstanding. In fact, when I became Zoning Administrator  
3 and began, in my 11 years as a Zoning Administrator, I was  
4 presented with, over those years, examples of this issue  
5 because it -- there is, I believe, the need for an  
6 interpretation or, excuse me, as I noted, there are things  
7 that are things that are placed in yards. Okay? Well, how  
8 do we regulate them?

9 We have this four-foot limitation. The -- if I  
10 were to take the tack like, well, oh this is a mechanical  
11 equipment there -- and it -- and I would -- if I construed  
12 it not to be a structure, then it would not be even limited  
13 to the four-foot limitation and somebody could come in and  
14 say, well, I'm going to put an eight-foot mechanical unit  
15 here.

16 And, I'd have to take this stance, well, no,  
17 you're fine, go ahead and do that. I think that would be an  
18 absurd result.

19 Therefore, when it's tied to the ground with the  
20 supports, I consistently then said, now, we're going to treat  
21 it as a structure subject to the four-foot height limitations  
22 of the Section 324.

23 ZC CHAIR HOOD: Okay. Again, though, I'm trying  
24 to remember, because, you know, we did nine years of  
25 revamping the Title 58 regulations to the ZR16, nine years.

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1 MR. LEGRANT: Yes, sir.

2 ZC CHAIR HOOD: My question is, my memory fails  
3 me, so my question is, was this one of the definitions that  
4 we looked at?

5 Because the goal was to try to clarify.

6 MR. LEGRANT: Sure.

7 ZC CHAIR HOOD: And, if I'm a citizen and I read  
8 this, we clarify -- we try to clarify to clarify to the point  
9 where we unclarify and that's becoming a problem and I'm not  
10 just having -- just had this the other night. I'm starting  
11 to have problems with my reading stuff like the term  
12 structure shall not include mechanical equipment but shall  
13 include the supports for mechanical equipment.

14 We starting clarifying these things so we wouldn't  
15 even probably even be having this session. So, I'm just  
16 asking, has this -- is this something we just looked at or --

17 MR. LEGRANT: Okay.

18 ZC CHAIR HOOD: -- if it isn't, we need to put it  
19 on the list.

20 MR. LEGRANT: Okay.

21 ZC CHAIR HOOD: Because, when I read that, I sit  
22 where they are.

23 MR. LEGRANT: Okay. This is the same wording that  
24 was in ZR58 and as we know, as you know, and many people here  
25 know, the ZR16 which revised the zoning regulations a couple

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1 -- and now I'm going back over two years ago, clarified many  
2 things.

3 Many aspects of the code were updated by the work  
4 of the Commission and the Office of Planning and my office  
5 helped clarify many things.

6 There are still things that are not crystal clear  
7 that were carried over. I would welcome the Office of  
8 Planning and the Zoning Commission to take a look at this  
9 provision to see if it can be -- if it's consistent with the  
10 Commission's goals and policies, to re-examine it. I'd be  
11 happy to work the Office of Planning if a text amendment  
12 needs to be reviewed.

13 ZC CHAIR HOOD: Okay. Let's make sure that gets  
14 on the list. But that has nothing to do this right now, but  
15 let's just make sure --

16 MR. LEGRANT: Sure.

17 ZC CHAIR HOOD: Okay.

18 Thank you, Mr. Chairman.

19 MEMBER JOHN: Mr. Chairman, I have a counsel for  
20 this, I mean a question for the Zoning Administrator.

21 Do you have any written internal guidance for your  
22 program analysts that they should use in interpreting this  
23 provision?

24 MR. LEGRANT: I don't believe I have anything  
25 written specific on this provision. For other provisions of

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1 the zoning code, I have issued interpretations.

2 But, as noted, when Mr. Reid, who's the Zoning  
3 Enforcement Officer of my office, works very closely, I work  
4 very closely with him on this case and other cases.

5 He comes to me and he says, okay, this is his  
6 understanding before he rendered a decision. The email that  
7 was referred to in this case, he briefed me on this so he  
8 wanted to be sure that it was consistent with my continual  
9 interpretation in this matter and I confirmed that it was.

10 MEMBER WHITE: Yes, this is kind of on board with  
11 mister -- Commissioner Hood. Just it, you know, there is --  
12 I can see how someone could be somewhat confused.

13 But, could you just tell me again the difference  
14 between your interpretation of mechanical equipment versus  
15 a mechanical structure?

16 MR. LEGRANT: Okay. So, mechanical equipment as  
17 per the definition is not included. So, I've had some cases  
18 and I'm thinking now mostly like on a rooftop situation where  
19 somebody has put some equipment that's not fixed. It's  
20 basically lays on the roof and it's not fixed to the roof and  
21 there's no supports for that.

22 And, the rare situations, it doesn't come up very  
23 often, and I say, well, okay, that doesn't -- it isn't now  
24 fixed to the overall building. In that case, on a roof, it  
25 doesn't qualify as a structure.

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1           And, I have said, fine, then you're exempt from  
2 any provision -- rooftop or penthouse regulations on  
3 structures. I urge them to be sure -- they have to confer  
4 with the building code for the thing doesn't blow off the  
5 roof in a wind or something. But, that was the end of my  
6 analysis.

7           Once you take that and you have to support it, you  
8 tie it to a building on a roof, or in this case, tie it to  
9 the ground, my interpretation is then, now I'm going to  
10 regulate it. Now, I'm going to treat it as a structure and  
11 we have a four-foot limitation.

12           I think I've had one other appeal case several  
13 years ago of a structure that the similar situation was  
14 electrical panel box and once it was tied to the ground, I  
15 said, oh that was subject for the four-foot limitation to if  
16 it was a required yard.

17           And, in that particular case, the structure which  
18 was I think about five or six feet in height fell outside a  
19 required yard and the Board ultimately upheld my decision in  
20 that other case.

21           MEMBER WHITE: Thank you.

22           BZA CHAIR HILL: Okay, just to go quickly with me  
23 again, from what Commissioner Hood was saying earlier on, the  
24 property was -- this is the way the property was, right?  
25 This is the side yard that was there to begin with?

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1 MR. LEGRANT: My understanding is, and the  
2 property owner may confirm, is that it was -- it's a  
3 nonconforming situation.

4 As Chairman Hood pointed out, if it was newly  
5 constructed, you'd have to have an eight-foot side yard on  
6 this property. But, as this case and many properties in the  
7 District of Columbia that were built many years before the  
8 rule went into effect, so it's nonconforming.

9 BZA CHAIR HILL: Okay, I was just trying to  
10 understand, right, so that didn't come before us as Chairman  
11 Hood was asking.

12 MR. LEGRANT: My understanding --

13 BZA CHAIR HILL: Then the other, Mr. LeGrant, I  
14 guess do you see this pretty often or like this situation  
15 often in terms of the mechanical units being put there in  
16 that side yard?

17 MR. LEGRANT: I do.

18 BZA CHAIR HILL: Okay. All right, anyone else?

19 MEMBER JOHN: I have a question about mister --  
20 for the Zoning Administrator about the issue of the  
21 projection.

22 And, there was a handy chart that you had before,  
23 can you go back over that?

24 MR. LEGRANT: Okay. So, right -- so the -- I will  
25 say there's two parts to this and the chart is -- it has to

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1 do with limitations on encroachments for projections in a  
2 transition zone or a transition area.

3 And, as I testified that it's my belief it doesn't  
4 apply here, it applies to a PDR Zone which has a whole set  
5 of requirements in transition areas.

6 What I think is more relevant is, as I noted, the  
7 projections into required open spaces B323 had a list of  
8 limitations on the -- on projections into a yard, depending  
9 on the type of element, cornices, eaves, sills, awnings, et  
10 cetera.

11 And then, the -- in this case of B323.9 and a  
12 self-contained air conditioner may project into a required  
13 yard or court a distance not to exceed two feet.

14 But, again, that -- it's my belief does not apply  
15 in this situation because it's a ground-based unit that is  
16 to limit the projections horizontally from the wall of the  
17 building. So, it is also nonapplicable here.

18 BZA CHAIR HILL: So, Mr. LeGrant, again, as you  
19 just said, the -- Mr. LeGrant, I think that, as you just  
20 said, you're saying this -- you don't believe this is a  
21 transition zone?

22 MR. LEGRANT: Correct.

23 BZA CHAIR HILL: Okay. All right, does the  
24 Applicant have any questions for the Zoning Administrator?

25 MR. LETTERI: Yes, Mr. Chairman, thank you.

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1 BZA CHAIR HILL: Okay, go ahead.

2 MR. LETTERI: Mr. LeGrant, one -- just to follow  
3 up on Board Member John's questions, are there any opinions  
4 anywhere that interpret structure the way you have  
5 articulated it today?

6 MR. LEGRANT: I don't believe I have issued a --  
7 like a written interpretation about this particular  
8 provision. There may be other cases, other instant cases in  
9 which I've rendered a decision on, but not a general rule.

10 MR. LETTERI: Okay. So, is it your position that  
11 if a piece of mechanical equipment is sitting on a support  
12 that converts the piece of mechanical equipment into a  
13 structure?

14 MR. LEGRANT: Yes.

15 MR. LETTERI: And, what is that based on?

16 MR. LEGRANT: Well --

17 MR. LETTERI: What is that interpretation based  
18 on?

19 MR. LEGRANT: Well --

20 MR. LETTERI: I don't, you know, I just don't see  
21 it in the definition.

22 MR. LEGRANT: Sure, sure. As I believe I  
23 testified, I am faced with many different situations of  
24 different types of things being built in yards, and required  
25 yards and throughout the District of Columbia.

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1           So, the four-foot limitation which generally there  
2 are things such as decks that are clearly arguably a  
3 structure that are subject to those limitations.

4           When I get to a situation such as this, a  
5 mechanical air conditioning unit, and I noted in a previous  
6 case, I had an electrical box. I'm faced with, do I regulate  
7 these? Do I limit them in height?

8           And, I've -- I believe the overall intention in  
9 the zoning regulations is to limit those structures in height  
10 in required yards. Therefore, because the structure, the  
11 mechanical equipment like in this case is tied to the ground  
12 through supports, I have deemed it is subject to the four-  
13 foot height limitation.

14           MR. LETTERI: Okay. You would agree with me,  
15 though, that an electrical panel box doesn't make any noise,  
16 wouldn't you?

17           MR. LEGRANT: As far as I know, yes.

18           MR. LETTERI: All right, so, it would be more in  
19 keeping with the examples given in the definition of  
20 structure which are television towers, reviewing stands,  
21 platforms, flag poles, et cetera that don't make any noise,  
22 right?

23           MR. LEGRANT: Well, I think one of them is a gas  
24 -- let's just put the list up there.

25           I would say my understanding, most of those things

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1 listed there do not emit noise.

2 MR. LETTERI: All right. And now, in terms of how  
3 a piece of mechanical equipment, in your opinion, becomes a  
4 structure, does -- what support are you talking about? Is  
5 it to the -- fixed to the building? Is it sitting on a  
6 platform? What?

7 MR. LEGRANT: It can either fixed to a building,  
8 as I noted, on a rooftop situation, or fixed to the ground,  
9 as in this case.

10 MR. LETTERI: Okay, I don't have any other  
11 questions, Mr. Chairman.

12 BZA CHAIR HILL: Okay, great.

13 All right, the property owner has an opportunity  
14 also to testify. Do you have anything you'd like to say or  
15 add?

16 MR. OGDEN: Just, Mr. Chairman, no matter how  
17 clarified this becomes, as a homeowner, I'm not going to be  
18 an expert in D.C. regulatory policy.

19 And so, we're very dependent, obviously, on  
20 architects and our builders who we hired who are very  
21 reputable, relying on DCRA's permits to guide how we proceed.

22 And so, to the extent that there is -- that this  
23 is, as I understand it, is longstanding precedent and I would  
24 hope that we would not use this occasion to revisit a new  
25 interpretation of that that would presumably then affect

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1 other people who have, throughout D.C., who have also been  
2 interpreted in this way before.

3 But, again, that's -- I'm not an expert in this  
4 topic, so that's all that we would hope for.

5 Thanks.

6 BZA CHAIR HILL: Okay.

7 So, Mr. Letteri, that was basically more of a  
8 statement. But, do you have any questions to that statement?

9 MR. LETTERI: One thing I'd like to know, Mr.  
10 Ogden, is why --

11 BZA CHAIR HILL: I just want to clarify here, so  
12 what this is, is, because I -- you haven't been here before,  
13 Mr. Letteri, have you?

14 MR. LETTERI: No, I haven't.

15 BZA CHAIR HILL: Before us? Yes. I'm not a big  
16 fan of cross examination and so, I keep saying that all the  
17 time, but apparently I have to do it.

18 The gentleman just gave some testimony. So, if  
19 you have any question just to the testimony he gave, I'd be  
20 welcome to have any questions. But, if you have any  
21 questions outside of that, it's not relevant to the testimony  
22 that he gave.

23 So, do you have a question to the testimony that  
24 he just gave?

25 MR. LETTERI: No, Mr. Chairman, I do not.

1 BZA CHAIR HILL: Okay, all right.

2 Okay, so now you can have rebuttal. I'll go ahead  
3 and give you -- you had 20 minutes for your testimony. Is  
4 15 minutes good for your rebuttal?

5 MR. LETTERI: Oh, plenty.

6 BZA CHAIR HILL: Okay, great. So, please go ahead  
7 and give rebuttal. Then they will have an opportunity also  
8 to ask questions again as to the rebuttal if they have any.

9 And then, you'll have an opportunity to give  
10 conclusion.

11 MR. LETTERI: Okay. Do you have anything more you  
12 want to add, Ms. Dove?

13 MS. DOVE: Yes. So, when the he -- the Zoning  
14 Administrator over there said that these units were approved  
15 at two or three feet high, one is short, the two others maybe  
16 hit four feet, just kind of getting up there.

17 We had one that was four-foot, eight inches. They  
18 had to get a stop order to switch is. They weren't  
19 acknowledging that they were within the rules that Mr. Rohan  
20 Reid had set.

21 And, we have been trying to get noise inspection  
22 for -- since the beginning, since it started. We just got  
23 it yesterday at 1:30. It was about 10 decibels over --

24 BZA CHAIR HILL: Yes, that's okay, I've just got  
25 to interrupt you again. The noise issue isn't part of our

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1 discussion just because it's not our purview so just --

2 MS. DOVE: Okay. But, I just want you to  
3 understand, they haven't worked with us. They say other  
4 people have done it, well, these are above our kids bedroom  
5 windows.

6 BZA CHAIR HILL: Okay, I understand, I understand.  
7 I'm just letting you know it has nothing to do with the  
8 zoning that we're doing. But, it was in the testimony there.

9 So, go ahead and continue.

10 MS. DOVE: So, anyway, we just want you to  
11 actually -- my point about the mechanical unit equipment to  
12 his point is, it shouldn't have been approved in the first  
13 place to hit the ground to become a structure. So, why is  
14 it all of a sudden because it was approved become a  
15 structure? What is it supporting? Why isn't it the main  
16 equipment? What is this equipment supporting? I would like  
17 to know that.

18 Is that okay or no? Sorry.

19 BZA CHAIR HILL: Well, that's okay, I'm just a  
20 little confused myself.

21 So, basically, you're in the rebuttal portion.

22 MS. DOVE: Oh, sorry, okay.

23 BZA CHAIR HILL: That's all right. So, what that  
24 means is you basically are, you know, refuting anything that  
25 was said in --

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1 MS. DOVE: I'm questioning it, yes.

2 BZA CHAIR HILL: -- any of the testimony that was  
3 given.

4 Right, but the -- that's okay. So, the question  
5 part is finished.

6 MS. DOVE: Okay.

7 BZA CHAIR HILL: We're done with the question  
8 part.

9 MS. DOVE: So then, no, I don't have anything more  
10 to add.

11 BZA CHAIR HILL: That's okay. And, by the way,  
12 again, I don't mean to -- I mean, I think we can all agree,  
13 will I don't know we all agree, but I mean, I can understand  
14 why you're here, right? And, I understand that if there's  
15 noise issues and you're trying to deal with that and they're  
16 next to your children's bedroom, that's all completely  
17 understandable, in my opinion, as to why you're here.

18 However, what it does do, really, is why we're  
19 here, meaning here as a Board, whether or not the Zoning  
20 Administrator has erred in the way he is looking and -- has  
21 erred in the way he has interpreted the zoning regulations.

22 So, but I'm just trying to say, I empathize with  
23 --

24 MS. DOVE: Okay.

25 BZA CHAIR HILL: -- why you're here. Right? So,

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1 that's, again, just a statement for whatever that statement  
2 is.

3 But, please go ahead and continue.

4 MS. DOVE: No, no, no, I'm done. I just have the  
5 question on the base concept that once it hit the ground it  
6 was structure when why was it allowed in the first place  
7 because it's mechanical equipment and you shouldn't have  
8 given it that exception.

9 BZA CHAIR HILL: Right.

10 MS. DOVE: That's my point.

11 BZA CHAIR HILL: Okay. And I guess --

12 MS. DOVE: So --

13 BZA CHAIR HILL: -- you're --

14 MS. DOVE: I apologize if it's the wrong time  
15 frame to bring it up.

16 BZA CHAIR HILL: No, you don't have to apologize.  
17 I think your attorney did a good job in questioning the  
18 definition and basically, there's a difference of opinion as  
19 to how that definition, you're viewing it in the regulation  
20 and how the Zoning Administrator is in the regulation.

21 Sir, you had something to say?

22 MR. CAVACEPPI: Yes, thank you.

23 My one question is why did the HVAC units approved  
24 in October 2017, why did they get moved in March 2018? Why  
25 was it so all important to switch them out from their new

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1 refurbished blown out house and put them on the side yard  
2 that is 36 inches, not 36 yards, not 36 feet, 36 inches. A  
3 man standing sideways covers the 36 inches.

4           And that noise that was originally allocated for  
5 the back yard is now being put right above our windows, right  
6 below our windows. I do not understand why the DCRA had to  
7 re-approve modify permits where you had HVAC units that were  
8 perfectly satisfactory that were in a satisfactory position  
9 in the back yard. I just don't understand.

10           And, I don't know if that's a rebuttal, but why  
11 were they moved? Why were they moved?

12           BZA CHAIR HILL: Okay, okay. I don't know.

13           Sir, what's your last name again?

14           MR. CAVACEPPI: Cavaceppi.

15           BZA CHAIR HILL: Yes, thanks, that was right.

16           Okay, so, Mr. Cavaceppi, I'm trying to figure out  
17 what your question was. Right? I mean, and who it's  
18 necessarily to. I mean, I can take a guess as to why -- what  
19 the answer is.

20           But, you're asking what of whom?

21           MR. CAVACEPPI: Well, I guess what I'm asking,  
22 honestly, is why is DCRA re-approving, changing permits? Why  
23 weren't the October 2017 permits satisfactory? Why weren't  
24 they good where they were originally placed? We were happy  
25 with that. Why put them between two houses?

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1 BZA CHAIR HILL: Okay, okay, okay, I understand,  
2 I understand. Right.

3 So, I'm -- do you have an answer, Mr. LeGrant?  
4 I mean, I assume that -- I assume the answer is that they  
5 were -- they applied to move them and then, therefore, they  
6 were approved.

7 MS. LORD-SORENSEN: If you submit plans, we review  
8 them and if we find that they're, you know, in accordance  
9 with the regulations and code --

10 BZA CHAIR HILL: Right.

11 MS. LORD-SORENSEN: -- then we issue a permit.

12 BZA CHAIR HILL: Okay. So, the answer is, they --  
13 no, no, I'm just telling you what the answer that I heard  
14 over there is that they applied to move them and then they  
15 determined whether or not they can be, not even moved, they  
16 applied for a permit and they determined whether that permit  
17 could be approved or not. And they approved that permit.

18 And so, that's the answer. That's the answer.

19 MR. CAVACEPPI: Does DCRA have any interest in  
20 having good neighbor policies of not having noise inflicted  
21 outside of the 80 decibels --

22 BZA CHAIR HILL: We're all here to be good  
23 neighbors, believe it or not.

24 MR. CAVACEPPI: Sure.

25 BZA CHAIR HILL: Okay. So, anyway, all right.

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1 So, is that the end of the rebuttal?

2 MR. LETTERI: Well, we will have an opportunity  
3 for a brief conclusion?

4 BZA CHAIR HILL: Closing? Yes, you have a  
5 closing, yes. Okay.

6 So, do you guys have any questions on the  
7 rebuttal?

8 MS. LORD-SORENSEN: No.

9 BZA CHAIR HILL: Okay.

10 Does the property owner have any questions on the  
11 rebuttal?

12 MS. CHANLETT-AVERY: I do not, sir.

13 BZA CHAIR HILL: Okay.

14 So, sir, we're turn for a conclusion to you. I'll  
15 give you -- does the Board have anything else before we get  
16 to conclusions?

17 MEMBER JOHN: I do.

18 BZA CHAIR HILL: Okay, great, more questions,  
19 sure.

20 MEMBER JOHN: Sorry, Mr. Chairman.

21 BZA CHAIR HILL: That's all right.

22 MEMBER JOHN: But, I have a question for the  
23 homeowners. And, I believe you submitted Google maps showing  
24 air conditioning units in side yards on your block. Is that  
25 correct?

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1 MR. OGDEN: Yes.

2 MEMBER JOHN: Okay, thank you.

3 BZA CHAIR HILL: Okay, all right, so --

4 MS. DOVE: Can I rebut on that?

5 BZA CHAIR HILL: No, no, no. We're just asking  
6 questions and it was an answer and I don't know how you rebut  
7 a yes. But that's okay.

8 So -- all right, so, actually, why don't you go  
9 ahead and adjust on your conclusion if you have anything to  
10 the -- well, now I'm just confused. Now, I'm going to go --  
11 I'm going to learn something new.

12 So, OAG, so, if the Board -- if we've asked  
13 questions, the Board asked questions and then those questions  
14 are answered, does the Appellant have the opportunity to  
15 provide rebuttal to those answered questions?

16 MS. NAGELHOUT: No, I think they could address --  
17 say whatever they want in their closing statements.

18 BZA CHAIR HILL: Okay, I just wanted to clarify,  
19 make sure I was doing because I don't necessarily always do  
20 it right.

21 All right, so, sir, you can go ahead and have your  
22 conclusion.

23 MR. LETTERI: Okay, Mr. Chairman, I -- what I  
24 would like to do is emphasize that the appeal that we filed  
25 is based primarily on the interpretation of Section 324.1(a)

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1 and the definition of structure.

2           And, I would urge the Board to find that an air  
3 conditioning unit is not a structure per the definition that  
4 exists in the regulations as written without, apparently, any  
5 kind of written interpretation or letter or a key other  
6 appellate decision other than an electrical box which is  
7 irrelevant.

8           I would say that, based on the language of the  
9 Section 324.1(a), the air conditioning units are mechanical  
10 equipment which are specifically exempted from the term  
11 structure.

12           The setback rules apply and those air conditioning  
13 units have to be moved back to their original position in the  
14 rear of the yard.

15           In terms of proof of where other air conditioners  
16 may sit in the neighborhood, there's no evidence before the  
17 Board that those are crammed in on a property line into a  
18 tiny side yard of three feet.

19           The other point that I would make is that  
20 Appellants are not interested in some kind of rule going  
21 forward. What they're interested in is based on the facts  
22 of this case.

23           This particular case, and the Board can limit its  
24 ruling to this particular case if it so chooses as opposed  
25 to setting some precedent for all of the District of

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1 Columbia.

2           In this particular case, when you take those three  
3 units and put them in a side yard where they barely fit, I  
4 would urge the Board to find that those cannot be structures  
5 for purposes of the four-foot exemption and they cannot, by  
6 the very examples given in the term as it's defined, which  
7 are all nonoperating units.

8           So, that would be my concluding statement, Mr.  
9 Chairman.

10           MS. DOVE: I would also like to say something,  
11 too, please. As we all acknowledged, we had a noise test  
12 yesterday under D.C. code, it's a mechanical unit. A  
13 mechanical unit gets noise tested.

14           So, all of a sudden, he's saying it's a structure,  
15 a main structure, how are you getting a noise test on a  
16 mechanical unit that's not considered a mechanical unit under  
17 his definition of structure? It makes no sense to me.

18           And, again, how did he approve a mechanical unit  
19 to go down. He's saying, once it hits the ground, so I get  
20 it if it's an old unit that's been there. But this -- we  
21 raised this question before they put any of those units on  
22 the ground. Right?

23           So, how can he say we're going to allow it even  
24 though it's a mechanical unit, as defined by the noise  
25 definition code. I don't know what the code is. But, how

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1 is he able to say, well, it's hit the ground now, now it's  
2 a structure?

3 BZA CHAIR HILL: Ms. Dove, I've got to interrupt  
4 you just one second. This is a kind of conclusion again  
5 which is that you're not providing new testimony. You now  
6 seem to be creating another argument --

7 MS. DOVE: Oh no --

8 BZA CHAIR HILL: -- which is that --

9 MS. DOVE: -- it's part of --

10 BZA CHAIR HILL: No, no, I'm saying --

11 MS. DOVE: Okay.

12 BZA CHAIR HILL: -- it's another argument that you  
13 didn't start to talk about in your original testimony in  
14 terms of that the noise in connection with it being a  
15 mechanical unit.

16 And so, you know, I mean, we're just here for  
17 conclusion now.

18 MS. DOVE: Okay.

19 BZA CHAIR HILL: We're just here for conclusion  
20 now and so, I understand you're upset and I understand you  
21 want this to go away. And so, we understand that.

22 And, again, what we're here, again, to do is just  
23 whether or not the Zoning Administrator has erred within the  
24 regulations and the definition is what we're currently  
25 struggling with.

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1 MS. DOVE: Well, that's what I'm addressing. I'm  
2 sorry if I'm not --

3 BZA CHAIR HILL: Okay.

4 MS. DOVE: -- being clear.

5 BZA CHAIR HILL: Okay.

6 MS. DOVE: I'm literally --

7 BZA CHAIR HILL: Okay.

8 MS. DOVE: -- addressing his definition.

9 BZA CHAIR HILL: Okay, all right, thank you.

10 MS. DOVE: So, what I'm trying to say is, he's  
11 defined these units --

12 BZA CHAIR HILL: You seem to be giving new  
13 testimony.

14 MS. DOVE: I swear to you, I'm not.

15 BZA CHAIR HILL: Okay, well, that's not the way  
16 I'm interpreting it. It seems like new testimony. Are you  
17 concluding?

18 MS. DOVE: I'm concluding that he said that these  
19 are structures.

20 BZA CHAIR HILL: Yes.

21 MS. DOVE: And not mechanical units.

22 BZA CHAIR HILL: Yes.

23 MS. DOVE: And, what I'm saying is, we're  
24 interpreting that these are mechanical units and there is  
25 support from D.C. code and how you regulate said units --

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1 BZA CHAIR HILL: Okay.

2 MS. DOVE: -- or said structure.

3 BZA CHAIR HILL: Okay.

4 MS. DOVE: Does that make sense? Am I being clear  
5 now?

6 BZA CHAIR HILL: Yes.

7 MS. DOVE: So, I was addressing everything we've  
8 talked about today. I may not have done it exactly the way  
9 I was supposed to. So, that's -- I just wanted to support  
10 that.

11 BZA CHAIR HILL: Okay, all right, thank you.

12 MS. DOVE: Thank you, sorry.

13 BZA CHAIR HILL: It's all right.

14 Okay, does anybody have any more -- anything for  
15 anybody?

16 (NO RESPONSE)

17 BZA CHAIR HILL: Okay, are we ready to deliberate?

18 MEMBER JOHN: Yes.

19 BZA CHAIR HILL: Okay, all right, the answer was  
20 yes. All right, then I'm going to go ahead close the  
21 hearing.

22 Who would like to start the deliberations?

23 MEMBER JOHN: I'll start. Mr. Chairman, I'll  
24 start.

25 Mr. Chairman, I have looked at the record and

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1 listened to the testimony of all the parties. And, it seems  
2 to me that the only issue of any significance is the  
3 definition of the term structure and whether or not the  
4 interpretation as given by the Zoning Administrator was not  
5 rational and, therefore, it was in error and the Board should  
6 reverse that decision.

7 In my view, the definition was reasonable, the  
8 interpretation of the definition was reasonable.

9 It is, in fact, a little ambiguous as we have  
10 noted. But, the Zoning Administrator has the responsibility  
11 to make sense of the regulations.

12 It seems to me that in his testimony, he stated  
13 that the original wording existed in ZR58 and was carried  
14 forward to ZR16.

15 And, that while there is no written internal  
16 guidance, that he has consistently interpreted the  
17 regulations in the way he has stated that once the air  
18 conditioner or the mechanical equipment is fixed to the  
19 ground, at that point, it becomes a structure that is subject  
20 to the regulations.

21 So, in my view, it is reasonable. And as the  
22 Zoning Administrator said, faced with that sort of ambiguity,  
23 he needs to interpret the regulations in a way that makes  
24 sense. And I think he's carried that burden in this case.

25 BZA CHAIR HILL: Thank you.

1           Okay, okay, all right, well, I can go next. I  
2 mean, I think that, again, what it kind of came down to for  
3 me was, again, as Ms. John had just mentioned in terms of the  
4 definition, well, there's a couple of things.

5           There's the definition of the structure and then  
6 there was the two-foot projection rule.

7           I thought that the Zoning Administrator, you know,  
8 he did clarify as to whether or not it was a transition zone.  
9 I don't think it's a transition zone, so therefore, I don't  
10 think that the two-foot setback rule did apply.

11           However, even if it was a transition zone, it  
12 wasn't -- it's not an air conditioning unit that's sticking  
13 out or a self-contained air conditioning unit that's sticking  
14 out.

15           So, therefore, the two-foot rule still wouldn't  
16 apply. So, I kind of didn't agree with that argument.

17           As far as the definition of structure, I mean, I  
18 do think, as you mentioned, it was -- it is ambiguous, a  
19 little ambiguous. However, there are a lot of things within  
20 the regulations that the Zoning Administrator is charged to  
21 help guide the, you know, the permitting process.

22           And so, I believe that he has continued to  
23 regularly, I guess it sounds like, interpreted it in this  
24 manner even when it was over in ZR58 and then coming over to  
25 ZR16 as Ms. White's just mentioned.

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1           So, I think that he is continuing to apply the  
2 interpretation the same way that he has in terms of the  
3 definition of structure. So, I would also agree with his  
4 definition of structure.

5           I think that in terms of the, I mean, again, as  
6 far as like the actual mechanics of this in terms of like,  
7 you know, it's a small side yard. It was already there to  
8 begin with and then now the air conditioner units have been  
9 placed there. I mean, I can understand, again, how if I were  
10 a neighbor, I would prefer that those not be, you know, next  
11 to my fence.

12           However, I don't think that the Zoning  
13 Administrator erred in allowing those permits. And, I do  
14 know that we have seen many other cases where, you know,  
15 there's a nonconforming side yards and those air conditioning  
16 units are actually put there.

17           I do think further then in terms of the  
18 definition, the way that the definition -- the Zoning  
19 Administrator's interpreting it, it does then bring it into  
20 the whole four-foot rule issue.

21           And so, you know, that also is why I would agree  
22 with the Zoning Administrator in terms of the four-foot --  
23 having the ability to apply the four-foot rule in terms of  
24 the height.

25           I'm, you know, disappointed that the property

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1 owner and the Appellant is had to go through this process in  
2 terms of, you know, the height of the air conditioning units  
3 and the noise which it seems like the noise issue is now  
4 being addressed with DCRA and I'm glad to hear that that's  
5 the case and hopefully that will move forward and get  
6 addressed even though it is outside of our purview.

7           In terms of, just again, my thoughts as far as the  
8 Applicant or the property owner, I mean, the property owner  
9 is doing what the property owner wants to try and do. And  
10 so, if the regulations allow it, then the regulations allow  
11 it and the regulations, I believe, do allow it.

12           So, I will be voting in denial of this appeal.

13           MEMBER WHITE: Thank you, Mr. Chairman.

14           Yes, this one was a little difficult for me  
15 because I could understand why the Appellant is making their  
16 argument, but I can also see there is a lot of -- this is  
17 very ambiguous in terms of trying to determine what's  
18 mechanical equipment versus a structure.

19           But, with respect to the side yard setback, you  
20 know, DCRA is indicating that the air conditioning units can  
21 occupy a side yard because they are mechanical structures  
22 that are fixed to the ground.

23           And, at the point where they're affixed to the  
24 ground and less than four-feet tall, under Subtitle B324(1)  
25 -- 324.1, it permits structures in a side yard so long as

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1 they're not part of the building and are not -- and are less  
2 than four feet tall.

3           So, while I'm, you know, I understand the  
4 Appellant's argument here. I do think that the Zoning  
5 Administrator has the ability to make an interpretation in  
6 terms of what constitutes a structure here.

7           Now, the Appellant is contending that the  
8 structure -- definition of a structure excludes mechanical  
9 equipment, and that the air conditioners should be considered  
10 mechanical equipment.

11           You know, if you just look at it, you know, just  
12 what makes sense, I mean, I can look at it and say that this  
13 looks like mechanical equipment that you're looking at  
14 Exhibit 2A.

15           But, nonetheless, I think that the Zoning  
16 Administrator is tasked to make that call in terms of what  
17 constitutes a structure.

18           And I would support, even though I think there  
19 needs to be a lot more calcification with respect to these  
20 definitions, I would support his interpretation that this was  
21 a mechanical structure.

22           And, I do understand the Appellant's irritation  
23 with the noise aspect of this. And, hopefully, because DCRA  
24 is actively involved with looking at the decibels here, we  
25 can eliminate any negative impacts that it's going to cause

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1 for the Appellant.

2           So, with respect to this particular appeal, I  
3 would, at this point, concur with your opinions, somewhat  
4 reluctantly, but I do think that there is room for  
5 interpretation in terms of what consists of a mechanical  
6 structure.

7           ZC CHAIR HOOD: When I first started, this is not  
8 my first time not necessarily agreeing the conclusions that  
9 we have in front of us, but I will tell you that I think that  
10 the Zoning Administrator, this one, who I will add and I've  
11 said -- I've been around a while, this one who I'll add has  
12 stayed in that position a long time by interpretations for  
13 the City.

14           And, it's not an easy job. It's easy for me to  
15 come up here and be a Monday morning quarterback after his  
16 interpretation. And sometimes, I start off that way because  
17 I wonder how we get to where we get to.

18           But I also have to realize that I help write the  
19 rules that he has to interpret. So, I put all that in.

20           And, I understand the Appellant in this case, the  
21 gentleman mentioned good neighbor policy. These are the kind  
22 of situations I hope neighbors could be able to work out.  
23 But, you know, enough said on that, let me get back to what's  
24 before me.

25           I think that the interpretation of the regulations

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1 do have some ambiguity and I think the Zoning Administrator  
2 does take those interpretations, it seems to be a  
3 longstanding interpretation. I never said that I agree with  
4 those longstanding interpretations, but I always have to look  
5 at how we got there. That's why I asked about the  
6 definition.

7           So, I think the definition isn't clear and what  
8 his practice has been, and obviously, it's been successful  
9 for the most part over the years, is that he has to add on  
10 to how he gets to that point.

11           And, I believe that -- I think my colleagues, you  
12 all have mentioned this about the setbacks and the height and  
13 the side yard requirement. I think his interpretation is  
14 longstanding. Does it need to probably be clarified? I keep  
15 using that word because every time we clarify something, we  
16 basically unclarify it.

17           So, I would deny the appeal with the hope of  
18 clarifying -- it won't help this situation, but I also would  
19 hope that neighbors could work together because that is some  
20 close proximity to hear somebody who's at a disadvantage.

21           But, I have to look at what's before the Zoning  
22 Administrator and what he has in front of him and how he  
23 makes his analysis because that analysis is just doesn't  
24 happen in 4404 Albemarle, it happens across the City, so I  
25 mean, that interpretation, obviously, has been working and

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1 I think we need to be consistent for now until we can modify  
2 and change it and clarify it, really clarify it for those to  
3 follow.

4 So, I will be denying this appeal and I just hope  
5 that neighbors can work for the good neighbor policy.

6 BZA CHAIR HILL: All right, Chairman Hood, well  
7 said.

8 Well, I will also, you know, it's always helpful  
9 that neighbors can work together and try to make things  
10 happen for both parties.

11 I'm going to make a motion to deny Appeal Number  
12 19777 as captioned and read by the Secretary and ask for a  
13 second.

14 MEMBER JOHN: Second.

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

17 (CHORUS OF AYES)

18 BZA CHAIR HILL: All those opposed?

19 (NO RESPONSE)

20 BZA CHAIR HILL: The motion passes, Mr. Moy.

21 MR. MOY: Staff would record the vote as 4-0-1 on  
22 the motion of Chairman Hill to deny the appeal. Seconding  
23 the motion Ms. John. Also in support of the motion, Ms.  
24 White, Mr. Anthony Hood, no other Board Members present  
25 today, the motion carries.

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1 BZA CHAIR HILL: Okay, thank you.

2 Thank you all very much.

3 We're going to take a quick ten minute break.

4 (Whereupon, the above-entitled matter went off the  
5 record at 11:03 a.m. and resumed at 11:20 a.m.)

6 BZA CHAIR HILL: All right, Mr. Moy.

7 MR. MOY: Thank you, Mr. Chairman.

8 Okay, the Board is reconvening in public hearing  
9 session again.

10 And, the next case application before the Board  
11 is Application Number 19834 of 5132 Lee Street, LLC, caption  
12 advertised for variance relief from the side yard  
13 requirements of Subpanel D, Section 307.1 which would  
14 construct two new semi-detached dwelling units, R-2 Zone and  
15 premises 5130 through 5132 Lee Street, Northeast, Square  
16 5201, Lots 48 and 47.

17 There is an entry in the record, Mr. Chairman,  
18 just this morning from ANC. It's an ANC report from ANC 7c.

19 BZA CHAIR HILL: Okay. Would you please introduce  
20 yourself for the record?

21 MS. WILSON: Hi, my name is Alex Wilson from the  
22 law firm of Sullivan & Barros on behalf of the Applicant.

23 BZA CHAIR HILL: Okay, Ms. Wilson, I don't want  
24 other things the Board Members want to hear from -- I don't  
25 have a lot of questions about the application.

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1           If you could, kind of go over what you're trying  
2 to do and how you're meeting the standard for us to approve  
3 the application.

4           I was kind of interested, I mean, again, we've  
5 read through the record, but I was kind of interested in the  
6 ANC stuff and so, I was just kind of -- I was smiling because  
7 I haven't seen I think an ANC report that says the Commission  
8 applauds the Applicant. I haven't seen applaud before. I'm  
9 pretty impressed with applaud.

10           So, if you could, go ahead and, as I said, I'm  
11 going to put 15 minutes on the clock and you can start  
12 whenever you like.

13           MS. WILSON: Great, thank you.

14           So, the existing site is made up of two vacant  
15 unimproved lots and the Applicant is proposing to construct  
16 two new semi-detached houses, one on each of the existing  
17 record lots.

18           These lots were created in 1926 in their current  
19 configuration in the R-2 Zone, a semi-detached structure is  
20 required to provide an eight-foot side yard. As the lots are  
21 only 20 feet in width, the Applicant is requesting variance  
22 relief in order to provide five-foot side yards instead of  
23 eight-foot side yards on each lot. So, each dwelling would  
24 be 15 feet in width.

25           Both adjacent neighbors have submitted letters in

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1 support and the Applicant attended the Executive Committee  
2 meeting for the ANC, the ANC meeting and the Deanwood Civic  
3 Association meeting and received support from all.

4           These lots are the only under developed lots on  
5 the block and were created prior to the 1958 zoning  
6 regulations. The lots are relatively narrow, only 20 feet  
7 in width.

8           And so, because of the narrow size of each lot,  
9 if relief isn't granted, the Applicant would only be able to  
10 construct 12-foot wide dwellings on each lot which would  
11 severely impact available living space and create a practical  
12 difficulty for the Applicant.

13           The R-2 is intended to provide for areas  
14 predominantly developed with semi-detached houses on  
15 moderately sized lots that also contain some detached  
16 dwellings.

17           This relief would allow the Applicant to provide  
18 15-foot wide semi-detached dwellings that meet the purpose  
19 and intent of the zoning regulations.

20           Granting their requested relief for the proposed  
21 side yards should not be detrimental to the public good and  
22 would be consistent with District objectives to provide  
23 opportunities for new and full housing where appropriate.

24           ANC 7c unanimously supports the application and  
25 the Deanwood Civic Association also supported the project.

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1 Both adjacent neighbors support the project and  
2 OP is recommending approval.

3 I have some floor plans if the Board is  
4 interested, but if not, that concludes the bulk of my  
5 presentation.

6 BZA CHAIR HILL: Okay, does the Board have any  
7 questions for the Applicant?

8 MEMBER WHITE: Yes, the adjacent owners support,  
9 was that also filed in the record?

10 MS. WILSON: Yes, it is. I can find the exhibits  
11 if you'd like.

12 MEMBER WHITE: And the -- while you're looking,  
13 the other question is just to address why you opted -- why  
14 your client opted not to combine the units in lieu of --  
15 instead of requesting variance relief?

16 MS. WILSON: Sure.

17 MEMBER WHITE: Those are the two questions I had.  
18 Thank you.

19 MS. WILSON: So, the neighbor support letters are  
20 Exhibit 14 and Exhibit 35 in the record.

21 And, regarding the other matter of right option,  
22 it would be to combine the two lots and create a large  
23 detached dwelling unit.

24 That option creates other difficulties, though,  
25 construction costs for both options being equal, it makes

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1 more sense in this area to create two smaller homes that  
2 could sell for half the price of one large home because it  
3 opens ownership up to a larger group of people and is more  
4 similar to the other comps in the area.

5 MEMBER WHITE: Thank you.

6 BZA CHAIR HILL: Okay, great.

7 Just going to mention something here actually real  
8 quick. If -- we're going to probably take a lunch break at  
9 some time or what have you.

10 But, if there's any ANC Commissioners here and if  
11 you could just speak to the Secretary at the break so I can  
12 find out what cases you're here for to see if I can kind of  
13 work you guys through as quickly as I can.

14 With that, I'm going to turn to the Office of  
15 Planning.

16 MS. MYERS: Hello, Crystal Myers for the Office  
17 of Planning.

18 The Office of Planning is recommending approval  
19 of this case and stands on the record of the staff report.

20 BZA CHAIR HILL: Okay, does anybody have any  
21 questions for the Office of Planning?

22 (NO RESPONSE)

23 BZA CHAIR HILL: Okay, do you have any questions  
24 for the Office of Planning?

25 MS. WILSON: No, thank you.

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1 BZA CHAIR HILL: Okay.

2 Is there anyone here wishing to speak in support?

3 (NO RESPONSE)

4 BZA CHAIR HILL: Is there wishing to speak in  
5 opposition?

6 (NO RESPONSE)

7 BZA CHAIR HILL: Ms. Wilson, is there anything  
8 else you'd like to add?

9 MS. WILSON: No, thank you.

10 BZA CHAIR HILL: Okay.

11 I'm going to close the hearing. Is the Board  
12 ready to deliberate? Okay, I can start.

13 I mean, I don't, as I started at the beginning  
14 when we were first introducing the case, I mean, I didn't  
15 really have a lot of questions in terms of the applicant.

16 I thought that they meet the variance tests and  
17 I agree with the argument provided by the Applicant as well  
18 as the analysis provided by the Office of Planning.

19 In addition to that, as the Applicant has pointed  
20 out, the ANC 7c also did weigh in and are in support of the  
21 application. And, there are other letters in support, but  
22 I do believe that they have met the burden of us -- with us  
23 to grant this application according to the variance test and  
24 I'll be voting in favor.

25 Was there anything anyone else would like to add?

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1           MEMBER WHITE: No, I would concur with you, Mr.  
2 Chair. I asked a couple of questions just to get some of  
3 that on the record regarding the adjacent owners. And, the  
4 minds -- the thought in terms of why they pursued the  
5 variance request versus trying to combine it and selling a  
6 much larger unit.

7           But, I'm satisfied that they've -- that you  
8 sufficiently met the area variance test. And, with the  
9 support of OP and the last minute filing from ANC, I'm even  
10 more comfortable with supporting this. So, I would vote in  
11 favor of it when you make a motion, Mr. Chair.

12           BZA CHAIR HILL: Okay, great.

13           Anyone else?

14           (NO RESPONSE)

15           BZA CHAIR HILL: Okay, I'm going to make a motion  
16 to approve Application Number 19834 as captioned and read by  
17 the Secretary and ask for a second.

18           MEMBER WHITE: Second.

19           BZA CHAIR HILL: Motion made and seconded. All  
20 those in favor say aye.

21           (CHORUS OF AYES)

22           BZA CHAIR HILL: All those opposed?

23           (NO RESPONSE)

24           BZA CHAIR HILL: The motion passes, Mr. Moy.

25           MR. MOY: Staff would record vote as 4-0-1. This

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1 is on the Motion of Chairman Hill to approve the application  
2 for the relief, seconded by Ms. White. Also in support, Ms.  
3 John and Mr. Anthony Hood. No other Board Members present  
4 today. The motion carries.

5 BZA CHAIR HILL: Thank you, Mr. Moy.

6 Thank you.

7 MR. MOY: The next case application before the  
8 Board is Application Number 19870 of 727 Kenyon, LLC. The  
9 caption advertised for a special exception under the  
10 residential conversion requirements, Subtitle U, Section  
11 320.2.

12 This would convert the existing principle dwelling  
13 unit to a three-unit apartment house, RF-1 Zone. This is a  
14 727 Kenyon Street, Northwest, Square 2892, Lot 845.

15 BZA CHAIR HILL: Okay, great, thank you, Mr. Moy.

16 Could you please introduce yourselves for the  
17 record? You need to push the mic -- the button there on the  
18 microphone and introduce yourself.

19 MR. JIMENEZ: Good morning, I'm the owner of 721  
20 Kenyon Street, Northwest, Washington, D.C. Just come to see  
21 what's going on, what is going to be with this case.

22 I'm not educated on this, I just came today to --

23 BZA CHAIR HILL: Okay, what's your name again,  
24 sir?

25 MR. JIMENEZ: Joel.

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1 BZA CHAIR HILL: Your last name?  
2 MR. JIMENEZ: Jimenez.  
3 BZA CHAIR HILL: Can you spell it for me?  
4 MR. JIMENEZ: Yes, J-I-M-E-N-E-Z.  
5 BZA CHAIR HILL: Okay, Mr. Jimenez.  
6 Okay, sir, are you the next door neighbor?  
7 MR. JIMENEZ: No, I'm the owner.  
8 BZA CHAIR HILL: Oh, I'm sorry.  
9 MR. JIMENEZ: I'm the owner of 721 Kenyon Street.  
10 BZA CHAIR HILL: Right, but the application is for  
11 727, correct?  
12 MR. JIMENEZ: No, the application is 19 --  
13 BZA CHAIR HILL: No, no, no, but the address --  
14 that's okay, I'll figure it out, just give me one second.  
15 If you could turn off your microphone, please?  
16 Thank you.  
17 Would you introduce yourself?  
18 MS. STUART: Hi, Elizabeth Stuart, I'm the project  
19 designer.  
20 MR. CROSS: Michael Cross, project architect.  
21 BZA CHAIR HILL: Mr. Cross, were you going to  
22 present to us?  
23 MR. CROSS: We are prepared to present.  
24 BZA CHAIR HILL: Okay. So, I was just trying to  
25 figure out who's going to present first.

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1 MR. CROSS: I believe Ms. Stuart will be  
2 presenting.

3 BZA CHAIR HILL: Okay, great.

4 So, Ms. Stuart, so that's one thing. So, you're  
5 -- the address, though, of the property that's being -- that  
6 the application is for is 727 Kenyon, correct?

7 MS. STUART: Correct.

8 BZA CHAIR HILL: Okay. And so, Mr. Jimenez, you  
9 live next door, nearby to 727?

10 MR. JIMENEZ: No, no, no.

11 BZA CHAIR HILL: You have to push the button  
12 there, I'm sorry, to speak into the microphone.

13 MR. JIMENEZ: No, I'm not. So, I just owner of  
14 the 721 Kenyon. I think it is --

15 BZA CHAIR HILL: I'm sorry, I misspoke. Right,  
16 you own 721 Kenyon.

17 MR. JIMENEZ: Exactly.

18 BZA CHAIR HILL: Is that next door to 727 Kenyon?

19 MR. JIMENEZ: I'm not sure.

20 BZA CHAIR HILL: I don't think so.

21 MR. JIMENEZ: Yes, I'm not sure, that's between  
22 houses.

23 BZA CHAIR HILL: Okay, that's okay, right, okay.  
24 So, you're here because you were just curious what was going  
25 on?

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1 MR. JIMENEZ: That's true, because, see, I  
2 received letter and --

3 BZA CHAIR HILL: I see.

4 MR. JIMENEZ: -- so --

5 BZA CHAIR HILL: Okay. So, the Applicant is here  
6 to ask for special exception for a residential conversion and  
7 there are plans and such in the record and they've gone  
8 before the ANC about the plans that they're doing.

9 So, you're welcome to sit and listen to the  
10 presentation. And, then, when it's time, we'll ask for  
11 people to come up to either speak in support or opposition  
12 to the project. And, that's when you'll have an opportunity  
13 to speak.

14 MR. JIMENEZ: Okay.

15 BZA CHAIR HILL: Okay? So, we'll call you back  
16 up when that time comes. So, until then, you can just sit  
17 back in to the audience.

18 MR. JIMENEZ: Okay.

19 BZA CHAIR HILL: Okay? But, I think, please watch  
20 the screens, because that's where you'll get the most  
21 information about the project.

22 MR. JIMENEZ: Thank you.

23 BZA CHAIR HILL: Okay, thank you.

24 All right, so, Ms. Stuart, if you could -- I have  
25 a couple of things, all right.

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1           So, if you could go ahead and walk us through the  
2 project and what you're trying to do. And, I guess since we  
3 do have someone here in the audience that's trying to  
4 understand it a little bit clearly, why don't you definitely  
5 walk through the project in a way that's understandable,  
6 okay, as opposed to what you normally would have done?

7           And then, go ahead and I do see, you know, what  
8 we have in the record, but I'll go ahead and let you start  
9 and just walk us through the project, walk us through what  
10 you're trying to and how you're meeting the standard for us  
11 to approve this, okay?

12           MS. STUART: Sure.

13           So, the property is, as we've said, 727 Kenyon  
14 Street, Northwest. We are proposing a conversion of an  
15 existing single family semi-detached home to a three-unit  
16 multi-family structure per the Subtitle U 320.2.

17           The structure as proposed to add a third story and  
18 rear addition, expanding only ten feet past the adjoining  
19 adjacent property to the west.

20           The structure --

21           BZA CHAIR HILL: What's the address of the  
22 adjacent property?

23           MS. STUART: I believe it is 729.

24           BZA CHAIR HILL: Okay, thank you.

25           MS. STUART: The structure will remain a semi-

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1 detached with a five-foot conforming side yard to the east.

2 The proposed project will provide three parking  
3 spaces in the rear with a max building height below the 35-  
4 foot allowed and within the allowed 60 percent lot occupancy.

5 BZA CHAIR HILL: Can I interrupt you one second?  
6 Ms. Jimenez, you can go ahead and fill those out later. Just  
7 why don't you go ahead and watch the presentation. Okay?  
8 I mean, you can -- please fill out the witness cards, but I  
9 just want you to have an opportunity to pay attention to the  
10 presentation. Thank you.

11 MS. STUART: Sure, the Applicant is seeking a  
12 waiver to remove the existing front porch and cornice.

13 The proposed structure will have a new cornice  
14 applied, as can be seen on the elevation. The new cornice  
15 will be on the third level and we will be removing -- or, we  
16 are asking to remove the front porch.

17 The proposed structure will have the existing curb  
18 cut removed in the front which will add additional parking  
19 to the street.

20 In addition, we are proposing to keep the front  
21 retaining wall and landscaped area. It will be repaired and  
22 replaced in kind to be in line with the rest of the  
23 neighborhood.

24 We have received support from both the ANC and the  
25 Office of Planning and we stand by their reports.

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1           BZA CHAIR HILL: Okay, can you walk me through the  
2 project just a little bit more in terms of diagrams and what  
3 you're trying to do?

4           MS. STUART: Sure, so, as I previously said, we  
5 are taking an existing single-family structure, asking to  
6 convert it into three single-family unit -- or, I'm sorry,  
7 into three units, making a multi-family structure.

8           The three units will be developed as what we are  
9 calling a micro townhouse situation where there'll be three  
10 separate entrances to the units, one in the front, and two  
11 on the side yard so that we still maintain that single-family  
12 look to the street.

13           And, as can be seen by the photos of the street,  
14 we believe that this proposed structure will be in kind with  
15 the rest of the street, maintaining a cornice now at the  
16 third level and still maintain that single-family appearance  
17 to the street front.

18           The proposed plans, as I explained, are three  
19 separate units set in this micro townhouse. They are  
20 identical, set one next to each other with their own  
21 autonomous entrances.

22           These are a set of solar studies showing two  
23 properties in either direction to east and west of the  
24 proposed project. It is our understanding and our belief  
25 that the proposed building which can be seen in the center

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1 is not going to obstruct the air or light of the adjacent  
2 properties as there are existing structures currently that  
3 are causing more disruption to the light in there, therefore,  
4 we don't believe our addition will affect them.

5 This -- I'm sorry.

6 BZA CHAIR HILL: Yes, just right there, so right.  
7 Just so I understand it again, there's the front entrance,  
8 then there's two side entrances that are going to be in the  
9 existing side yard?

10 MS. STUART: Correct.

11 BZA CHAIR HILL: Okay.

12 All right, does the Board have any questions?

13 (NO RESPONSE)

14 BZA CHAIR HILL: Okay. Oh, sorry.

15 MEMBER WHITE: Can you talk a little bit about the  
16 chimney? The chimney agreement --

17 MS. STUART: Sure.

18 MEMBER WHITE: -- that you have and what you're  
19 planning to do there just so we have it on the record?

20 MS. STUART: Sure. We have approached the  
21 neighbor about their existing chimney and are proposing to  
22 extend the chimney so that it is in compliance with the code.

23 We have received a letter from them signed  
24 agreeing to this work being done on their behalf.

25 MEMBER WHITE: And that's in the record, correct?

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1 MS. STUART: Yes.

2 MEMBER WHITE: Okay, thank you.

3 BZA CHAIR HILL: Okay, I'm going to turn to the  
4 Office of Planning.

5 MR. KIRSCHENBAUM: Good morning, Board Members,  
6 Jonathan Kirschenbaum from the Office of Planning.

7 We'd recommend approval of this conversion and we  
8 stand on our report. Let me know if you have any questions.

9 Thank you.

10 BZA CHAIR HILL: Okay. Does anybody have  
11 questions for the Office of Planning?

12 (NO RESPONSE)

13 BZA CHAIR HILL: Does the Applicant have any  
14 questions for the Office of Planning?

15 MS. STUART: No, I do not.

16 BZA CHAIR HILL: Okay. So, is there anyone here  
17 wishing to speak in support of the application?

18 (NO RESPONSE)

19 BZA CHAIR HILL: Is there anyone here wishing to  
20 speak in opposition of the application?

21 (NO RESPONSE)

22 BZA CHAIR HILL: Okay, Ms. Stuart, I'm going to  
23 go back to you. And so, as you'll know, there's somebody  
24 who's here that's in the neighborhood that I guess came all  
25 the way down here from whatever they had to do to try to

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1 understand the project.

2 I don't know what's going to happen, but it seems  
3 like this is kind of moving forward for a variety of reasons.  
4 So, I would really, you know, request that you just take a  
5 little time to help the person who came all the way down here  
6 understand what's going on. Okay?

7 MS. STUART: Yes.

8 BZA CHAIR HILL: All right.

9 And so, let's see, yes, do you have anything you'd  
10 like to say in conclusion?

11 MS. STUART: No, I don't, thank you.

12 BZA CHAIR HILL: Okay.

13 Board Members have anything else they'd like to  
14 add?

15 (NO RESPONSE)

16 BZA CHAIR HILL: All right, going to go ahead and  
17 close the record. Is the Board ready to deliberate? Okay,  
18 I can start.

19 I thought that the Applicant has made the case for  
20 the special exception in terms of residential conversion.  
21 I thought it was actually kind of a unique design. I didn't  
22 get a chance to kind of go too much into it, but I was a  
23 little -- it reminded me of like Asia, you know, for some  
24 reason.

25 Anyway, but entrances, that is.

1           So, I thought that they met their burden. I  
2 thought that the Office of Planning's analysis was accurate.

3           However, I would point out that I was going to  
4 mention this to the Applicant, but I would still think that  
5 we should implement a condition concerning the chimney. And,  
6 that condition would be prior to the issuance of any building  
7 permit authorized by this order, the Applicant shall obtain  
8 the issuance of a building permit for 725 Kenyon Street,  
9 Northwest to raise the chimney or otherwise ensure the  
10 compliance of the project approved by this order with the  
11 requirements of Subtitle U 320.2(f).

12           So, that would be a condition that I would request  
13 we implement.

14           In addition, the Applicant did find that the ANC,  
15 given the great weight we're support to address the ANC, the  
16 ANC 1a did vote 7-0-0 in support as well as their petition  
17 for 14 neighbors.

18           But, I would agree that they meet the condition --  
19 I mean, sorry, the standards for us to grant this  
20 application. I will be voting in approval.

21           Would anyone else like to add anything?

22           (NO RESPONSE)

23           BZA CHAIR HILL: No? Okay, then with that, I'll  
24 go ahead and make a motion to approve Application Number  
25 19870 as captioned read by the Secretary and ask for a

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1 second.

2 ZC HAIR HOOD: Second.

3 BZA CHAIR HILL: Motion made and seconded, all  
4 those in favor say aye.

5 (CHORUS OF AYES)

6 BZA CHAIR HILL: The motion passes, Mr. Moy.

7 MR. MOY: Before I read the final vote count --

8 BZA CHAIR HILL: Oh yes, I'm sorry, Mr. Moy, just  
9 one second. I wanted to make sure I did the condition.

10 And, the, again, the motion is to approve  
11 Application Number 19870 as captioned read by the Secretary  
12 including the condition prior to the issuance of any building  
13 permit authorized by this order, the Applicant shall obtain  
14 the issuance of a building permit for 725 Kenyon Street,  
15 Northwest to raise the chimney or otherwise ensure the  
16 compliance of the project approved by this order with the  
17 requirements of Subtitle U 320.2(f). And, can I get a  
18 second?

19 ZC CHAIR HOOD: Second.

20 BZA CHAIR HILL: Motion made and seconded, all  
21 those in favor say aye.

22 (CHORUS OF AYES)

23 BZA CHAIR HILL: All those opposed?

24 (NO RESPONSE)

25 BZA CHAIR HILL: The motion passes, Mr. Moy.

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1 MR. MOY: Thank you, Mr. Chairman.

2 Staff would record the vote as 4-0-1, this on the  
3 motion of Chairman Hill to approve the application along with  
4 the one condition as he has read into the record. Seconding  
5 the motion, Mr. Anthony Hood. Also in support, Ms. White and  
6 Ms. John, no other Board Members, the motion carries.

7 BZA CHAIR HILL: Okay. And, if there was any  
8 questions, if the audience has any questions about anything  
9 at a break, you can ask the Secretary over here to my left  
10 and so, that's that.

11 Okay, one second.

12 Okay, if there's anyone here wishing to testify  
13 that hasn't taken the oath, if you could stand and -- is  
14 there anybody here who hasn't taken the oath and they want  
15 to testify?

16 (NO RESPONSE)

17 BZA CHAIR HILL: Okay, that's one thing.

18 The other thing, so I was trying to figure out at  
19 the very beginning of the day, we let everyone know that we  
20 were following the order in which the agenda is here -- in  
21 the order of the agenda.

22 And then, we're at some point going to take a  
23 break for lunch.

24 I did -- I noticed there's some Commissioners  
25 here, that's why I'm kind of reiterating this. And so, if

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1 at the next break, anyone -- any Commissioners would like to  
2 approach the Secretary, we can see what we can do in terms  
3 of moving things around.

4 But, currently, we're following the order of the  
5 agenda.

6 All right, so that being said, oh, we're done with  
7 you, thank you so much.

8 Okay, thank you, sir. Thank you.

9 And, Mr. Moy, we can go to the next one.

10 MR. MOY: Thank you, Mr. Chairman.

11 That would be Case Application Number 19876 of  
12 Kristen Johnson captioned and advertised for a special  
13 exception under Subtitle A, Section 5007.1 and 520.1 from the  
14 accessory structure lot occupancy requirements, Subtitle E,  
15 Section 5003.1 to construct and accessory structure in the  
16 rear yard of an existing semi-detached principle dwelling  
17 unit, RF-1 Zone, 1258 Florida Avenue, Northeast, Square 4069,  
18 Lot 13.

19 BZA CHAIR HILL: All right, can you please  
20 introduce yourselves from my right to left?

21 MR. ROUSE: Michael Rouse, architect from MPR  
22 Architecture.

23 MS. JOHNSON: Kristen Johnson, homeowner.

24 MR. PLATT: Corey Platt, homeowner

25 BZA CHAIR HILL: Okay, Mr. Rouse, are you going

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1 to be presenting to us?

2 MR. ROUSE: yes, sir.

3 BZA CHAIR HILL: Okay. Mr. Rouse, you haven't  
4 been here before, have you?

5 MR. ROUSE: This is my third time this year.

6 BZA CHAIR HILL: Oh really?

7 MR. ROUSE: Yes.

8 BZA CHAIR HILL: I'm sorry, I apologize.

9 MR. ROUSE: That's okay.

10 BZA CHAIR HILL: I will remember now.

11 Let's see, so Mr. Rouse, I guess you can go ahead  
12 and start whenever you like. And, basically, we're  
13 interested in knowing again what little bit about the  
14 project, a little bit about how your meeting the requirements  
15 for to grant or deny this application?

16 And, the thing that, you know, sticks out,  
17 obviously for us immediate is that I don't see what the ANC  
18 reports were. You have ANC 5d and then the adjacent ANC 6a.  
19 So, we'd be wanting to hear what your outreach was to them.

20 And, let's see, I'm going to put 15 minutes on the  
21 clock just so I know where we are and you can begin whenever  
22 you like.

23 MR. ROUSE: Thank you.

24 The Applicants are coming today to construct a  
25 carriage house in the rear yard of the property located at

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1 1259 Florida Avenue, Northeast, 1259 -- 58, excuse me, did  
2 I get that right? 1258, yes, it's wrong on the zoning thing.

3 The relief we're seeking today from the accessory  
4 building area footprint that is in the zoning ordinance and  
5 we're asking to go to 249 square feet.

6 This is an area plan of the location of the house  
7 in dark black. And then, the other thing you can see is the  
8 numerous alley structures that are surrounding the property.

9 And, what we're proposing to do is to basically  
10 create one of those alley structures in the rear yard. So,  
11 there's precedence for alley structures in this block.

12 Front to side of the house and then the current  
13 rear roll up gate and door for photos for what's existing.

14 Just some images of some of the alley structures  
15 that are currently existing. Most of them are in brick. The  
16 1254 Florida Avenue is the closest alley structure to the  
17 property, vinyl siding and CME block.

18 But, in moving forward, here's the site plan  
19 illustrating the masonry structure, the masonry garage at the  
20 back. This garage will have a second floor above that will  
21 be used as a second unit for the property, and RF-1 does  
22 allow us to do that.

23 First floor plan showing the two-car garage, work  
24 bench area and then a separate entry to the loft above. And  
25 then, the loft itself which has a bath and a kitchenette for

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1 the studio.

2           The elevations are showing the materials, brick,  
3 asphalt shingles and then, lots of great windows facing north  
4 to the alley.

5           Side elevations, because we're on the property  
6 line, there'll be no windows, so privacy for looking into the  
7 side yards, rear yards of the two side neighbors won't occur,  
8 of course.

9           And then, this is the elevation that will be  
10 facing the rear of the house. Wood paneling and vertical  
11 siding that can be seen there.

12           Section through it, I'm going to go back just to  
13 mention that we are at the -- we're at 19 feet, 11 for the  
14 measurement of the height, halfway up the gable which is  
15 allowed in the zoning ordinance.

16           And then, just the section along the alley just  
17 to show you that we're actually lower than the next door  
18 neighbor and then the section above shows the section through  
19 the property which shows that the structure is below the  
20 front cornice line of the main residence.

21           And then, just some sun studies to show that,  
22 because we're at the back of the lot, the light and air  
23 that's available won't be impacted to the residence at the  
24 front of the lot. So, most of our shadows are cast into the  
25 alley and the very rear yards of the neighboring properties.

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1 In -- for outreach, the owner is here, I'd like  
2 them to also speak about it. We did reach out to the two  
3 side neighbors and we also received a letter of support from  
4 a neighbor two or three doors down, if I remember correctly.

5 And, also the client did reach to the ANC prior  
6 to filing this back in July and received some good support,  
7 but we have not received a report.

8 But, I'm going to pass it off to the owner, if  
9 that's okay.

10 BZA CHAIR HILL: Sure.

11 MS. JOHNSON: Hi, so yes, we went to the ANC  
12 meetings in July, July 10th and found out while one of the  
13 reasons we have not been hearing back from our ANC members  
14 is because she was very -- has been very ill, Commissioner  
15 Buggs.

16 And, I've reached out a few times since then to  
17 try to figure out what our next steps with the ANC are and  
18 we just haven't heard back. But, at the meeting, they were  
19 really enthusiastic about this project.

20 They liked the fact that it would look like the  
21 other historic carriage houses and that it would not take  
22 away from any parking and that it would be an improvement to  
23 the neighborhood.

24 BZA CHAIR HILL: When you say they, you presented  
25 to them? I don't understand what you mean by they.

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1 MS. JOHNSON: Yes.

2 BZA CHAIR HILL: Oh so you did a presentation to  
3 the ANC?

4 MS. JOHNSON: Yes.

5 BZA CHAIR HILL: Did they take a vote?

6 MS. JOHNSON: No.

7 BZA CHAIR HILL: They didn't take a vote? Do you  
8 know why they didn't take a vote?

9 MS. JOHNSON: We were not on the docket.

10 BZA CHAIR HILL: That's okay. So, you weren't on  
11 the docket, but you did present there?

12 MS. JOHNSON: Yes.

13 BZA CHAIR HILL: So, they didn't take a vote  
14 because you weren't on the docket?

15 MS. JOHNSON: Yes.

16 BZA CHAIR HILL: Okay.

17 ZC CHAIR HOOD: Who's the Chairman of 5-D?

18 MS. JOHNSON: Yvonne Buggs.

19 ZC CHAIR HOOD: The Chair?

20 MS. JOHNSON: Commissioner --

21 ZC CHAIR HOOD: The Chairperson?

22 MS. JOHNSON: Oh, the Chairperson?

23 ZC CHAIR HOOD: Right.

24 MS. JOHNSON: I don't know.

25 ZC CHAIR HOOD: That's not Thomas Bradley, is it?

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1 MS. JOHNSON: That does not sound familiar.

2 ZC CHAIR HOOD: Okay, all right. Thank you.

3 BZA CHAIR HILL: Okay, so you did present to them?  
4 And, there was, you believe, positive feedback?

5 MS. JOHNSON: Yes.

6 BZA CHAIR HILL: Okay.

7 MS. JOHNSON: From them and the other neighbors  
8 in the room.

9 BZA CHAIR HILL: Okay. And then, you're -- you  
10 said that you did reach out to both adjoining neighbors?

11 MS. JOHNSON: Yes, we haven't been in touch with  
12 the owners because they're renters who are beside us and we  
13 don't have their contact information.

14 BZA CHAIR HILL: Okay, okay. All right.

15 All right, Mr. Rouse, you want to keep going or --

16 MR. ROUSE: Sure. We stand by the Office of  
17 Planning's report which supporting the project and I'm happy  
18 to entertain any questions.

19 BZA CHAIR HILL: Okay, okay, great.

20 Does the Board have any questions for the  
21 Applicant?

22 (NO RESPONSE)

23 BZA CHAIR HILL: Okay. I'm going to turn to the  
24 Office of Planning.

25 MR. COCHRAN: Thank you, Mr. Chair.

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1 OP stands on the record.

2 BZA CHAIR HILL: All right, after that very short  
3 report, does anybody have any questions for the Office of  
4 Planning?

5 (NO RESPONSE)

6 BZA CHAIR HILL: Okay. Does the Applicant have  
7 any questions for the Office of Planning?

8 MR. ROUSE: No.

9 BZA CHAIR HILL: Okay. Is there anyone here  
10 wishing to speak in support of the application?

11 (NO RESPONSE)

12 BZA CHAIR HILL: Is there anyone here wishing to  
13 speak in opposition of the application?

14 (NO RESPONSE)

15 BZA CHAIR HILL: Okay. Is there anything else you  
16 would like to add?

17 MR. ROUSE: No.

18 BZA CHAIR HILL: All right.

19 Does the Board have anything further?

20 (NO RESPONSE)

21 BZA CHAIR HILL: Okay, all right, I'm going to  
22 close the hearing. Is the Board ready to deliberate?

23 Okay, I can start. I mean, I'm -- I -- the --  
24 well, I would agree with the analysis that was provided by  
25 the Office of Planning.

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1 I was interesting in hearing, again, in terms of  
2 the outreach -- the community outreach and I'm satisfied that  
3 the Applicant has reached out to the community and has  
4 presented in front of the ANC. It's disappointing that the  
5 ANC did not take a vote and give us a report.

6 But, I understand that they weren't on the agenda  
7 or the record for that and that is perhaps why they didn't  
8 give us an official vote and that the SMD, it sounds like,  
9 has been ill for that SMD. But, they are

10 So, I am comfortable with their outreach. But,  
11 beyond that, I do believe that they made the case to have  
12 their meeting, the criteria for us, the standards for us to  
13 grant this application, I'll be in support of the  
14 application.

15 I'm a little jealous of their house, you know, I  
16 just kind of say it's just they are lucky people. Like, I'd  
17 like to just have that house.

18 And, so, for whatever that's worth and there you  
19 go.

20 Does anybody else have anything they'd like to  
21 add?

22 ZC CHAIR HOOD: Yes, Mr. Chairman. I would --  
23 this was back to the commuint6y outreach.

24 Knowing Chairperson Clarence Lee, if they had an  
25 issue we would have heard it. So, so I feel a confident

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1 level, not hearing anything, silence is golden. So, I think  
2 the merits of this case, especially about in the Office of  
3 Planning's analysis.

4 I think this is favorable and ready for us to move  
5 forward to approval and I will be voting in favor of this  
6 application.

7 BZA CHAIR HILL: Okay, anyone else?

8 (NO RESPONSE)

9 BZA CHAIR HILL: All right, I'm going to make a  
10 motion to approve Application Number 19876 as captioned read  
11 by the Secretary and ask for a second.

12 ZC CHAIR HOOD: Second.

13 BZA CHAIR HILL: Motion made and seconded, all  
14 those in favor say aye.

15 (CHORUS OF AYES)

16 BZA CHAIR HILL: The motion passes, Mr. Moy.

17 Any nays? Did anybody make a nay?

18 (NO RESPONSE)

19 BZA CHAIR HILL: No.

20 MR. MOY: Staff would record the vote as 4-0-1.  
21 This is on the motion of Chairman Hill to approve the  
22 application for the relief requested. Seconding the motion  
23 is Mr. Anthony Hood. Also in support, Ms. White and Ms.  
24 John, no other Board Members present, the motion carries.

25 BZA CHAIR HILL: Thank you.

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1 Thank you all very much.

2 MR. ROUSE: Thank you.

3 BZA CHAIR HILL: All right, Mr. Moy, whenever you  
4 like.

5 MR. MOY: The next case application before the  
6 Board is Application Number 19878 of Giulio Girardi, caption  
7 advertised for a special exceptions under Subtitle C Section  
8 1402 from the retaining wall requirements, Subtitle C Section  
9 1401.3(a) and (b) and under Subtitle D Section 5201 from the  
10 side yard setback requirements of Subtitle D Section 307.1  
11 and the pervious surface requirements of Subtitle D Section  
12 308.1 to construct a rear yard retaining wall and a rear deck  
13 addition to an existing detached principal dwelling unit, R-  
14 1-B Zone at 2931 South Dakota Avenue Northeast, Square 4339,  
15 Lot 39.

16 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.  
17 Could you please introduce yourselves for the record?

18 MR. SAGE: My name is John Sage, I'm the architect.

19 MR. GIRARDI: And my name is Giulio Girardi, I'm  
20 the property owner.

21 BZA CHAIR HILL: Can you spell your name for me,  
22 Mr. Girardi?

23 MR. GIRARDI: Yes, G-I-U-L-I-O.

24 BZA CHAIR HILL: How do you spell it? I mean, how  
25 do you say it?

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1 MR. GIRARDI: Giulio.

2 BZA CHAIR HILL: Giulio?

3 MR. GIRARDI: Yes.

4 BZA CHAIR HILL: Giulio, all right. Mr. Sage, are  
5 you going to be presenting to us?

6 MR. SAGE: Yes.

7 BZA CHAIR HILL: Okay. So, if you could go ahead  
8 and walk us through the application and what you're trying  
9 to do and, in particular, focus in on the standards in which  
10 we are supposed to review the application and how you're  
11 meeting those standards.

12 It seems as though there has been some discussion  
13 with the Office of Planning concerning a tree, so if you  
14 could tell us a little bit about that. And then, I'm going  
15 to put 15 minutes on the clock and you can begin whenever you  
16 like.

17 MR. SAGE: Okay. The project consists of building  
18 a --

19 BZA CHAIR HILL: Could you lean a little bit  
20 forward into that microphone? Thank you.

21 MR. SAGE: The project consists of building a rear  
22 deck, a covered rear deck, a new accessory garage structure  
23 at the rear property line, and then, a retaining wall with  
24 new stair access, allowing us to fill in a bit of the sloping  
25 rear yard, to get more of a level play surface for the owner.

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1           The three elements of relief we're looking for are  
2 concerning a side yard setback for the rear deck being  
3 constructed. Relief from the four-foot height requirement  
4 for a retaining wall -- we're seeking to build a five-foot.  
5 And then, the impervious or pervious surface calculation  
6 requiring 50 percent. We are maintaining the existing of 47.

7           So, we have received support from the ANC. We  
8 received a letter of support from the Office of Planning.  
9 We have spoken with the adjacent property owners and have  
10 received no opposition from them.

11           And concerning the tree, the tree has come up,  
12 it's in the adjacent property, not actually shown on our  
13 plans here. Oh, forgive me, the tree shown in our plans,  
14 there was concern about its health during construction and  
15 the deck posts.

16           We received a letter from arborist saying that the  
17 tree should be fine, there will be some basic protection that  
18 needs to occur during construction, but there should be no  
19 harm to it for the -- due to the construction.

20           Our construction, we're using wood posts on round  
21 concrete piers, so it's a pretty minimal amount of excavation  
22 required, so the root system is not really at risk of being  
23 damaged.

24           BZA CHAIR HILL: Okay. And as far as the ANC  
25 outreach, I mean, I see the letter from the ANC Commissioner

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1 5C02, is that the SMD?

2 MR. SAGE: I believe so, yes. Mr. Kevin Malone,  
3 we reached out to schedule a presentation with the ANC, but  
4 they were not doing design meetings.

5 And so, he told me, if we could meet at the  
6 property, we could review the project and take it from there.  
7 And so, I met at the property with Mr. Kevin Malone, reviewed  
8 the project, and he provided a letter of support.

9 BZA CHAIR HILL: Okay. But you did not present in  
10 front of the ANC?

11 MR. SAGE: We did not, now.

12 ZC CHAIR HOOD: So, he told you they were not doing  
13 design meetings?

14 MR. SAGE: Correct. They were -- I think they  
15 typically do an August recess, this was in July, they were  
16 not doing a meeting in July. And so, he said that if we  
17 could meet onsite, that would be good. So, that was, you  
18 know -- I tried to schedule a meeting, but they weren't  
19 having it, so he suggested this alternative.

20 ZC CHAIR HOOD: The meeting in July, they weren't  
21 having it?

22 MR. SAGE: Correct.

23 ZC CHAIR HOOD: Okay.

24 BZA CHAIR HILL: So, you didn't think --

25 ZC CHAIR HOOD: Which --

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1 BZA CHAIR HILL: You didn't --

2 ZC CHAIR HOOD: Let me just interject.

3 BZA CHAIR HILL: Sure.

4 ZC CHAIR HOOD: That's my ANC, so I know what goes  
5 on over there. But, anyway, you did what you had to do, you  
6 talked to -- you don't have the full endorsement of the full  
7 ANC, which is what we have -- when you have the single-member  
8 district or whatever -- because actually, when I pull it up,  
9 Mr. Chairman, I get something else that comes up.

10 So, I get an affidavit of posting, so I don't  
11 know, that's a glitch, so I never did see the letter from  
12 Kevin Malone. So, anyway, it is what it is. But I'll take  
13 your testimony. But can't give it the great weight, because  
14 you just have a single-member district, which is fine.

15 BZA CHAIR HILL: Right. But so, that's what I'm  
16 asking about. So, the -- so, you didn't think of going back  
17 in, to present in front of the full ANC, in whatever,  
18 September, I guess, or October?

19 Because now, we're at the end of December.  
20 Because then, you could have gotten in front of them, gotten  
21 a letter from them, so we had more -- I'm just trying to  
22 figure out why you didn't go in front of the full ANC. I  
23 mean, August was August, this is now end of December. You  
24 just didn't think you needed to?

25 MR. SAGE: Correct.

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1 BZA CHAIR HILL: You thought that was it?

2 MR. SAGE: Correct.

3 BZA CHAIR HILL: Okay.

4 MR. SAGE: He offered a letter of support, so I --

5 MEMBER WHITE: Did he actually file the letter in  
6 the record? Because I don't see it.

7 MR. SAGE: We uploaded it, yes.

8 MEMBER WHITE: What exhibit --

9 MR. SAGE: He sent --

10 MEMBER WHITE: -- is it?

11 MR. SAGE: He sent it to me and I uploaded it  
12 through the system.

13 MEMBER WHITE: Yes, I'm seeing two duplicate  
14 affidavits of maintenance under Exhibit 34. Did you -- am  
15 I -- maybe it's --

16 ZC CHAIR HOOD: It's actually not corrected in our  
17 files as Board Member White was saying. It shows an  
18 affidavit of posting. And I was trying to -- and it's signed  
19 by Mr. Girardi.

20 I was trying to figure, okay, what is that, what  
21 is this? So, we want to make sure we at least correct the  
22 record and at least get his record in there promptly. Unless  
23 it's just my computer, I'm not sure.

24 MEMBER WHITE: Then, it's mine too.

25 BZA CHAIR HILL: All right. While we figure that

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1 out, let's turn to the Office of Planning.

2 MR. MORDFIN: Good morning. I'm Stephen Mordfin.  
3 And the Office of Planning supports this application, finding  
4 that it's in conformance with the requirements for the  
5 special exception.

6 We did request that the applicant contact an  
7 arborist. The applicant did submit a letter indicating that  
8 the arborist recommended that tree protection fencing be  
9 placed between the tree and where the posts will be dug, and  
10 that a mulch ring should be placed around the tree.

11 So, the Office of Planning recommends that the  
12 arborist's recommendation be included, should the Board  
13 approve the application. And that -- thank you.

14 MR. MOY: Mr. Chairman, while there's a slight  
15 pause, I left ZDOCS for a moment and I went to the IZIS case  
16 record, and under Exhibit 34, all right, in the IZIS, it's  
17 a letter from Kevin Malone dated November 28, 2018.

18 So, if you go that route, you'll see his letter,  
19 basically saying that the ANC 5C takes no exception to the  
20 request for relief from the sections listed below, supports  
21 approval by the BZA. But of course, there are other  
22 standards that's missing in this letter.

23 BZA CHAIR HILL: Okay. Yes, no, I'm so glad that  
24 you found that, because I was thinking, I know I saw it. And  
25 so, when I review the stuff, I go through IZIS. And so, I

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1 was able to at least see the information. What we have in  
2 front of us is a different system.

3 So, okay. As far as the Office of Planning, I  
4 guess the thing that even the Office of Planning -- the  
5 Office of Planning? Yes, the Office of Planning. The tree's  
6 in public space, right?

7 MR. MORDFIN: That's correct.

8 BZA CHAIR HILL: Okay. So, I don't know if, based  
9 upon some of the discussions we've had also with OAG and, I  
10 think that you guys understand what the Office of Planning  
11 is asking you to help do with the tree, correct?

12 MR. SAGE: Yes.

13 BZA CHAIR HILL: And you're in agreement with doing  
14 that?

15 MR. SAGE: Yes.

16 BZA CHAIR HILL: Okay. All right. Then, I would  
17 be comfortable with doing that. Let's see. Is there anyone  
18 here -- do you have any questions for the Office of Planning?  
19 Does the applicant?

20 MR. SAGE: No.

21 BZA CHAIR HILL: Okay. Is there anyone here  
22 wishing to speak in support of the application? Is there  
23 anyone here wishing to speak in objection to the application?  
24 Okay.

25 Does the Board have any further questions of the

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1 applicant? Okay. Do you have anything you'd like to say in  
2 conclusion?

3 MR. SAGE: No.

4 BZA CHAIR HILL: Okay. All right. I'm going to  
5 close the record. Is the Board ready to deliberate? Does  
6 someone else want to start?

7 MEMBER WHITE: Yes, I --

8 BZA CHAIR HILL: Just because I've been talking the  
9 whole time.

10 MEMBER WHITE: I can provide some comments. So,  
11 like the applicant said, this is a project for a rear yard  
12 retaining wall and rear yard addition for a special exception  
13 is being requested. The retaining wall relief under C 1401.3  
14 for a five-foot wall, side yard setback under D 307.1, as  
15 well pervious surface relief under Subtitle D 308.1.

16 I don't have a problem with the application. It  
17 sounds like the record is full. They're basically looking  
18 to do the rear yard retaining wall and a rear deck addition  
19 to an existing detached principal dwelling in the R-1-B Zone.

20 And the side yard is adjacent to the South Dakota  
21 Avenue, so there's no side yard presently exists and the five  
22 feet is being proposed where a minimum of eight feet is  
23 required.

24 As Mr. Chair stated earlier, Office of Planning  
25 and Mr. Mordfin have a very full record. They are

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1 recommending approval, but they're also requesting that the  
2 applicant protect a tree that is in public space and is  
3 actually under DDOT's jurisdiction.

4           And again, after we clarified, after much delay,  
5 we were finally able to find the ANC SMD's letter citing no  
6 problems with the application that's being sought by the  
7 applicant.

8           The community, there's nothing in the record  
9 specifically, but there doesn't appear to be any opposition  
10 to the application. So, Mr. Chair, I would be in support of  
11 the application filed by Mr. Girardi. Those are my comments.

12           BZA CHAIR HILL: Thank you. Anyone else? Okay.  
13 Well, I agree with Board Member White, in terms of I believe  
14 the applicant has met the burden for this application to be  
15 granted.

16           I also think that, even though we can't give great  
17 weight to the recommendations of the SMD, it does seem as  
18 though the applicant has reached out to the community. And  
19 I would agree with the analysis by the Office of Planning.

20           No disrespect to the Office of Planning, other  
21 than the public space issue or the tree, I think is something  
22 that I wouldn't be comfortable with making a condition, but  
23 I'm glad to see that the applicant has agreed to do what they  
24 can for the tree, as requested by the Office of Planning.

25           So, I'll go ahead and make a motion to approve

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1 Application Number 19878 as captioned and read by the  
2 Secretary and ask for second.

3 MEMBER WHITE: Second.

4 BZA CHAIR HILL: Motion made and seconded, all  
5 those in favor, say aye.

6 (CHORUS OF AYES)

7 BZA CHAIR HILL: All those opposed? The motion  
8 passes, Mr. Moy.

9 MR. MOY: Staff would record the vote as 4-0-1,  
10 this on the motion of Chairman Hill to approve the  
11 application for the relief requested, seconding the motion,  
12 Ms. White. Also in support, Ms. John and Mr. Anthony Hood.  
13 No other member participating today. Motion carries.

14 BZA CHAIR HILL: All right. Mr. Moy, let's call  
15 our next case.

16 MR. MOY: Thank you, Mr. Chairman. So, if we could  
17 have applicants to the table to Case Application Number 19879  
18 of Dominic Puchalla, captioned and advertised for special  
19 exceptions under Subtitle C Section 703.2 from the minimum  
20 parking requirements of Subtitle C Section 701.5, this would  
21 convert the existing artist studio to a principal dwelling  
22 unit in the RF-1 Zone at 1518 New Jersey Avenue Northwest,  
23 this is at the rear, Square 510, Lot 165.

24 BZA CHAIR HILL: Okay, great. Thank you. If you  
25 could please introduce yourselves.

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1 MS. WILSON: Hi, I'm Alex Wilson from Sullivan and  
2 Barros, on behalf of the applicant.

3 BZA CHAIR HILL: Okay, great. Thank you. So, Ms.  
4 Wilson, I guess, I don't really have a lot of particular  
5 questions, if you can please just walk us through what your  
6 client is trying to achieve and how you're meeting the  
7 standard for us to grant the application?

8 There doesn't seem to be anything from the ANC 6E,  
9 unless I'm missing it, or unless it just came in, so if you  
10 could tell us a little bit about your outreach to the ANC and  
11 the community. And I'm going to put 15 minutes on the clock  
12 and you can begin whenever you like.

13 MS. WILSON: Thank you. I believe the ANC report  
14 was just submitted yesterday. We reached out to them and  
15 they submitted the report, or they emailed it.

16 BZA CHAIR HILL: Did they applaud the applicant?

17 MS. WILSON: I don't think they applauded this one,  
18 but --

19 BZA CHAIR HILL: Okay.

20 MS. WILSON: -- they supported it.

21 BZA CHAIR HILL: All right. Go ahead --

22 MS. WILSON: Okay.

23 BZA CHAIR HILL: -- and begin whenever you like.

24 MS. WILSON: So, the property is currently improved  
25 with a two-story building, which was most recently used as

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1 an artist studio.

2           The applicant is proposing to renovate the  
3 interior and do some minor exterior renovations in order to  
4 use the building as a one-family dwelling. A one-family  
5 dwelling is required to provide one parking space.

6           As the building takes up the majority of the  
7 subject property and leaves no room for a parking space, the  
8 applicant is requesting special exception relief from the  
9 parking requirements. The property is a corner alley lot and  
10 the building takes up the majority of the lot, as you can see  
11 from this photo.

12           Regarding the special exception requirements, the  
13 physical constraints of the substandard lot means that the  
14 applicant is unable to provide a full-sized parking space on  
15 the lot and parking cannot be provided within 600 feet of the  
16 lot.

17           The subject property is well served by mass  
18 transit. It is within 500 feet of a bus stop, three-tenths  
19 of a mile from a bike share station, a half mile from a  
20 Zipcar location and the Shaw-Howard Metro, and seven-tenths  
21 of a mile from the Mount Vernon Square Metro.

22           One additional residential unit is unlikely to  
23 create additional traffic congestion in the neighborhood.

24           And we've included some maps showing the proximity  
25 from the property to the various forms of public

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1 transportation in the area. The location adjacent to bus  
2 stops, bike share, the Zipcar, and then, the Shaw-Howard  
3 Metro, and the Mount Vernon Square Metro.

4 To conclude, ANC 6E unanimously supports the  
5 application. The Office of Planning is recommending  
6 approval. And there are four letters of support from nearby  
7 neighbors. Thank you.

8 BZA CHAIR HILL: Okay. Does the Board have any  
9 questions for the applicant? All right. Going to turn to  
10 the Office of Planning.

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

15 BZA CHAIR HILL: Okay. Does anybody have any  
16 questions for the Office of Planning? Does the applicant  
17 have any questions for the Office of Planning?

18 MS. WILSON: No, thank you.

19 BZA CHAIR HILL: Is there anyone here wishing to  
20 speak in support of the application? Is there anyone here  
21 wishing to speak in opposition to the application? Ms.  
22 Wilson, do you have anything you would like to add at the  
23 end?

24 MS. WILSON: No, thank you.

25 BZA CHAIR HILL: Okay. I'm going to go ahead and

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

3 Again, after reviewing the entirety of the record  
4 and the analysis provided by the Office of Planning, I would  
5 be in agreement with their analysis, in terms of how the  
6 standards are being met to grant the application.

7 In addition to that, I'm glad to see that the ANC  
8 has weighed in and is voting in favor of the application, so  
9 that we can, therefore, give them great weight. There was  
10 also four letters in support from the neighbors.

11 But even beyond all that, again, I agree they have  
12 met the burden for us to grant the application. So, I will  
13 be voting in support. Is there anything anyone else would  
14 like to add? Okay.

15 I'm going to go ahead and make a motion to approve  
16 Application Number 19879, as captioned and read by the  
17 Secretary, and ask for a second.

18 MEMBER JOHN: Second.

19 BZA CHAIR HILL: Motion has been made and seconded,  
20 all those in favor, say aye.

21 (CHORUS OF AYES)

22 BZA CHAIR HILL: All those opposed? The motion  
23 passes, Mr. Moy.

24 MR. MOY: Staff would record the vote as 4-0-1.  
25 This is on the motion of Chairman Hill to approve the

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1 application for the relief requested, seconding, I believe,  
2 is Ms. John, unless I'm corrected. Also in support of the  
3 motion, then, would be Ms. White and Mr. Anthony Hood. No  
4 other Board Members present. The motion carries.

5 BZA CHAIR HILL: Thank you, Mr. Moy. Thank you  
6 very much. All right. If you could please introduce  
7 yourselves for the -- oh, did you call the case?

8 MR. MOY: Not yet, I was just waiting to see --

9 BZA CHAIR HILL: Sorry, okay, that's all right.  
10 They're all sitting there.

11 MR. MOY: -- what the intent was. I'm sorry, Mr.  
12 Chairman. So, I see the very rush to the table. This is  
13 regarding Case Application Number 19881 of Luis Colemanares.

14 Let's see, this is for a special exception under  
15 Subtitle D Section 1206.4 and 5201 from the rear addition  
16 requirements of Subtitle D Section 1206.3, which would  
17 construct a two-store rear addition to an existing attached  
18 principal dwelling unit, R-20 Zone. This is at 3714 S Street  
19 Northwest, Square 1308S, Lot 47.

20 BZA CHAIR HILL: Okay, great. Thank you. Could  
21 you please introduce yourselves for the record?

22 MR. SULLIVAN: Thank you, Mr. Chairman, Members of  
23 the Board. My name is Marty Sullivan, with the Law Firm of  
24 Sullivan and Barros, on behalf of the applicant.

25 MS. WILSON: Alex Wilson from Sullivan and Barros,

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1 on behalf of the applicant.

2 MR. ESPINOZA COLEMENARES: Luis Espinoza  
3 Colemenares, I'm the owner.

4 BZA CHAIR HILL: All right. Sir, could you spell  
5 your last name for me?

6 MR. ESPINOZA COLEMENARES: Espinoza is E-S-P-I-N-O-  
7 Z-A.

8 BZA CHAIR HILL: Okay, great, Mr. Espinoza. Okay,  
9 great. Mr. Sullivan, Wednesday just wouldn't be the same  
10 without seeing your smiling face, I got to let you know.

11 MR. SULLIVAN: Thank you.

12 BZA CHAIR HILL: Okay. So, I don't know who's  
13 going to go? Ms. Wilson? Okay. Ms. Wilson, if you could  
14 just kind of, again, walk us through the application in terms  
15 of what your client is trying to achieve and how you're  
16 meeting the standard of relief for us to grant that  
17 application. I'm going to put 15 minutes on the clock and  
18 you can begin whenever you like.

19 MS. WILSON: Great, thank you. So, Luis and his  
20 wife have lived in this house for five years and during that  
21 time, they've watched their family grow, but the house has  
22 remained the same size.

23 The existing house is two stories with a  
24 relatively small footprint, and as they want to grow their  
25 family, they need additional living space.

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1           Accordingly, they are requesting relief from the  
2 ten-foot rule in order to do a two-story, 20-foot extension,  
3 as the building already extends ten feet past the adjacent  
4 properties. And both adjacent neighbors have submitted  
5 letters in support of the project.

6           Originally, we were going to have the architect  
7 walk through the project, but I think she got caught in some  
8 traffic, so I'm going to briefly walk you through the  
9 project, as best I can.

10           So, this is the proposed first floor site plan.  
11 And the addition is primarily to add just a few additional  
12 rooms of living space for their growing family. I believe  
13 it's an additional bedroom and a living area.

14           And the addition is only on two floors. There's  
15 a ground level and two stories. And it's going to extend the  
16 existing building footprint by 20 feet, but they are not  
17 adding an additional level.

18           And this is the photo of the front and rear  
19 elevation. The building will look exactly the same from the  
20 front and they are not touching the front facade. And the  
21 rear will look extremely similar, it will just extend an  
22 additional 20 feet.

23           Regarding the special exception requirements,  
24 these zoning regulations permit extensions beyond ten feet,  
25 subject to the criteria of D 5201.3(a) through (d), which

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1 focuses on light, air, privacy, and character.

2           The shadow studies show some impact, but overall,  
3 the impact is minimal and the light is not unduly affected.  
4 The property to the west is only slightly impacted for a few  
5 hours in the morning and the property to the east is only  
6 impacted for a few hours in the late afternoon. And again,  
7 both neighbors have submitted letters in support.

8           The impact is even less in the summer time. The  
9 impact in fall and winter are similar to the impact in the  
10 spring.

11           BZA CHAIR HILL: Do you know how far back that  
12 property to -- I'm just going to say to the left of the one,  
13 I'm looking in the bottom left corner, the left of the one  
14 that has the two decks, do you know how far back that goes?

15           MS. WILSON: I believe it extends 30 feet plus  
16 decks.

17           BZA CHAIR HILL: So, are you matching that edge?

18           MS. WILSON: Yes, we are matching that edge,  
19 although we will not have as large of balconies, and then,  
20 we will not have a third story.

21           BZA CHAIR HILL: Okay. Okay, thank you.

22           MS. WILSON: You're welcome. So, to summarize,  
23 there is a minimal difference in the impact between the  
24 matter-of-right building and the proposed addition. The  
25 biggest impact is in the winter, but the neighbors are only

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1 impacted for two to three hours, at most, and both neighbors  
2 are in support of the addition.

3           Regarding privacy, there will be no windows on the  
4 addition, nor will there be any large balconies. The only  
5 balcony is for egress and access to a staircase and it's only  
6 on the first floor. The applicant will also be maintaining  
7 the existing fence.

8           Regarding the character, the front of the building  
9 will not be altered at all and there is no third-story  
10 proposed.

11           Regarding the view from the alley, the addition  
12 would maintain a similar appearance to neighboring houses on  
13 S Street and should, therefore, not substantially visually  
14 intrude upon the character, scale, or pattern of houses along  
15 the alley.

16           The applicant is only requesting special exception  
17 relief in order to provide more room for his growing family.  
18 Both adjacent neighbors are in support. The addition will  
19 preserve the character of the house and the neighborhood.  
20 The ANC is in support and OP is recommending approval.

21           And we have some additional photos in the  
22 following slides if the Board is interested, but if not, that  
23 concludes my presentation.

24           BZA CHAIR HILL: Okay. Does the Board have any  
25 questions for the applicant?

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1 MEMBER WHITE: The only question I have, I see the  
2 letters of support from the adjacent neighbors that are  
3 located at 3712 and 3716. So, the letter says they support  
4 the fact that the rear addition is going to go beyond ten  
5 feet.

6 Are they absolutely -- have they been informed  
7 that it's going back 30 feet and are they comfortable  
8 specifically with that 30-foot extension?

9 MR. ESPINOZA COLEMENARES: Yes, we have speak many  
10 times with my two neighbors. They know very well my case and  
11 my project.

12 MEMBER WHITE: And they are onboard with that?

13 MR. ESPINOZA COLEMENARES: Yes.

14 MEMBER WHITE: Okay.

15 ZC CHAIR HOOD: Mr. Sullivan, let me ask, could you  
16 address the ANC's letter?

17 MR. SULLIVAN: Yes. It was --

18 ZC CHAIR HOOD: So, she had to go up to --

19 MR. SULLIVAN: -- not as clear -- well, I'm as  
20 familiar with the case too --

21 ZC CHAIR HOOD: Oh, okay.

22 MR. SULLIVAN: -- and so, but that was one thing  
23 I was just looking at. They had a meeting, Mr. Espinoza had  
24 a meeting with the single-member district representative at  
25 the property and he didn't express any concerns.

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1           But at the meeting, this was the resolution they  
2 came up with. And I looked it over and what I see it saying  
3 is, they do say that they support it.

4           And they say they're -- but then, they mention  
5 concerns about having a 30-foot addition, regarding intruding  
6 upon the character and scale of properties in the alley. And  
7 then, I think the Office of Planning's report addressed that  
8 issue sufficiently, I think.

9           But if the question is, are they in support or  
10 not, I think they are in support, they just felt the need to  
11 express some concerns about one aspect of the project.

12           ZC CHAIR HOOD: So, basically, it says, although  
13 ANC 2E supports the addition, the ANC notes that it has  
14 concerns that extending the addition an additional 20 feet,  
15 resulting in the addition being 30 feet beyond the rear walls  
16 of the adjoining properties, could intrude upon the character  
17 and scale of the properties in the alley to the east and  
18 west.

19           The ANC notes that the property at 3718 S Street  
20 Northwest, which has an addition, did not require relief when  
21 the current zoning regulations went into effect. Okay. So,  
22 this whole -- okay.

23           I don't know if that's what they meant, I just  
24 don't think they were -- I think they -- the way I read it  
25 is, they are having issues with what's being asked for, the

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1 amount.

2 That's the way I read it, but I don't know if  
3 others see it that way. But that concerns me. But anyway,  
4 let's see how it goes. All right, thank you, Mr. Chair.

5 BZA CHAIR HILL: Okay. I'll go ahead and turn to  
6 the Office of Planning.

7 MS. VITALE: Good morning, Mr. Chair, Members of  
8 the Board. Elisa Vitale with the Office of Planning. And  
9 we will rest on the record in support of the requested  
10 special exception relief from the ten-foot requirement. And  
11 I am happy to answer any questions. Thank you.

12 BZA CHAIR HILL: Anybody have questions for the  
13 Office of Planning?

14 ZC CHAIR HOOD: Ms. Vitale, do you know any of  
15 cases that we have, when this ten-foot rule was put in place,  
16 that has a recommendation from the Office of Planning to  
17 deny?

18 MS. VITALE: I believe there have been instances  
19 where OP has not recommended approval, we can certainly do  
20 an analysis, if the Board is interested in receiving that  
21 information, but I can't give you an exact count or number.

22 ZC CHAIR HOOD: Okay. I'm not going to ask for  
23 that at this point, but I am going to ask for an analysis  
24 from Office of Planning at the next Zoning Commission  
25 meeting, because I'm curious, as we're already looking into

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1 this rule to begin with, it doesn't even work, why do we even  
2 have it? Because it seems like we approve it all the time  
3 anyway.

4 I'm not trying to punish this applicant, because  
5 it seems like he has all the necessary approvals, other than  
6 the ANC level, I mean, other than the ANC letter, which is  
7 the only thing that concerns me.

8 Okay. Thank you. But, Ms. Vitale, if you can  
9 note that that's coming down the pipe. All right. Thank  
10 you.

11 BZA CHAIR HILL: Commissioner Hood, or Chairman  
12 Hood, I'm sorry, if I might humbly just add, I do remember  
13 there was a couple that had been denied.

14 But the question I do have for the Office of  
15 Planning is still the question I have every time the Office  
16 of Planning is here for this kind of thing, which is, they're  
17 now going 20 feet back past the ten feet, right?

18 And so, both neighbors are in approval and the  
19 Office of Planning, as always, is looking at each individual  
20 case, as we are in the BZA. But in general, for this  
21 particular case, what did you look to in order to give your  
22 analysis that this met the standard, what did you look to for  
23 this one?

24 MS. VITALE: Certainly, I'm happy to answer that.  
25 In this particular application, I think factors that

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1 contributed to our recommendation for approval included the  
2 fact that this maintained the two-story character.  
3 Frequently, we see these cases, and in addition to going  
4 back, they're going up.

5           So, this maintained the two-story character of  
6 this particular house, as well as of the surrounding  
7 neighborhood. So, I think that was a big factor in our  
8 assessment that this proposed addition would not be  
9 detrimental to the character of the surrounding neighborhood.

10           I think, obviously, when viewed from the front,  
11 when viewed from S Street, one wouldn't know that there was  
12 an addition at this property.

13           When viewed from the alley, the applicant is not  
14 proposing, as I mentioned, they're not proposing a third  
15 floor, they're not proposing multiple decks that could  
16 compromise privacy for adjoining property owners.

17           They have one small rear deck at the first floor  
18 level, which is typical of the surrounding neighborhood.  
19 Their window pattern, door pattern at the rear of the  
20 property is consistent with other houses in the neighborhood.

21           They've provided the shadow study, which, while  
22 there are some impacts, those impacts are minimal. So, taken  
23 as a whole, the Office of Planning determined that the  
24 proposed addition should not have a negative impact on the  
25 character of the surrounding homes, as viewed from the alley.

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1 BZA CHAIR HILL: Okay. Anyone else for the Office  
2 of Planning?

3 ZC CHAIR HOOD: I want to add, Ms. Vitale, if you  
4 could just let Ms. Steingasser know to put that on our list  
5 of laundry list. I have to do it know, because we got so  
6 much, I be done forgot.

7 MS. VITALE: I've already gotten --

8 ZC CHAIR HOOD: Okay.

9 MS. VITALE: -- that written down.

10 ZC CHAIR HOOD: Thank you.

11 MS. VITALE: So, I'll pass that on.

12 ZC CHAIR HOOD: Thank you.

13 BZA CHAIR HILL: Okay. Let's see. Is there anyone  
14 here wishing to speak in support? Is there anyone here  
15 wishing to speak in opposition? I forgot to ask, did the  
16 applicant have any questions for the Office of Planning?

17 MS. WILSON: No, thank you.

18 BZA CHAIR HILL: Okay. Does the applicant have  
19 anything they would like to add at the end?

20 MS. WILSON: No, thank you.

21 BZA CHAIR HILL: Okay. All right. I'm going to  
22 go ahead and close the hearing. Is the Board ready to  
23 deliberate? Okay. I can start.

24 I think it's an interesting discussion that,  
25 Chairman Hood, you're here oftentimes, well actually, you're

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1 here -- sometimes this comes up when you're here. And so,  
2 the pop-back thing is always kind of interesting for us,  
3 because we talk about it every time it comes up, to be quite  
4 honest.

5           And I still think that it is something that I  
6 think, I don't know whether there's further analysis, in  
7 terms of having more clarification on it, but it does seem  
8 to kind of be a variety of issues that come forward when  
9 we're determining whether or not we think it meets the  
10 requirement.

11           In this particular case, again, given that I think  
12 that the applicant has put forward a lot of information for  
13 us to provide analysis to, such as the shadow study, such as  
14 -- even though I don't like the next door neighbors, I don't  
15 like to think that that is something that we are necessarily  
16 taking into account, they are in approval, and so I don't  
17 like that that kind of comes into our analysis necessarily,  
18 but it is there.

19           I think, in my reasoning, in terms of why I am  
20 going to vote for this, is that I think that they've met the  
21 standard for us to grant the application in a lot of the ways  
22 that the Office of Planning just kind of pointed out.

23           For me, it's also that they aren't going up a  
24 third floor, they don't have the additional balconies that  
25 would provide kind of privacy issues, and they are kind of

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1 matching the edge of the house that's another house over.

2           So, I think that they are -- the light and air,  
3 privacy issues are not being affected for this particular  
4 special exception.

5           So, in terms of the ANC letter, I did think it was  
6 a little bit confusing, but I thought that they were, just  
7 from my reading of it, I mean, I can just take it the way I  
8 kind of read it, was that they're in approval, but they still  
9 are continuing to be -- they're concerned about this type of  
10 project, but they were in approval of this one. That's at  
11 least how I read the letter, in terms of their vote in  
12 approval unanimously.

13           So, again, I think they meet the standard, I think  
14 the Office of Planning has provided that analysis, and I'll  
15 be voting in favor. Anyone else?

16           MEMBER JOHN: Mr. Chairman, I am always concerned  
17 about these rear yard additions that go beyond the ten-foot  
18 by-right provision. And so, I looked at this case to see  
19 what was different about it.

20           And I think, as others have said, there is no  
21 third story, which would affect, more deeply affect the light  
22 and air issues of a neighbor. It's also quite -- the  
23 existing lot is 37 feet -- let me say that again. Even with  
24 the addition, the rear yard would be 37 feet. And so, again,  
25 that would affect light and air issues.

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1           And the existing house is 18 feet wide to begin  
2 with, so I can understand the need for an extension of that  
3 size.

4           Also, the extension would be in line with one  
5 adjacent house, which would also mitigate the light and air  
6 issues. We don't have two houses with 20-foot additions.  
7 I mean, although that could happen in the future.

8           So, on balance, I think I would make an exception  
9 to my general reluctance to go ahead with these very long  
10 additions.

11           MEMBER WHITE: I'm typically in that camp, too, Ms.  
12 John. I'm always -- a red flag always goes up when I see  
13 these extensive rear additions, and 30 feet, in my mind, is  
14 an extensive rear addition.

15           But certain things, certain stars have to be  
16 aligned for me to kind of change my position on these kind  
17 of cases. And I think, for this one, I'm willing to support  
18 the application, just kind of concurring with all of your  
19 comments, that the project maintains the two-story character.

20           I do think about what the adjacent owners do say,  
21 because for me, they're the ones that are most impacted. But  
22 I am looking at other things, such as lot occupancy, where  
23 for this type of relief, the lot occupancy, I think, is at  
24 45 percent.

25           And so, they -- we are able to approve structures

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1 on this type of lot above that number. So, I think they're  
2 in line with that. I don't see tremendous light impacts.

3 And again, while the ANC said that they supported,  
4 it sounds like they are -- they definitely have concerns, but  
5 they did take a vote. So, I did look at that as well. So,  
6 I will support this application for this particular case.

7 ZC CHAIR HOOD: Mr. Chairman, while I don't think  
8 that the shadow studies really showed us the before and  
9 after, unless I read them wrong, all they showed was the  
10 after.

11 I'm always hesitant when we go -- we put the rule  
12 in place for a reason and we do have some caveats, which  
13 would enable a homeowner to be able to extend, I just have  
14 not been here and seen where we've been able to -- not saying  
15 our goal is to deny it, but it goes back to what the ANC  
16 letter says, it's about making sure we protect the character  
17 of the neighborhoods.

18 But what's in place is what this particular  
19 homeowner has operated on. It looks like it passes the test  
20 from the Office of Planning, it passed the test to be able  
21 to allow it to be able to expand in the back.

22 And even more than that, the ANC letter and the  
23 two homeowners concur. So, I'm not going to push back on  
24 this one or be hesitant on it, because I think it's all about  
25 the character of our neighborhoods in this city and we don't

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1 want to make sure that we go down in the record as destroying  
2 that.

3           So, I just want to make sure we're consistent and  
4 that we have a valid way of being able to look at each one,  
5 case by case, and make sure it's in context with the  
6 surrounding character of the neighborhood. So, with that,  
7 I'll just leave it at that. And thank you.

8           BZA CHAIR HILL: Okay. I'll make a motion to  
9 approve Application Number 19881, as captioned and read by  
10 the Secretary, and ask for a second.

11           MEMBER JOHN: Second.

12           BZA CHAIR HILL: Motion made and seconded, all  
13 those in favor, say aye.

14           (CHORUS OF AYES)

15           BZA CHAIR HILL: All those opposed? Motion passes,  
16 Mr. Moy.

17           MR. MOY: Staff would record the vote as 4-0-1.  
18 This is on the motion of Chairman Hill to approve the  
19 application for the relief requested, seconding the motion,  
20 Ms. John. Also in support, Ms. White and Mr. Anthony Hood.  
21 No other members participating today. Motion carries.

22           BZA CHAIR HILL: Okay. Thank you, Mr. Moy. Thank  
23 you all very much. Mr. Moy, you can call our next case.  
24 Just so everybody knows, we're going to try very hard just  
25 to push through. Like, we're just going to go right on

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1 through.

2 We're going to forget about lunch and we're just  
3 going to go right through, okay? So, but we are going to  
4 take a break, we're taking a break after this one and then,  
5 we're going to do the last case. So, Mr. Moy, did you call  
6 it?

7 MR. MOY: Yes, sir, in a moment. This is before  
8 the Board, Case Application Number 19883. This is of 845  
9 Upshur LLC, captioned and advertised for special exception  
10 under Subtitle G Section 409 and 1200 from the lot occupancy  
11 requirements of Subtitle G Section 404.1. This would  
12 construct a three-story addition to an existing mixed-use  
13 building in the MU-4 Zone. This is at 845 Upshur Street  
14 Northwest, Square 3024, Lot 56.

15 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.  
16 Could you please introduce yourselves?

17 MR. DOSIK: Yes, hi --

18 BZA CHAIR HILL: You need to push the button.

19 MR. DOSIK: Okay.

20 MR. WILLIAMS: Yes, Zach Williams, attorney for the  
21 applicant, and Marc Dosik, representative for the applicant.

22 BZA CHAIR HILL: I'm sorry, what was the other  
23 gentleman's name?

24 MR. DOSIK: Marc Dosik, D-O-S-I-K.

25 BZA CHAIR HILL: And who are you with, Mr. Dosik,

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1 I didn't hear that?

2 MR. DOSIK: I'm one of the partners.

3 BZA CHAIR HILL: Okay. Were you guys sworn in  
4 earlier?

5 MR. WILLIAMS: Yes.

6 MR. DOSIK: Yes.

7 BZA CHAIR HILL: Okay, great. All right. Who's  
8 going to be presenting?

9 MR. WILLIAMS: I am.

10 BZA CHAIR HILL: Okay. All right, Mr. Williams.  
11 So, I don't have a lot of questions about this, actually,  
12 unless the Board has any specific ones.

13 I think, if you could just kind of walk us through  
14 what you're trying to do and also, how you're meeting the  
15 standard for us to grant the application. I'm going to put  
16 15 minutes up on the clock, Mr. Moy, and you can begin  
17 whenever you like.

18 MR. WILLIAMS: Thank you, Chairman Hill. I'll walk  
19 through this quickly and then, again, if there's any  
20 questions, we're here to answer them.

21 Quickly, this is a proposal at 845 Upshur Street  
22 Northwest, along the 800 block of Upshur Street, for a  
23 special exception to allow lot occupancy up to 81.3 percent.

24 The proposed project is shown here on this slide.  
25 It's three-story mixed-use building, with commercial retail

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1 at street level and four residential apartment units on  
2 levels two and three.

3 This slide shows generally the location of the  
4 property, vis-a-vis surrounding properties. It's zoned MU-4,  
5 1,790 square feet of lot area. It's not in a Historic  
6 District.

7 It only has frontage on Upshur Street, there is  
8 no rear access here. Neighboring restaurants, bars, and  
9 shops along what has become a bustling corridor along Upshur  
10 Street in this location.

11 The current structure is depicted here. It's an  
12 existing two-story building, 1,777 square feet of GFA. It  
13 had a former restaurant, take-out restaurant, at the first  
14 level that's now vacant. And formerly had a residential unit  
15 on the second level. Existing lot occupancy was 40 percent  
16 and the existing height is a little over 22 feet.

17 The proposed project is an addition to the  
18 existing building, to bring it to three stories and a total  
19 of a little over 4,000 square feet, 2.44 FAR, under 2.5 FAR  
20 permitted by-right.

21 Four residential apartment units would be provided  
22 on levels two and three, two units on each level. And then,  
23 a restaurant/retail space at street level.

24 Proposed lot occupancy is 81.3 percent for levels  
25 two and three, as those would be residential, the lot

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1 occupancy requirements in MU-4 would apply. Sixty percent  
2 is permitted by-right. Proposed height would be well under  
3 the 50-foot maximum, and the required rear yard is provided.

4 The MU-4 Zone allows exceptions to lot occupancy  
5 through a special exception and the very familiar special  
6 exception standards apply here. It must be in harmony with  
7 the purpose and intent of the MU Zone and it must not  
8 adversely affect neighboring properties.

9 And very quickly, I'll run through these. And OP  
10 also touched upon these standards and OP's in support. As  
11 we know, MU-4 Zone encourages moderate-density mixed-use  
12 development, which is what's provided here.

13 Without the lot occupancy requirement being  
14 modified, the second and third levels would -- the floor  
15 plate would be significantly reduced from the first level.  
16 The first level being commercial is not subject to the lot  
17 occupancy requirements.

18 And what we're looking to do here is have three  
19 equal floor plates. And for a number of different reasons,  
20 that provides, not just economically, but also, it makes the  
21 building easier to construct.

22 And it also allows for more flexibility on the  
23 first level, for a restaurant, for example, for a kitchen.  
24 If you don't have those structural requirements that would  
25 involve putting a load-bearing wall sort of halfway into the

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1 space, for levels two and three, it just makes the bottom  
2 level space easier to build-out for the restaurant.

3 It also allows for the applicant to build up to  
4 the permitted density, while still providing the rear yard  
5 setback. And the building volume height and facade would be  
6 identical to the adjacent building to the east.

7 The special exception, it won't adversely affect  
8 neighboring properties, as I mentioned. Neighboring  
9 properties include a mix of commercial and residential uses  
10 on Upshur Street.

11 They're generally one to three-stories in height,  
12 even though 50 feet is permitted. Like I said, the adjacent  
13 property to the east is improved with a three-story building  
14 with a mix of uses. The building massing would be identical  
15 to what's proposed.

16 And the project would include residential units,  
17 which will support existing retail along Upshur Street, and  
18 also help to provide further residential units to an already  
19 busy area of Petworth.

20 We have a letter of support from the ANC. We went  
21 to present to the ANC and we gave a presentation. They  
22 deliberated, we came back a month later for the vote, and  
23 they voted in favor of the project.

24 OP supports the project as well. We spoke with  
25 neighboring property owners, who are also in support. And

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1 with that, I will stand on the record and we are here to  
2 answer any questions.

3 BZA CHAIR HILL: Okay, great. Thank you. Does the  
4 Board have any questions for the applicant? What was the  
5 name of the take-out place that was there at the bottom?

6 MR. WILLIAMS: China American Inn, I believe.

7 MR. DOSIK: Yes.

8 MR. WILLIAMS: China American Inn.

9 BZA CHAIR HILL: Okay. All right. I'm going to  
10 turn to the Office of Planning.

11 MS. MYERS: Hello, Crystal Myers for the Office of  
12 Planning. The Office of Planning is recommending approval  
13 of this case and stands on the record of the staff report.

14 BZA CHAIR HILL: Does anyone have any questions of  
15 the Office of Planning? Okay. Does the applicant have any  
16 questions for the Office of Planning?

17 MR. WILLIAMS: We do not.

18 BZA CHAIR HILL: Is there anyone here wishing to  
19 speak in support? Oh, please, come forward.

20 MS. WHOLEAN: I would like to --

21 BZA CHAIR HILL: No, no, no, you have to come to  
22 the microphone. That's all right. And did you get sworn in  
23 earlier?

24 MS. WHOLEAN: No.

25 BZA CHAIR HILL: Okay. Let's do that first. Mr.

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1 Moy, if you could swear -- and if there's anybody else here  
2 who would like to testify, if you could please stand and take  
3 the oath administered by the Secretary to my left? Oh, I'm  
4 sorry, you have to stand and then, you have to raise your  
5 right hand and repeat after him.

6 (WITNESSES SWORN)

7 BZA CHAIR HILL: Okay, great. So, if you could  
8 please introduce yourself and give your address?

9 MS. WHOLEAN: Claire Marie Wholean.

10 BZA CHAIR HILL: Wholean?

11 MS. WHOLEAN: Wholean.

12 BZA CHAIR HILL: Okay. And if you also could fill  
13 out two witness cards when you're doing and give it to the  
14 gentleman to the table to my right there.

15 MS. WHOLEAN: Sure.

16 BZA CHAIR HILL: I'm going to put three minutes on  
17 the clock for your testimony and the clocks are located on  
18 either side there. Mr. Moy? And you can begin whenever you  
19 like.

20 MS. WHOLEAN: I would like to express conditional  
21 support of the project. I'm an architect. I support the  
22 zoning, the massing of the project. However, it appears to  
23 be a copycat.

24 BZA CHAIR HILL: Mr. Williams, you guys, can you  
25 guys turn off your microphones? There's feedback. I just --

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1 yes, there's only one at a time. Thank you so much.

2 MS. WHOLEAN: It appears to be almost an exact copy  
3 of the neighbor, the neighboring building. And the  
4 neighborhood as a whole, you see a degree of subtle  
5 architectural distinction from one building to the next. So,  
6 I would support approval, with subtle design changes, so that  
7 it doesn't appear to be an exact copy.

8 BZA CHAIR HILL: Okay. Does anybody have any  
9 questions for the witness? Okay. All right, great. Thank  
10 you very much. Okay. Do you have anything you would like  
11 to add?

12 MR. WILLIAMS: I guess the only thing that I would  
13 add is that these are the plans that we took to the ANC, and  
14 the ANC supported the plans as depicted today, and OP  
15 supports the plans as depicted today. So, I guess, I'd just  
16 -- it makes me a little bit cautious to open that box back  
17 up --

18 BZA CHAIR HILL: I understand.

19 MR. WILLIAMS: -- when we already have support.

20 BZA CHAIR HILL: Okay. All right. Thank you, Mr.  
21 Williams. All right. Does the Board have anything else?  
22 All right, good. I'll close the record. Is the Board ready  
23 to deliberate? Okay. I can -- somebody else want to start?

24 MEMBER WHITE: So, this is an application, a  
25 special exception application, for lot occupancy under G

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1 404.1. And again, you're looking to do a three-story  
2 addition to an existing mixed-use building. And I thought  
3 that the presentation was adequate, in terms of setting forth  
4 the criteria in order to get the special exception.

5 It appears that you've got strong community  
6 support. We did just have testimony asking you to keep an  
7 open mind in terms of some architectural modifications, but  
8 it does -- the fact is that you did get support from ANC 4C,  
9 right?

10 And the Office of Planning has a very  
11 comprehensive report, where they laid out the criteria that  
12 you met for the relief. As well as the fact that the  
13 community seems to be supportive of this.

14 So, I would be in support of the application, Mr.  
15 Chair. I think it will be a positive addition to the  
16 community.

17 BZA CHAIR HILL: Okay. Anyone else?

18 ZC CHAIR HOOD: Mr. Chairman, without repeating  
19 everything that Board Member White just mentioned, I would  
20 concur with her analysis. And I will be voting in support  
21 of this project as well.

22 BZA CHAIR HILL: Okay. So, again, the MU-4 Zone  
23 is intended to, A, permit moderate-density mixed-use  
24 development, B, provide facilities for shopping and business  
25 needs, housing, and mixed uses for large segments of the

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1 District of Columbia outside of the central core, and, C, be  
2 located in low and moderate-density residential areas with  
3 access to main roadways or rapid transit stops and including  
4 office employment centers, shopping centers, and moderate  
5 bulk mixed-use centers, G 400.3.

6 And I would agree that they are meeting the  
7 standard in order for us to grant this. I think that in  
8 terms of the testimony that we took from the public, with --  
9 it would end up having to start again.

10 I mean, you would have to, like -- these are the  
11 plans that are before us, these are the plans that were  
12 approved by the Office of Planning, these are the plans that  
13 were approved by the ANC.

14 I don't know how one goes about changing those  
15 things, but I think that we have, like, the plans there  
16 before us, and I think, besides even that, we're not here for  
17 design, we're just here for the actual, whether you meet the  
18 zoning or not. So, I would be in approval of this.

19 Does the Board have anything else? Okay. I'm  
20 going to make a motion to approve Application Number 19883,  
21 as captioned and read by the Secretary, and ask for a second.

22 MEMBER JOHN: Second.

23 BZA CHAIR HILL: With the motion being made and  
24 seconded, all those in favor say aye.

25 (CHORUS OF AYES)

1 BZA CHAIR HILL: All those opposed? The motion  
2 passes, Mr. Moy.

3 MR. MOY: Staff would record the vote as 4-0-1.  
4 This on the motion of Chairman Hill to approve the  
5 application for the relief requested, seconding the motion,  
6 Ms. John. Also in support of the motion, Ms. White and Mr.  
7 Anthony Hood. And no other Board Members present. Motion  
8 carries.

9 BZA CHAIR HILL: Okay, thank you. Thank you very  
10 much. We're going to take a quick break and then, we're  
11 going to come back for our last case. We're going to take  
12 a ten minute break.

13 (Whereupon, the above-entitled matter went off the  
14 record at 12:49 p.m. and resumed at 1:13 p.m.)

15 BZA CHAIR HILL: All right, Mr. Moy. Whenever you  
16 like.

17 MR. MOY: Thank you Mr. Chairman. The time is  
18 1:13. The Board is reconvening in the public hearing  
19 session.

20 If we can have parties to the table to Case  
21 Application Number 19862 of Heights Holdings LLC. Captioned  
22 and advertised for special exceptions under Subtitle C,  
23 Section 703.2.

24 This is from the minimum parking requirements of  
25 Subtitle C, Section 701.5, and under Subtitle G, Section 409

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1 and 1201 from the rear yard requirements Subtitle G 405.2.  
2 This would construct a new 26 unit apartment house.

3 This is in the MU-4 Zone at 3331 and 3333 11th  
4 Street N.W. and 1032 and 1034 Park Road, N.W. Square, 2841  
5 lots 95, 96, 98 and 99.

6 BZA CHAIR HILL: Okay. Great. If you could  
7 please introduce yourselves for the record, from my right to  
8 left.

9 COMMISSIONER BOESE: Sure. Kent Boese, ANC 1A.

10 MR. RISLEY: Ryan Risley, Heights Holdings.

11 MR. EDWARDS: David Edwards, Heights Holdings.

12 MS. MOLDENHAUER: Good afternoon, Meredith  
13 Moldenhauer, Cozen O'Connor, land use counsel for the  
14 Applicant.

15 MR. PICHON: PGN Architects, Sean Pichon.

16 MR. VARGA: Stephen Varga, land use services  
17 director, Cozen O'Connor for the Applicant.

18 BZA CHAIR HILL: Okay. Ms. Moldenhauer, are you  
19 going to be presenting?

20 MS. MOLDENHAUER: Yes.

21 BZA CHAIR HILL: Okay. And Commissioner Boese,  
22 I guess you're here representing the ANC. Sorry, I tried to  
23 get you out of here as soon as I could. But like, you know.  
24 That's --

25 COMMISSIONER BOESE: This is better than I

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1 expected, so.

2 BZA CHAIR HILL: Oh, there you go. Well, that's  
3 good. That's good. Always trying to do -- but, always  
4 trying to do what we can for the Commissioners. Honestly.

5 So, all right Ms. Moldenhauer, you can go ahead  
6 and go through -- walk us through your presentation. Sure.

7 MS. MOLDENHAUER: Sorry, we have a lot of  
8 witnesses that were getting here late. And we appreciate the  
9 Board's accommodation of time. And they should be sworn in.

10 BZA CHAIR HILL: Okay. Sure. Okay, Mr. Moy if  
11 you can swear in the witnesses.

12 MR. MOY: Do you solemnly swear or affirm that the  
13 testimony you are about to present in this proceeding is the  
14 truth, whole truth, and nothing but the truth?

15 (WITNESSES SWORN)

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

17 BZA CHAIR HILL: Okay. So, let's see, so there  
18 are obviously the different requests that you're asking from  
19 us.

20 And I guess Ms. Moldenhauer if you could just kind  
21 of like walk us through the project, including, you know, as  
22 normal how you're meeting the standards in order for us to  
23 grant the Application.

24 The ANC is obviously here. And so you can also  
25 speak to some of those issues in terms of the ANC.

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1           The ANC as a party, a standing party will have the  
2 opportunity to give a presentation of the same length as the  
3 Applicant, as well as provide questions -- or I'm sorry, ask  
4 questions of the Applicant after the presentation. So, just  
5 to kind of mention that to you Commissioner Boese.

6           And Ms. Moldenhauer, you can start whenever you  
7 like.

8           MS. MOLDENHAUER: Absolutely. So, this is our  
9 list of witnesses. We'll try to go through this very  
10 quickly, but answer any questions the Board might have.

11           At Exhibit 51 we have the resume for Mr. Sean  
12 Pichon. As we indicated, there was a change in architects.  
13 And so I'll just point that out.

14           I will turn it over to David Edwards and quickly  
15 walk through where the project is. And then we'll turn it  
16 over to Mr. Pichon to walk through the architecture of the  
17 project.

18           BZA CHAIR HILL: Okay. Just for a -- I thought  
19 Mr. Pichon was already in our book and had been -- okay, all  
20 right. So you --

21           MS. MOLDENHAUER: We just didn't have him in the  
22 record because there was a change.

23           BZA CHAIR HILL: Okay. We'll just ask him to be  
24 an expert witness. But, I mean, you are in our book anyway.  
25 So, I understand the change though.

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1 But thank you. Okay.

2 MR. EDWARDS: Okay. So, our project is located  
3 at approximately the corner of Park Road and 11th Street.  
4 There was one property, RedRocks Pizzeria on the corner. And  
5 we are abutting two sides of that business.

6 There is a pipe stem that goes back to the rear  
7 that you see heading south to the alleyway. Which will be  
8 used for egress of bikes, from internal of the building, as  
9 well as trash servicing and pickup.

10 We are constructing a four-story building and  
11 cellar.

12 BZA CHAIR HILL: Just real quick, can you go back  
13 to that drawing again?

14 MR. EDWARDS: Yes, sir.

15 BZA CHAIR HILL: I'm sorry. So the pipe stem,  
16 you're saying that's again, your property.

17 MR. EDWARDS: Correct.

18 BZA CHAIR HILL: It will take you all the way back  
19 to that alley. Which is how you plan on servicing the  
20 building as well as you're saying the bicycles?

21 MR. EDWARDS: Sure.

22 BZA CHAIR HILL: Okay.

23 MR. EDWARDS: Yes, sir.

24 BZA CHAIR HILL: Please, I'm sorry. Go ahead.

25 MR. EDWARDS: Okay. So, this is going to be a new

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1 construction, four-story build with a cellar. Comprising of  
2 26 units in total, with a mix of one, two, and three  
3 bedrooms. More one bedrooms than the rest, just because of  
4 the uniqueness of the lot and the building layout.

5           The main entry will be from 11th Street. Which  
6 is the main business corridor running north to south. We are  
7 -- we reached out to the community through the ANC. They  
8 provided feedback.

9           One of their -- after the initial meeting, one of  
10 their feedback was architectural design on the exterior.  
11 They were concerned it was a little too modern.

12           So we changed that to show more brick, a mural.  
13 They seemed to be more responsive to that design than the  
14 original. We gave that to the -- presented that to them on  
15 the second meeting.

16           The other issue that the ANC brought up was  
17 parking. So we talked about giving, obviously, you know,  
18 there was only so much we can do. We're landlocked on the  
19 property.

20           But, you know, we have internal bike storage and,  
21 you know, offered up measures to the tenants -- or I'm sorry,  
22 to the new condo owners to use public transit. There's buses  
23 right out front. The Metro is very close.

24           We do have neighboring support. We have 14  
25 letters of neighboring support. The owner of the actual

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1 business of RedRocks has given his weight behind the project.

2 I have reached out to neighboring, abutting  
3 property owners on Park Road. One of them is an absentee  
4 landlord who has tenants in it. And the property is  
5 currently for sale.

6 So, you know, there are tenants just renting rooms  
7 in the house on 1030 Park Road. So, there's not really much  
8 communication with that owner.

9 The other abutting owner on 11th Street is also  
10 out of state. He lives in California. And he rents room by  
11 room for his property. Next.

12 MS. MOLDENHAUER: So now I'll turn it over to Mr.  
13 Pichon to walk through the project.

14 MR. PICHON: Okay. Good evening. Thank you  
15 Commissioners. My name is Sean Pichon with PGN Architects.  
16 Just walk you through, very quickly through the overall  
17 design.

18 As David mentioned, we did reach out to the  
19 community. And there was feedback which helped guide some  
20 of the design decisions and materiality of the building.

21 What you see here in this rendering represents the  
22 plan that has been presented to the community in several  
23 meetings.

24 And the feedback based on the initial meeting to  
25 now is that the materiality of the building is in keeping

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1 with the district that we're building within.

2           We reduced some of the sizes of windows and  
3 matched with the existing character of the neighborhood in  
4 terms of the brick, as opposed to some of the more modern  
5 materials that we were using previously.

6           From a site plan perspective, as David mentioned,  
7 the access, the property fronts both 11th Street and Park  
8 Road. And it wraps around encompassing the corner lot, which  
9 is RedRocks.

10           We do have the pipe stem, which is approximately  
11 it's just under four feet in width that extends back to the  
12 alleyway. That is going to be our access for trash removal  
13 and for bikes to get in and out of the building from the  
14 rear. The bikes will also have the access from the front.

15           We will have -- if you want to go down to the  
16 cellar level, the trash room will be enclosed inside the  
17 building, air conditioned. Trash will be kept in that  
18 facility until the trash company comes to remove it.

19           We also have access to the bike rooms that are --  
20 the bike room that is located directly next to the trash.  
21 That's accessed internally through the elevator shaft once  
22 you're in the building, to get down to that level.

23           One of the areas of relief that we're asking for  
24 is the rear yard. Since our property is -- we're calling the  
25 11th Street entry as the front of the building, our measuring

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1 point is there.

2           And the rear yard would normally be along the back  
3 of that property. So you can see the line across the  
4 property that indicates where the 15-foot rear yard setback  
5 would be.

6           What that would do is cause -- create a gap along  
7 Park Road and the street facade. Which, from an urban design  
8 standpoint, we don't think is in keeping with what the Office  
9 of Planning would be looking for in terms of filling this  
10 spot.

11           So, what we've proposed is a -- to keep the -- go  
12 to a zero lot line along Park Road. And keeping with the dog  
13 legs that are existing along the Park Road with the existing  
14 housing, we're matching those same dog legs.

15           So as you go back approximately 40 feet along the  
16 Park Road frontage back to the rear, we create a 10-foot  
17 setback at that point. That continues all the way back to  
18 the other lot line.

19           Thus, creating a -- in keeping with the dog legs  
20 of the other properties, we are creating the light and air  
21 similar to what the other properties adjacent to us are  
22 creating.

23           And as you go up the building, that 10 foot  
24 setback holds, we're populating each floor with units around  
25 the central corridor. If you want to go up it.

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1           And then at the very top of the building, we are  
2 four stories plus a penthouse. So here we're showing a plan  
3 representing our penthouse.

4           And keeping with all the required setbacks, we are  
5 setting back along Park Road and along 11th Street and along  
6 the rear of the property.

7           MS. MOLDENHAUER: Thank you very much. We'll now  
8 turn to Mr. Varga.

9           MR. VARGA: Good afternoon Board Members. Again,  
10 Stephen Varga at Cozen O'Connor. In preparation of my  
11 testimony, I have reviewed the application, performed zoning  
12 and planning research, and conducted site visits of the  
13 property and surrounding neighborhood.

14           As previously stated, OP and DDOT are supportive.  
15 However, the ANC stated some concerns in their report about  
16 the massing of the project and increased demand for on-street  
17 parking in the community. Which do not necessarily directly  
18 relate to the relief requested.

19           Therefore, in evaluating the appropriateness of  
20 the rear yard and parking relief requested, I will be framing  
21 my testimony around how the project satisfies the stated  
22 purposes and objectives in the MU-4 zone plan, as this is the  
23 first criterion of consideration the Board is asked to  
24 consider when granting special exception relief.

25           I believe you will find the Applicant has worked

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1 hard to satisfy these purposes and objectives, while  
2 minimizing impacts to neighbors.

3 First, granting the requested special exception  
4 would be harmonious with the purpose and intent of the zone,  
5 which permits moderate density, mixed use development. And  
6 provides facilities for shopping and business needs, housing,  
7 and mixed uses outside of the central core.

8 The project is compatible with the neighborhood  
9 based on zoning history. It is compatible with the pattern  
10 of existing development. And it is compatible with the plan  
11 designations for the area in the future.

12 In researching the zoning history of the site, I  
13 confirmed this area has historically been commercially zoned  
14 to facilitate a mix of uses since as early as 1936.

15 In 1958 the majority of 11th Street N.W.,  
16 including the property, from Irving Street, N.W. to the south  
17 up to Monroe Street to the north, was zoned C-2, today's MU-  
18 4. And matches the boundary of an MU-4 designation today.

19 So, for at least 80 years, the character of the  
20 area has been defined by the commercial and mixed use  
21 designation which supports a mix of uses, including apartment  
22 buildings. At the degree of bulk in keeping with that  
23 proposed here.

24 In conducting a site visit, today 11th Street N.W.  
25 currently is made up of a mix of both residential and

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1 commercial uses in buildings of moderate height and bulk as  
2 that proposed in the project. In this way the project is  
3 compatible with the existing pattern of development.

4 In reviewing the comp plan, the project is  
5 decidedly not inconsistent with its recommendations for  
6 future development. First, the generalized policy map  
7 designation is that of a main street, mixed use corridor.

8 Also, the FLUM designation is from mixed use low  
9 density commercial and moderate density residential, which  
10 corresponds to the former C-2-A Zone, now MU-4. And  
11 satisfies multiple recommendations from the framework, land  
12 use and housing citywide elements, as well as the mid-city  
13 area element.

14 The project is also supported by the Draft  
15 Sustainable D.C. 2.0 Plan. Which states that increasing the  
16 number of residents leaving near public transportation can  
17 reduce congestion, and create quality neighborhoods.

18 In response to ANC comments, the project is  
19 consistent with the matter of bulk, mixed use history of the  
20 area through its elegant brick design, complete with  
21 historically themed mural.

22 The request for rear yard relief also allows a  
23 building design that provides a complete street wall. The  
24 revised brick design honors the legacy of the past,  
25 complements the existing character, and the project satisfies

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1 future planning goals.

2 Now let's turn to the parking relief. The central  
3 test here is, is this an area that provides alternate modes  
4 of transportation to a degree that warrants the special  
5 exception parking request for four parking spaces?

6 The answer to that question is an unequivocal yes.  
7 We know that 36 percent of District households already don't  
8 own cars. And the need for individual cars is declining,  
9 particularly among new residents, of whom 88 percent are car-  
10 free.

11 The Draft Sustainable D.C. 2.0 Plan, Policy BE-2.4  
12 calls for the location of high density housing close to  
13 commercial zones, and high capacity transit. Neighborhoods  
14 like Columbia Heights. And that's where new residents are  
15 choosing to live.

16 So what makes this area in particular attractive  
17 to car-free residents? First, the property is located less  
18 than a half a mile from not one, but two Metro stations.

19 It's located in an area that provides easy access  
20 to main roadways as directed. The property features stops  
21 for two bus lines just steps away.

22 The project provides both short term and long term  
23 bike storage options. The property is approximate to four  
24 Capital Bikeshare stations, including one out front.

25 Five car share spaces are located along the rear

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1 alley. And walkscore.com indicates the area is a walker's  
2 paradise with excellent transit and is very bikeable. The  
3 highest ratings possible for each category.

4           Additionally the project proposes a robust TDM  
5 plan. Further, to be noted that DDOT recently announced it  
6 would allow the expansion of dockless bikes and scooters in  
7 the District.

8           Next year operators can maintain up to six hundred  
9 dockless vehicles and expand their fleet by 25 percent every  
10 three months. Undoubtedly many of these new bikes and  
11 scooters will be available for use in Columbia Heights.

12           So all this is to say that the neighborhood  
13 provides a rich selection of alternate modes of  
14 transportation for new residents who are increasingly  
15 choosing the sensible option to forego car ownership.  
16 Thereby negligibly impacting on-street parking.

17           Thank you very much for your time.

18           MS. MOLDENHAUER: Thank you very much. And so I  
19 will simply summarize. We have -- OP will be presenting what  
20 their support is in the record.

21           DDOT has indicated support. We've identified our  
22 TDM plan, which is in the record at Exhibit 48. And there  
23 is no objection by DDOT.

24           And we would be working with them to resolve some  
25 of the public space issues that they addressed during the

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1 public space process.

2           We are asking for two areas of special exception  
3 relief, rear yard relief, as well as parking relief. We  
4 believe that the project is harmonious with the zone plan,  
5 both in regards to our maintaining a solid wall along Park  
6 Road in regards to our rear yard relief.

7           And the fact that the parking relief, the special  
8 exception, we believe that it is in close proximity to a  
9 robust transit network, as well as any mitigation from our  
10 Transportation Demand Management Program.

11           There will be no adverse impact to the neighboring  
12 properties as the height and massing of the property is  
13 consistent with the zone. We are not asking for any relief  
14 in regards to height, FAR or massing or on occupancy.

15           And that the project is encouraged -- encourages  
16 patrons to obviously utilize non-automotive options. I won't  
17 go through all the specific special exception standards.

18           But we believe that we satisfy all of the  
19 subcategories and specific conditions for the rear yard  
20 requirement, and would be available for questions. As well  
21 as we believe that we satisfy the specific subcategories for  
22 the parking requirements as well.

23           Here is our Transportation Demand Management Plan,  
24 which is part of the record, including our providing a  
25 welcome package to future homeowners. Providing a prepaid

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1 Capital Bikeshare membership, or a Capital Car -- Metro  
2 membership, offering those individuals a choice between those  
3 two. As well as providing a display screen in the lobby and  
4 a robust bicycle parking program.

5 We have asked for flexibility on the application.  
6 And we'd be available to answer any questions.

7 BZA CHAIR HILL: Okay. If we do get to it, I  
8 think there's a few things that I'd like to walk through in  
9 terms of your conditions.

10 Like there's the ones that you -- yours are in --  
11 your TDM Plan is Exhibit 46A. Is that right? And then DDOT,  
12 I mean, they don't necessarily match one for one like  
13 everything that DDOT is asking for.

14 So, and also kind of OP. So, if we get to it,  
15 we'll kind of walk through some of those. Or at least what  
16 appears to be at least some discrepancies in the language.

17 Does the Board have any questions of the  
18 Applicant?

19 MEMBER WHITE: Just a couple of questions. Go  
20 back to the slide where you're showing a map of where the  
21 project is.

22 I think I know the area pretty well. I think  
23 there's a pizza place there. And a dog park across the  
24 street. If that's the area I'm thinking about. So --

25 MS. MOLDENHAUER: Yes. Exactly. So this is the

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1 pizza place. Which is RedRock. They are in support at  
2 Exhibit 52, I believe it is. Let me make sure I say that  
3 correct.

4 MEMBER WHITE: Okay. No, I saw RedRocks.

5 MS. MOLDENHAUER: And the dog park across the  
6 street.

7 MEMBER WHITE: Yeah. And so the single family  
8 homes, I mean, obviously a business owner is going to be  
9 supportive, because that's more customers. But there could  
10 be some other issues that could cause them some concerns as  
11 well.

12 But, I'm kind of interested in what the residents  
13 that live in the single family homes, what kind of feedback  
14 you're -- you've gotten from them in terms of being  
15 supportive. Because I know parking is tight over there.

16 And I don't know if most people -- I don't think  
17 most people have garages. So, I just wanted one, what  
18 feedback you've gotten from those types of homeowners that  
19 actually have to look for parking when they come home?

20 And the other question was -- you can just answer  
21 that one first. I had another question.

22 MS. MOLDENHAUER: Sure. I'll turn to Mr. Edwards  
23 end of it. There also is a large amount of alley networks,  
24 as you can even see in this image here. Where a lot of the  
25 property owners do have rear access. There are not as many

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1 as you indicated, specific garages.

2 But there are a lot, I know there's an alley along  
3 this property. And then there's also another alley that  
4 connects up north.

5 But, we also did reach out to some of the  
6 neighbors. And I'll let Mr. Edwards respond to that.

7 MEMBER WHITE: Okay. But the other question was,  
8 physically, you're physically unable to incorporate parking  
9 as part of that development.

10 I don't know if that was addressed.

11 MS. MOLDENHAUER: It's a four -- the sliver that  
12 we've been referring to, it's four feet. So, you can't  
13 physically drive a car four feet without then obviously  
14 driving onto somebody else's property.

15 So and we have communicated with DDOT and inquired  
16 about obtain curb cuts. And we had a conversation with them.  
17 The corner here on Park is too close based on the DDOT  
18 guideline manual to provide a curb cut, in order to comply  
19 with their limitations on having curb cuts near  
20 intersections.

21 And then on 11th Street, there are multiple street  
22 trees. And the ability to obviously provide a curb cut one,  
23 away from the intersection, and then without impacting the  
24 street trees, we would end up having, I believe, it was an  
25 eight foot -- was it eight foot or less?

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1           It was like about six foot or four foot wide width  
2 that would then be permitted. Which would obviously again,  
3 not comply with either the zoning requirements for drive  
4 aisles, or DDOT requirements for drive aisles.

5           So there are physical limitations with the site  
6 that do not allow parking. But then in addition to that,  
7 we've obviously identified the aspects of transit.

8           And I'll let Mr. Edwards talk about his  
9 communications with individual homeowners in the  
10 neighborhood.

11           MR. EDWARDS: Hi, thank you for your question.  
12 One of the homeowners that's in the Exhibit of support lives  
13 on the street. He's on Park Road, about eight houses down.

14           He was supportive of the project. He only has one  
15 parking -- or he has two parking spots in the back of his  
16 house, only uses one, because he only has one car and the  
17 rest metro, so.

18           ZC CHAIR HOOD: Mr. Varga, I have a few questions  
19 from your comment. And let me preference this by, I think  
20 you're a great guy.

21           Okay? So I don't want you to think I'm being  
22 harsh. I appreciate your comments. But that's not what's  
23 going on over there.

24           And I understand, it sounded good, Metro is only  
25 so far away. It's enriched transportation and bus line. But

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1 what's really going over there -- on over there?

2           Parking is an issue. And I think the ANC 1A  
3 raises that. So, I think I read it somewhere in this case,  
4 and if I didn't, forgive me.

5           When you get ready to have people to come stay  
6 there, I think this is at least -- I think what they're  
7 asking for, and I'll let them speak for themselves, there are  
8 other outside of the thinking that you can do, outside of the  
9 box, to try to deal with this parking issue.

10           Because what -- it sounds good. We're only asking  
11 for a few parking spaces. We're not paying to provide them  
12 because of the lot. I understand that.

13           But if we keep -- if from my perspective, if I  
14 keep approving stuff over and over and over again the same  
15 way, then all I'm doing is compounding and adding to the  
16 problem.

17           So, is that a fair assessment? My whole analogy?  
18 I know your client is sitting there. But is that a fair  
19 assessment?

20           MR. VARGA: So my understanding is that there are  
21 some on-street parking challenges that were elucidated by the  
22 ANC for sure.

23           I think just to clarify, in the testimony that I  
24 presented, and the way that I framed my testimony, was that  
25 the on-street parking challenges, which do exist in the

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1 community, that those don't directly relate to the relief  
2 requested in the sense that there are different requirements  
3 that need to be met in the parking section.

4 And that if those are satisfied, then the parking  
5 relief maybe granted. And so I just wanted to clarify that  
6 those are two different things.

7 I know that there is some relation there. But,  
8 I just want to clarify that.

9 ZC CHAIR HOOD: Okay. So, the on-street parking,  
10 I think it's one side is residential parking only. The other  
11 side is whatever the other side is.

12 Is that correct? If you've -- since you've done  
13 analysis? Resident -- Ward One residential parking only?

14 MR. VARGA: I did not do an analysis of the on-  
15 street RPP layout of the intersection. But I know that we  
16 do have that information.

17 ZC CHAIR HOOD: And so that wasn't included in  
18 your assessment of what was going on. To help actually prove  
19 your case?

20 MR. VARGA: Not in the land use testimony that I  
21 presented, no.

22 ZC CHAIR HOOD: Why wasn't it? Is it not germane?  
23 Do you feel that it's not germane? I mean, I'm just curious.  
24 Why wasn't it?

25 MR. VARGA: We provided a TDM plan that addresses

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1 the on-street parking requirements. Or I'm sorry, the on-  
2 street challenges that may result as a result of the project  
3 being approved.

4 ZC CHAIR HOOD: And that component was left out  
5 of the analysis?

6 MR. VARGA: Of the land use analysis, because we  
7 provided the TDM plan in addition to the land use analysis.

8 ZC CHAIR HOOD: Okay. All right, okay. Let me --  
9 let's keep going Mr. Chairman. I'm sorry. Thank you.

10 BZA CHAIR HILL: That's all right. Sure. Okay,  
11 Chairman Boese, as you -- Boese, correct? As you know, you  
12 now have an opportunity to ask questions.

13 And I think that if you have any questions, please  
14 go ahead and ask the Applicant before your presentation.

15 COMMISSIONER BOESE: Sure. I'm not sure I have  
16 much of a presentation. I just thought it would be helpful  
17 for me to be here, because I think this is very impactful in  
18 the community.

19 I will -- I don't know if this is in response, but  
20 there are some things that I would like to put out there.  
21 I think Commissioner Hood, or Board Member Hood is --

22 BZA CHAIR HILL: Chairman Boese, I just want to  
23 interrupt you just so I get it in the right portion of the  
24 hearing.

25 COMMISSIONER BOESE: Yeah.

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1 BZA CHAIR HILL: So, do you have any questions of  
2 the -- because I want you to -- I mean, you'll have as much  
3 time as you want --

4 COMMISSIONER BOESE: Sure.

5 BZA CHAIR HILL: To give your presentation where  
6 you can list everything in terms of it. Because we want to  
7 hear from you. You've been here this long. And you're  
8 actually one of the more reasonable Commissioners that I've  
9 ever come across.

10 So, --

11 COMMISSIONER BOESE: What did I do right?

12 BZA CHAIR HILL: I don't know.

13 COMMISSIONER BOESE: Is this Christmas?

14 BZA CHAIR HILL: I don't know to be quite honest.  
15 I've got to let you know, I think it was the last time you  
16 were here, your head didn't spin.

17 COMMISSIONER BOESE: Okay.

18 BZA CHAIR HILL: But, --

19 COMMISSIONER BOESE: I'll tell you what, I'll  
20 wait.

21 BZA CHAIR HILL: Okay.

22 COMMISSIONER BOESE: I'll wait and address my  
23 points later.

24 BZA CHAIR HILL: Okay. No, that's all right. But  
25 now I'm just asking you if you have any direct questions to

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1 their testimony? And or, then you can go into your  
2 presentation.

3 COMMISSIONER BOESE: What I will say is based on  
4 the comments that have been made just for the configuration  
5 of on-street parking, Mr. Hood is exactly right.

6 That one side in Ward One is reserved for Ward One  
7 residents only. And the other side is open to all people  
8 coming into the neighborhood within that two-hour window.

9 Where the intersection of Park Road and 11th  
10 Street -- 11th Street south of Park Road is in the RPP.  
11 North of Park Road between Park and Monroe, I believe is  
12 metered.

13 BZA CHAIR HILL: Okay.

14 COMMISSIONER BOESE: But that's how it's  
15 configured.

16 BZA CHAIR HILL: Okay. Okay. All right. Okay  
17 then, Chairman, you can go ahead and begin whenever you like.  
18 I mean, I didn't really have much of a clock.

19 I don't know how much time you want. I'll put 15  
20 minutes on there. But, so you can go ahead and begin  
21 whenever you like.

22 COMMISSIONER BOESE: Sure. So, I think that  
23 focusing on parking is the primary issue here. We did have,  
24 and I will give a lot of credit to the team here, that came  
25 out to a special meeting that was very well attended, I

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1 believe in, I want to say October.

2           They came to the November ANC meeting and  
3 presented. They came -- well actually they came to the  
4 October ANC meeting and presented.

5           They came back to the November ANC meeting and  
6 presented where we voted six to one against this project.  
7 And after having had a chance to talk to all the  
8 Commissioners and the comments that were made, I believe the  
9 core issue is the parking.

10           I know three of the Commissioners that voted  
11 against, were very close to supporting this. But they have  
12 concerns with the parking.

13           We know that one Commissioner in particular  
14 brought up at the ANC meeting that if only they could be  
15 exempt from RPP. Which we know is unenforceable.

16           We know over time that that's been a bit of a bill  
17 of goods that's been sold in some buildings. But, you know,  
18 if you go to DMV they will just give you the pass anyway.

19           So, and I know Commissioner Wade, who was  
20 staunchly opposed to this project is across the board saying  
21 that, you know, she's going to vote against any project that  
22 comes asking for relief from parking, just because of the  
23 snowball effect in the community.

24           I also think something that has not been  
25 addressed, and I really do want to emphasize that OP and DDOT

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1 really need to take parking more seriously then I feel they  
2 do. Especially DDOT.

3 Unlike you fine people here, DDOT does not wait  
4 for official ANC-wide vote before they implement things.  
5 They think that comment from a Commissioner is just fine.  
6 There is no great weight there.

7 And at this intersection, within the time from  
8 when we received the notice of the BZA case, DDOT felt the  
9 need based on the recommendations of a Commissioner, to  
10 remove three on-street parking spaces to put in a Bikeshare  
11 station at that intersection.

12 Which means, we're not just being asked to say  
13 four spaces exemption is okay. We're also taking three more  
14 off line.

15 And when you realize that there's a curb cut there  
16 that isn't monitored, we know people will illegally park  
17 there at night. So that's eight spaces off line.

18 That is hard. You know, we're not even a full  
19 block away from the Park Road Community Church. We know that  
20 people drive to church on Sundays.

21 We have a number of seniors that live on the block  
22 that now they're very motivated that in order to protect  
23 their ability to park on the street, they're going to go to  
24 the doctor and see if they can get the correct documentation  
25 for handicap accessible parking spaces.

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1           You know, when you can park within a space or two,  
2 you can jiggle it around. When now you're faced with the  
3 possibility that you may have to park a block away, and you  
4 don't have mobility, that's an issue.

5           I totally see where maybe within 10 years, 15  
6 years, 20 years, we may not have the reliance on cars we have  
7 now. But, we're not there yet.

8           What we have is DDOT trying to build out bike  
9 infrastructure. And along the way, removing on-street  
10 parking to do it that's in direction conflict with  
11 development also trying to be exempted from off-street  
12 parking requirements.

13           Because people can just park on the street. But  
14 don't worry about that. They're not going to bring their  
15 cars. They do bring cars. Maybe not one for one, but they  
16 do bring cars.

17           So, you know, looking at the TDM, I think it is  
18 more robust than it was at the beginning of the process.  
19 Again, not something we discussed at the ANC meeting.

20           But in looking at it, I think an improvement would  
21 be just making it more from a one year requirement to a five-  
22 year requirement. Or a three-year requirement.

23           Make it long enough to actually instill behavior  
24 in somebody. Versus just long enough that it's a cute little  
25 move in perk. And then I can go back to doing what I want

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1 to do.

2           You know, again the neighbors, we're not happy  
3 with the original design, which was quite modern. As  
4 everyone knows, I think I was the only one that liked it.

5           But, you know, the development team was  
6 responsive. They listened to the comments. They were able  
7 to address many of the concerns.

8           Parking is the one that just is not able to be  
9 solved. And you know, we're talking about the assemblage of  
10 four separate parcels.

11           It would have been nice if someone had thought  
12 when they were purchasing those properties and bringing them  
13 together, well how am I going to address parking?

14           Rather than going through this process and having  
15 to say well, sorry the other properties weren't available.  
16 Sorry that they're not able -- I mean, we've created a  
17 practical -- I mean, who has created the practical  
18 difficulty?

19           I mean, four separate parcels that each had a  
20 single family living in them being assembled to create 26  
21 living units. I don't think relief from parking is something  
22 that should be dismissed.

23           You know, again, I like the -- I'll say it, I like  
24 the development. But if we could find a solution to the  
25 parking, or stronger TDM measures, or something.

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1 I know some of those no votes would have been much  
2 closer to a yes and possibly a yes. But, that's where we  
3 were.

4 BZA CHAIR HILL: Okay, great. Thank you Chairman.  
5 Anybody have any questions?

6 ZC CHAIR HOOD: Mr. Chairman --

7 BZA CHAIR HILL: Yes?

8 ZC CHAIR HOOD: Let me ask Chairman Boese  
9 something.

10 BZA CHAIR HILL: We've got three Chairmans today.

11 ZC CHAIR HOOD: Well, I'm not here in that  
12 capacity today. I've got enough other --

13 Let me ask Chairman Boese the -- one of the  
14 things, and I don't know if I read it in this record, I read  
15 so many records I'm trying to remember.

16 Was it ever discussed about making -- I know we've  
17 tried this. And I've asked and asked for a track record on  
18 how this actually works in the city.

19 On leases, where we put it on a lease or you put  
20 on a lease that you can't own a car. Was that a discussion  
21 that you may have had?

22 Since according to Mr. Varga's testimony, nobody  
23 has cars in the newer generation. Which I know. They don't  
24 have cars now anyway.

25 But like you said, cars are still there. And I

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1 can tell you, as someone who travels that area frequently,  
2 there's never nowhere to park.

3 Especially when you're sweeping the streets.  
4 Especially when there's residential, which I have no problems  
5 with Ward One residents only.

6 But has that been discussed about the lease?

7 COMMISSIONER BOESE: To the best of my  
8 recollection, I'm going to say no. I know we briefly brought  
9 up at the ANC meeting, exempting the building from parking  
10 from RPP.

11 So I don't know if it came up in that context.  
12 There was some push back understandably. This Board has not  
13 supported that recently, or it's been lukewarm to it at best.

14 We've learned that it doesn't happen.

15 ZC CHAIR HOOD: So you would --

16 COMMISSIONER BOESE: My question would still be,  
17 like the enforcement mechanism.

18 ZC CHAIR HOOD: Right.

19 COMMISSIONER BOESE: I still have a hard time  
20 believing that if someone was in a lease, and all of a sudden  
21 purchased a car, I have a hard time believing that they'd put  
22 them out.

23 ZC CHAIR HOOD: So we're talking two different  
24 things. The RPP is one thing. The reason that whole other  
25 lease came up, is because we didn't think the RPP was --

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1 there was enough evidence to show us that that actually  
2 didn't work.

3 So that's why I'm not even -- I'm not even going  
4 to the RPP.

5 COMMISSIONER BOESE: Um-hum.

6 ZC CHAIR HOOD: But where I'm going is to the  
7 leases. And I think in some areas that works. The jury's  
8 still out on that.

9 And I'm wondering if that was a discussion.  
10 Because it doesn't seem like from your comments that you're  
11 that far off.

12 You just want to make sure that even if we have  
13 to think outside the box, that there is some type of parking,  
14 then there's some kind of way to relieve the nei -- or  
15 increase the TDM measures.

16 But, I'm just wondering, and I'm trying to find  
17 a way. Because it doesn't seem, again, to me it doesn't seem  
18 that you all are that far away.

19 COMMISSIONER BOESE: Yeah.

20 ZC CHAIR HOOD: Even with the Commission -- the  
21 other ANC Commissioners as well.

22 COMMISSIONER BOESE: I would say I like the idea.  
23 I like where you're going. I would also put it back in your  
24 court too.

25 That maybe there's a way to not do all or nothing

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1 since the building's designed to be 26 units with 20 of them  
2 single bedroom. Maybe the requirement, if that's the  
3 direction people are willing to go, maybe it could just be  
4 the single bedroom.

5 Understanding that a larger unit may have a  
6 family. May have a need to take a small child to the doctor  
7 once in a while.

8 You know, I've seen -- I've been in my  
9 neighborhood long enough where I've seen young couples move  
10 in, no car. The minute they have a child or two children,  
11 they seem to need a car on a regular basis for doctor's  
12 appointments, what have you.

13 And then as they get older in life, maybe they get  
14 rid of the car, because they're empty nesters. You know,  
15 it's -- I don't think that we can peg people as car or no  
16 car.

17 I think a lot depends on what's going on at that  
18 particular stage of their life. And what their demands are.

19 I think a lot of people move in and out of it over  
20 time.

21 ZC CHAIR HOOD: Okay. All right. Let's just keep  
22 that in the parking lot so to speak. Okay. Thank you Mr.  
23 Chair.

24 BZA CHAIR HILL: That's awful. All right. So,  
25 let's see, okay, I've got some questions.

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1           So I mean, Chairman Boese, you know like they only  
2 have to provide four spots. Like they're trying to get rid  
3 of four spot -- I mean, that's what the requirement was.

4           I understand the snowballing. And I'm just -- so  
5 what I sometime struggle with myself, and Commissioner, I  
6 mean, Chairman Hood has his own opinion of it all.

7           You know, I know there is a snowball effect. I  
8 understand. And we've been here also where there is, we've  
9 tried the RPP thing.

10          And I still can't figure out why DDOT just can't  
11 have the building, you know, and it just pops up when the  
12 address pops up. And they can't get their permit.

13          But, yeah, I don't -- so I don't know where that  
14 was. But so, if there was some way, I understand -- I just  
15 wanted to clarify, the ANC is aware that we're talking about  
16 four spots, right?

17          The ANC is aware that they are landlocked, right?  
18 And that they are unable to get a curb cut.

19          So, what would have happened then, I guess, if  
20 nothing were to happen, and you, I guess, would have four  
21 single family homes as opposed to whatever it is. And then  
22 four single family homes that would need cars. Right?

23          So that's kind of -- I mean, that's kind of the  
24 discussion that was had probably at your ANC. Correct?

25          COMMISSIONER BOESE: That's a good question. It

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1 was -- there was a lot of time at the meeting spent on this  
2 one issue.

3           So, my recollection of everything that was  
4 discussed may not be as fresh as it could be. Just in  
5 honesty.

6           But, we know that -- yes, we know that there is  
7 a difficulty that we do know that the curb cut, DDOT's  
8 opposed to it. So, that's not going to happen.

9           We do know that there's no alley access. But we  
10 also know that the parking requirement for a parcel of this  
11 size, as we understood it, the requirement would be much  
12 higher if it weren't considered such a transit rich area.

13           I mean, so there's already a reduction because of  
14 the access, the transportation. And yet that reduction  
15 didn't go to zero.

16           There's still a requirement for something. And  
17 yet mainly --

18           BZA CHAIR HILL: No, that's okay. I got you.

19           COMMISSIONER BOESE: Do you see what I'm saying?

20           BZA CHAIR HILL: Yeah. I mean, --

21           COMMISSIONER BOESE: I mean, there's already  
22 consideration for the Metro, and the Bikeshare, and the --

23           BZA CHAIR HILL: All I was just trying -- all I  
24 was just trying to get at, I mean, I understand how sometimes  
25 those meetings go.

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1           Wherein like, you know, you're mad about -- you  
2 just brought up the three being taken away for the Bikeshare.

3           COMMISSIONER BOESE: Yeah.

4           BZA CHAIR HILL: So you're -- and you're just mad  
5 at DDOT in general, because DDOT just isn't listening to you.

6           So, I just wanted to understand a little bit. But  
7 then, yeah, there was this -- I think in this letter, there  
8 was some kind of discussion about IZ.

9           And kind of like how deep the IZ can be and all  
10 stuff. And just from my experience thus far, it's like if  
11 they were meeting the IZ requirement, then that usually is  
12 something that we don't tend to get involved in.

13          COMMISSIONER BOESE: Yeah.

14          BZA CHAIR HILL: But I'm just kind of speaking to  
15 that one issue that you -- that I saw in you all's report.

16          To the Applicant, so the other thing, if that  
17 RedRocks Pizza thing is the -- the one right there that --  
18 you guys couldn't get that to put together your parcel?

19          I'm just curious. That didn't happen? You tried  
20 and that didn't happen. So, that's --

21          MS. MOLDENHAUER: But even if it did happen, that  
22 parcel's landlocked. And it would still --

23          BZA CHAIR HILL: I was just asking for a yes or  
24 no. I was just kind of curious.

25          So it was more just a curiosity. You can thank --

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1 thank you attorney very much for defending your clients. A  
2 simple answer of yes or no.

3 MR. EDWARDS: We were not able to acquire that  
4 property.

5 BZA CHAIR HILL: Okay. Thank you so much. Okay,  
6 let's see. Okay, any more questions for the Chairman? And  
7 I am going to let the Applicant have an opportunity also.

8 No? Okay. Does the Applicant have any questions  
9 of the testimony that was given by the Commissioner?

10 MS. MOLDENHAUER: We were talking about parking.  
11 Can I just confirm, we're looking at this image, is it true  
12 there are, what, five or six Zipcar spaces located right  
13 here?

14 I think they're on the record.

15 COMMISSIONER BOESE: Sure. But --

16 BZA CHAIR HILL: Okay, actually he didn't bring  
17 up Zipcars in his testimony.

18 MS. MOLDENHAUER: He was talking about the  
19 parking.

20 BZA CHAIR HILL: He brought up parking. But so  
21 you're bringing up Zipcars in your questions.

22 MS. MOLDENHAUER: It's a rebuttal question. Yes.

23 BZA CHAIR HILL: Okay.

24 MS. MOLDENHAUER: On the same topic.

25 BZA CHAIR HILL: That's a rebuttal question?

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1 MS. MOLDENHAUER: It's on the same topic.

2 BZA CHAIR HILL: I should have gone to law school.  
3 I could banter about all this stuff the same way. It's so  
4 interesting.

5 MS. MOLDENHAUER: The question is scope.

6 BZA CHAIR HILL: Okay.

7 MS. MOLDENHAUER: So we're in the same scope about  
8 parking.

9 BZA CHAIR HILL: Okay. So you got your answer.  
10 Your next question?

11 MS. MOLDENHAUER: My next question. Is -- no.  
12 no other questions. That's fine.

13 BZA CHAIR HILL: Okay. Thank you. All right.  
14 I'm going to turn to the office of planning.

15 MR. MORDFIN: Good afternoon. I'm Stephen  
16 Mordfin. And the Office of Planning supports this  
17 application both for the rear yard reduction and also for the  
18 parking.

19 With respect to the rear yard reduction, there are  
20 a number of criteria that are contained within the zoning to  
21 -- that the Board has to evaluate this against in order to  
22 recommend approval or denial.

23 And OP finds that this application is in  
24 conformance with all of those, including the one where --  
25 that mentions parking. Because the Applicant has also

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1 requested parking relief.

2           And should the Board approve the parking relief,  
3 then OP finds that the Applicant would be in conformance with  
4 all the criteria necessary for rear reduction.

5           The other special exception that was requested was  
6 to reduce parking. And within that, the Applicant needs,  
7 there's a whole list -- there is a list of different  
8 situations that the Applicant has to conform to one of them,  
9 one of those criteria in order to meet what's necessary for  
10 parking reduction to be approved by the Board.

11           In this case, OP found that the Applicant is in  
12 conformance with three of those criteria. In addition to  
13 that -- well, part of the reason --

14           BZA CHAIR HILL: Mr. Mordfin, can you tell me what  
15 the three criteria are again?

16           MR. MORDFIN: Yeah. The three criteria that  
17 they're in conformance on is -- one is due to physical  
18 constraints of the property, the required parking spaces  
19 cannot be provided on the lot or within 600 feet of the lot  
20 in conformance with Section C-71.8.

21           The physical constraints of the property, DDOT  
22 will not allow for a curb cut on either Park Road or 11th  
23 Street.

24           And also the access to the alley, although the  
25 property has alley access, it's 3.7 feet wide, which is

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1 insufficient for a vehicle to get through.

2           The second one is the use of structures  
3 particularly well served by mass transit, shared vehicle, or  
4 bicycle facilities. This site is located within half a mile  
5 of one Metro station and a little bit more than that, 0.6  
6 miles from the second, which is Columbia Heights. The first  
7 being Georgia Avenue. It's also located 0.1 miles from a  
8 Bikeshare station and also from three Metrobus routes.

9           And the third one is the property does not have  
10 access to an open alley, resulting in the only means by which  
11 a motor vehicle could access the lot is from an approved  
12 public street and either, one, a curb cut from the property  
13 has been denied by the District Department of Transportation.  
14 DDOT has indicated that it does not support building a curb  
15 cut to this property. And one does not exist today.

16           And, two, a driveway that could be accessed --  
17 that could access an improved public street from the property  
18 would violate any regulation of this Chapter of the parking  
19 provisions of any other subtitle in the Zoning Regulations,  
20 or of Chapter 6 or 11 of Title 24.

21           So the only way to access this property then is  
22 through that curb cut which is insufficient. So therefore  
23 OP finds that it does -- this property is in conformance with  
24 three, even though -- I mean, the application is in  
25 conformance with it, even though it only needs to be in

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1 conformance with one.

2           So therefore, because of that, the Office of  
3 Planning recommends approval of the parking reduction, in  
4 that the Application is in conformance with the criteria as  
5 contained in the Zoning Regulations required for parking  
6 relief.

7           BZA CHAIR HILL: Okay. Thanks. And the Office  
8 of Planning has the condition about the Metro cards? Is that  
9 right? And the Bikeshare?

10           MR. MORDFIN: Yes. The Applicant did submit a TDM  
11 plan to DDOT. DDOT did review that plan and has made  
12 comments on it.

13           The Office of Planning did include four -- four  
14 items for the TDM plan. And the Applicant has since modified  
15 their TDM plan to conform to some of that.

16           So because DDOT is in support of the Application,  
17 in support of the TDM, the Office of Planning finds that the  
18 TDM plan is sufficient.

19           BZA CHAIR HILL: Say that last part again.

20           MR. MORDFIN: DDOT has reviewed the TDM plan and  
21 finds it adequate. Let's see what they said. Well DDOT  
22 found that the proposed TDM plan was robust for the requested  
23 parking relief.

24           And the Applicant is going to work with DDOT for  
25 securing all of the bicycle parking spaces that are necessary

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1 for this project.

2 BZA CHAIR HILL: Okay. All right, thank you.  
3 Does the Board have any questions for the Office of Planning?

4 MEMBER WHITE: Was there ever any discussion about  
5 extending the conditions kind of on a continuous basis?

6 Or it looks like some of them -- some of the  
7 conditions are just based upon like the Applicant commits to  
8 a minimum dollar amount for a prepaid Metro card for all  
9 initial new residents. It's kind of like an initial thing.  
10 They do it once and then they don't have to do it at all.

11 I just heard the Commissioner kind of, I think I'm  
12 representing your comments correctly, that you were thinking  
13 maybe making it a longer period of time. As opposed to just  
14 a payment initially when they move in.

15 Was any thought or consideration given with  
16 respect to that?

17 MR. MORDFIN: OP did not discuss that with DDOT.  
18 That is something that the Board could do to mitigate the  
19 impacts of the reduced parking.

20 The idea of doing it at the beginning is to try  
21 and create a culture amongst the people that are moving in  
22 that, hey, you know, there's other ways to get about besides  
23 a car. Maybe by bus. Maybe by shared bike.

24 If the Board finds that a longer period of time  
25 is necessary in order to actually create that culture amongst

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1 the residents, OP could see that that's a possibility.

2 ZC CHAIR HOOD: Mr. Mordfin, do we know what the  
3 track record is for projects such as this, that we have put  
4 a no car requirement in the leases? Do you know offhand?

5 MR. MORDFIN: Offhand the only project I can think  
6 of that we did that to was a PUD at Wisconsin and Brandywine.  
7 And I know that one had it in the leases.

8 I'm not a --

9 ZC CHAIR HOOD: You're not aware of whether it's  
10 working. I know we did more than one. But I knew it was --  
11 I was just wondering.

12 MR. MORDFIN: That's the only one I can think of  
13 now. And I'm not aware of --

14 ZC CHAIR HOOD: Okay.

15 MR. MORDFIN: -- of how that has played out.

16 ZC CHAIR HOOD: So you've heard Chairman Boese  
17 mention that -- I think I'm paraphrasing correctly, that it  
18 would strengthen some of the TDM measures if this relief is  
19 granted.

20 And I know we're only asking for a few amount of  
21 spaces. But is there anything else the Office of Planning  
22 could recommend other than -- to help us mitigate some of the  
23 issues that the community's having or what Chairman Boese has  
24 already mentioned? In a -- from a planning perspective?

25 MR. MORDFIN: From a planning -- well, part of

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1 what, you know, OP is recommending is how we're directed by  
2 the criteria in the Zoning Regulations.

3 But, I think, you know, trying to encourage people  
4 not to use vehicles is probably the best way to do it. And  
5 as Board Member White mentioned, you know, maybe increasing  
6 the amount of time would help to encourage that type of  
7 behavior.

8 ZC CHAIR HOOD: Okay. All right. All right, I'd  
9 like the way that when I kicked it, that I was planning to  
10 kick it back to the Zoning Regulations.

11 But thank you. That's good. All right, and I  
12 mean you did what you were supposed to do. I was just  
13 asking. Okay. Thank you. Thank you, Mr. Chair.

14 BZA CHAIR HILL: Okay. Let's see, so -- oh, does  
15 the Applicant have any questions for the Office of Planning?

16 MS. MOLDENHAUER: No questions for Office of  
17 Planning.

18 BZA CHAIR HILL: Does the ANC have any questions  
19 for the Office of Planning?

20 COMMISSIONER BOESE: No questions.

21 BZA CHAIR HILL: Okay. I'm trying to figure out  
22 the conditions. And I see that you threw up your TDM plan  
23 there.

24 Like there -- and this was kind of a -- I was  
25 helped to put this together by our staff actually. But

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1 there's kind of like your condition and then there was DDOT's  
2 condition. And then there was OP's condition.

3 So I'm a little bit confused. And the Board can  
4 kind of speak to this also as they kind of go along. Like  
5 there's nowhere in the record that says DDOT approves the TDM  
6 plan in 46A, right?

7 Like for example, DDOT's condition number one  
8 says, and I'm just -- I don't know where we're going to get  
9 with this because this sounds like we're going to be talking  
10 about this just a little bit more.

11 Because primarily we're going to talk about this,  
12 I think, as it goes to the parking. And so, you know, and  
13 I will read through -- I'm just kind of throwing all this out  
14 again.

15 What I got was like DDOT's condition number one,  
16 distribute in new tenant and new resident packages including  
17 site specific transit related information to all persons or  
18 entities signing leases.

19 And then yours is a little bit more full, I guess,  
20 right? Okay. But it just kind of -- it makes it difficult  
21 for me sometimes as the Board, which is like, you know, then  
22 you have to kind of like pick through and kind of figure out  
23 what's going on.

24 We're going to continue to go through this  
25 hearing. I think there is going to be some continued

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1 discussion that either the Board wants to hear, or I'd like  
2 to hear, in terms of like what you may or may not be able to  
3 do to get the ANC to feel as though the parking is a little  
4 bit stronger.

5           It just sounds like it's just not something that's  
6 that far away as Chairman Hood mentioned, in terms of whether  
7 or not it's -- I mean, I don't necessarily think the ANC is  
8 going to vote in favor.

9           I'm just saying in terms of the parking and how  
10 that may -- and as I continue to talk through this, is that  
11 some of it is confusing for me. Or was confusing for me,  
12 such as the specificity to the length of, you know, how long  
13 these things are going on.

14           I think you've heard discussion here on the Board  
15 where, you know, maybe if it was a little bit longer in some  
16 cases. And it just -- I just also -- then even DDOT's  
17 condition -- continuing to do this in a muddy way. But  
18 DDOT's condition number three was provide a one year Capital  
19 Bikeshare membership or prepaid Metro card for each resident  
20 -- after initial -- with a minimum cost of \$2,200.

21           So yours doesn't say \$2,200 in it. Well, it  
22 doesn't -- it wasn't when I looked at it at 46A.

23           So that's where, you know, this is all kind of a  
24 little bit more -- I'm going to have to definitely at least  
25 want to see one place where all the conditions are that DDOT

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1 is agreeing to. And that possibly the ANC is getting a  
2 little bit more as to what they think, you know.

3 Because I do think that, at least for me as we're  
4 just kind of going through this, I would agree with the ANC  
5 in terms of, you know, there are four spaces that you should  
6 be providing that you're not.

7 However, I also think that -- I don't see how  
8 you're going to provide the four spaces. So there is that  
9 place that I'm kind of stuck in. But I think that as you've  
10 heard from other members here on the Board, there may be a  
11 way that you can do this so that we wouldn't do things that  
12 maybe you didn't want us to do.

13 Which, I mean, meaning that like, you know, we did  
14 try that -- that PPB with the -- I forget what it's now.  
15 Blanking out.

16 MEMBER WHITE: RPP.

17 BZA CHAIR HILL: Thank you. Thank you. Thank  
18 you. Thank you. Thank you. I don't know, did I start to  
19 sing there for a second?

20 All right, so RPP, the RPP thing, right. And so  
21 like, you know, we tried that before. And I still think  
22 that, you know, it's worth something.

23 You know, I mean, at least it -- you know, whether  
24 or not eventually nobody does it, at least it says there in  
25 the lease, you're not allowed to go get RPP.

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1           So that will stop you at least from -- some people  
2 from trying to go get RPP. It might not stop anybody, but  
3 at least the person that signed the thing that says I'm not  
4 going to do it, maybe just because they signed the thing,  
5 just like you all just swore your oath that you're telling  
6 the truth, you know, you won't get RPP.

7           So I'm still fine with actually even that concept.  
8 Even though I know that Chairman Hood doesn't think that it  
9 has a lot of teeth to it. And I also agree that it doesn't  
10 have a lot of teeth to it. I don't remember ever doing it  
11 with something in the lease that says you can't have a car.

12           I don't remember while I've been there, because  
13 I'm just on the Boy Scouts of the group. Like you all got  
14 to do all the things that you do up there in the Zoning  
15 Commission.

16           But like, you know, I've never actually seen it  
17 in the lease. And so that's a new thing that I'm just kind  
18 of throwing out there as we kind of have this open  
19 discussion.

20           So those are kind of my comments. Because we're  
21 going to go through public testimony here. Because -- and  
22 I just want to come back.

23           But I'm just saying the conditions are a little  
24 bit where I need a -- I'm not clearly understanding what  
25 we're -- I understand what you're asking for. I'm not

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1 clearly understanding what we're necessarily going to be  
2 granting yet. In terms of the flexibility, from -- and we  
3 can talk about it as well.

4 But in terms of flexibility like, you know, from  
5 different advisements that we received lately, and  
6 previously, I guess, from Office of the Attorney General,  
7 it's like, you know, those kind of flexibility issues aren't  
8 necessarily related to zoning.

9 So that's where -- just again throwing that out  
10 there. So I don't think there was any questions in anything  
11 that I just said. So you don't have to answer anything.

12 Is there anyone here wishing to speak in support?

13 Is there anyone here wishing to speak in  
14 opposition? If you can please come forward.

15 MS. WHOLEAN: Hi.

16 BZA CHAIR HILL: Hi. If you can please introduce  
17 yourself. Give your address, and then you'll have three  
18 minutes to give your testimony.

19 There are a couple of clocks on either side.  
20 First, why don't you go ahead and give your name and address.

21 MS. WHOLEAN: Clair Marie Wholean, architect.  
22 Company Archfina. Address, 1725 17th Street N.W., D.C.  
23 20009.

24 BZA CHAIR HILL: Okay, Ms. Wholean, thank you.  
25 All right, so you can go ahead and begin whenever you like.

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1 MS. WHOLEAN: Sure. First of all, Mr. Hill, in  
2 response to your comment about not having design concerns at  
3 this meeting, I feel that design and zoning interact with  
4 each other. And to look at one in isolation is reducing the  
5 quality of construction in this city. So I do have a few  
6 design comments in here.

7 My reason for opposition, there are seven reasons.  
8 First is the building appears too large compared to adjacent  
9 construction.

10 One story less would be more appropriate. And  
11 possibly having bay windows that are less dominating. Not  
12 to remove them completely, but just less dominating.

13 Reason two. The building provides a precedent for  
14 demolition of adjacent historic row homes in order to create  
15 more multi-family buildings in the neighborhood.

16 Three, the building creates a precedent for a  
17 penthouse on the corner property, which doesn't fit with the  
18 adjacent historic fabric.

19 Four is that the design traps the neighborhood in  
20 a status quo of transitional design, which is to compromise  
21 to give the neighborhood any character.

22 Character comes both from the new and the old, but  
23 not from new designs reinterpreting old materials and  
24 construction methods to make them appear as if they are not  
25 new.

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1           Five, the mural appearing historic is not  
2 appropriate. That is pastiche.

3           Six, making face brick, a wall that has face  
4 brick, appear to be a party wall is inappropriate because  
5 that's a dishonest use of materials.

6           Seven, the project would likely not be approved  
7 in other East Coast cities with comparable building fabric  
8 for design reasons.

9           And I have one additional comment. And that is  
10 that the process of giving so much emphasis on neighbor input  
11 is reducing innovation in the development of our city.

12           And then a suggestion of what I would support.  
13 And that is modifying the massing to be less dominating, as  
14 well as a design expressing the spirit of the age would be  
15 appropriate.

16           BZA CHAIR HILL: Okay. Great. Thank you. Ms.  
17 Wholean?

18           MS. WHOLEAN: Wholean.

19           BZA CHAIR HILL: Wholean. What I meant by design  
20 in the previous case that you were talking about, we do have  
21 the ability to look at character.

22           But we don't -- we, the BZA, don't have a look at  
23 design. Like we don't -- that's not what we have within our  
24 purview. But character is something.

25           Does the Board have any questions for the witness?

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1 ZC CHAIR HOOD: I do have a question. One of your  
2 laundry list of items you just mentioned, one of them said --  
3 did you say we were giving too much neighborhood input?

4 MS. WHOLEAN: Mm-hmm.

5 ZC CHAIR HOOD: I have never heard -- could you  
6 read that again, please?

7 MS. WHOLEAN: Yeah. I'll just explain a little  
8 bit more. So I feel that it's very important to involve the  
9 community. But there's many people that should be involved.

10 The community, the ANC, other design  
11 professionals, a design review board. I don't know that this  
12 has had any third-party review, any design review.

13 That would be my comment. There should be  
14 multiple parties giving feedback, not just several neighbors  
15 controlling the design.

16 ZC CHAIR HOOD: Oh, okay. Can I ask you a  
17 question? Not -- because I noticed you were here for the  
18 other case as well.

19 Are you taking an interest -- well, let me try to  
20 ask this correctly. Are you taking an interest in zoning?

21 Obviously you have an interest in zoning in the  
22 city. Have you been to a Zoning Commission meeting?

23 MS. WHOLEAN: I have not. I would like to.

24 ZC CHAIR HOOD: Oh, okay. Well, look at the  
25 schedule.

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1 MS. WHOLEAN: Okay.

2 ZC CHAIR HOOD: All right. I'll be interested --  
3 because that's where design is talked about. And the  
4 Chairman is right, the BZA does not have -- even though I  
5 might disagree with that, but they don't necessarily talk  
6 about a lot of design.

7 MS. WHOLEAN: Thank you.

8 ZC CHAIR HOOD: Thank you. Thank you, Mr. Chair.

9 MEMBER WHITE: There was one question that you  
10 asked about reducing the size of the windows. I believe they  
11 made an adjustment with respect to that, unless I heard it  
12 incorrectly.

13 MS. WHOLEAN: Mm-hmm.

14 MEMBER WHITE: Have you looked at any -- the most  
15 recent drawings? You still think they need to be reduced  
16 even more?

17 MS. WHOLEAN: So my comment is not to reduce the  
18 size of the bay windows. It's to make them less dominating.  
19 So that could be done in many ways.

20 Through a change in materiality. Through, you  
21 know, there's a myriad of ways to do that. It's just that  
22 they appear as this very dominating presence on the street.

23 They could even be made bigger if they're less  
24 dominating. So it wasn't about size, it was more about the  
25 perception of how you see that as you're walking down the

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1 street.

2 MEMBER WHITE: Thank you.

3 MEMBER JOHN: Mr. Chairman, I have a question.  
4 So were you at the ANC meeting where the plans were presented  
5 and questions asked?

6 MS. WHOLEAN: I was not. I wasn't aware of the  
7 project.

8 MEMBER JOHN: Okay. So that's a good avenue to  
9 make those design comments. So, you know, you have an  
10 opportunity to engage the developer. And that might be a  
11 more appropriate avenue for you to do that.

12 MS. WHOLEAN: Thank you.

13 BZA CHAIR HILL: Okay. Does the Applicant have  
14 any questions of the witness?

15 MS. MOLDENHAUER: No.

16 BZA CHAIR HILL: Does the Chairman have any  
17 questions of the witness?

18 COMMISSIONER BOESE: No.

19 BZA CHAIR HILL: Okay. Thank you very much.

20 Okay. Let's see, Chairman Boese, if you could  
21 turn off that microphone. Sometimes I get feedback. Thank  
22 you.

23 All right, let's see, so this is back to where we  
24 are. So I get -- we get rebuttal if you'd like to give it.

25 And you can go ahead, I'll give you -- you can do

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1 ten minutes, Ms. Moldenhauer, for rebuttal. And if you want  
2 to rebut the things that I just said about the conditions,  
3 you can rebut those too.

4 And so, you know -- right, okay. So anyway, just  
5 go ahead. Please start whenever you like.

6 MS. MOLDENHAUER: Sure. I don't believe we'd  
7 rebut any aspect of the conditions. I do agree that they're  
8 just simply just some differences in maybe language.

9 But I do believe that DDOT's condition one, our  
10 conditions were in Exhibit 46, so number wise, we filed ours  
11 first. Then DDOT filed theirs in Exhibit 48, which was  
12 subsequent to that.

13 We did, however, have discussions with DDOT. And  
14 whether our language was more robust or more legalese, and  
15 they provided their language, but we had discussed it with  
16 them.

17 And so they -- I believe they are identical in  
18 that regard. One on the screen, which is part of the record  
19 now, is the same as their first one. It's just worded in  
20 more detail.

21 Number two actually corresponds with their third  
22 bullet point. I'm on Exhibit 48, page two. And we just --  
23 whether they use the word initial, and we use the word first,  
24 again, these are languages that we feel as though sometimes  
25 orders have had.

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1           And so we're trying to use words that the Office  
2 of the Attorney General or the Board's orders copied in our  
3 conditions.

4           Number three is --

5           BZA CHAIR HILL: Hold on a second. So there's no  
6 minimum amount though in your number two.

7           MS. MOLDENHAUER: Number two? The total cost, I'm  
8 looking up on the board right now, at the PowerPoint, which  
9 is part of the record.

10          BZA CHAIR HILL: Oh, sorry, okay. I'm looking at  
11 something else.

12          MS. MOLDENHAUER: Sorry, the PowerPoint is part  
13 of the public record. So I'm looking at our PowerPoint page  
14 24. The total cost developer will be at least 2,220 as  
15 required.

16          And that's calculated based on \$85 Metro  
17 membership times \$26 a unit, which equals \$2,210, rounding  
18 that up to \$2,220.

19          BZA CHAIR HILL: So your number three --

20          MS. MOLDENHAUER: Number three is their point  
21 number four.

22          BZA CHAIR HILL: So would it be there, you know,  
23 there will have -- there will have a permanent transportation  
24 information center display?

25          MS. MOLDENHAUER: Yeah, sorry. Or my number three

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1 is their point number two. And, yes, that would be a  
2 permanent --

3 BZA CHAIR HILL: Yeah. But there's nowhere in  
4 your condition that it says permanent.

5 MS. MOLDENHAUER: It will be installed in the  
6 lobby. My understanding is that once it's installed, it's  
7 like anything else with a building permit.

8 BZA CHAIR HILL: No, that's okay.

9 MS. MOLDENHAUER: Once installed, it's then part  
10 of the project. And part of the, obviously, the condition  
11 as to how the permit is approved.

12 BZA CHAIR HILL: Okay. So but you don't have an  
13 issue with permanent being put in there? Okay.

14 MS. MOLDENHAUER: Not at all, Chairman Hill.

15 ZC CHAIR HOOD: Mr. Chairman?

16 BZA CHAIR HILL: Yes?

17 ZC CHAIR HOOD: Mr. Chairman, can we go back to  
18 number two?

19 BZA CHAIR HILL: Sure.

20 ZC CHAIR HOOD: Ma'am, is that \$2,200 for the  
21 whole year for all of the units?

22 MS. MOLDENHAUER: Yes. So as I said, it's \$85  
23 membership times 26 units, which equals \$2,210. And so we've  
24 offered just rounding it up to a flat number of the 2,200.

25 But if we want to talk about that specific issue,

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1 I can turn to my client now.

2 ZC CHAIR HOOD: So, hold tight. I don't know if  
3 we need to go that far. I think, and I'm not sure where  
4 Chairman Boese was, but I think to me that's real light.

5 Because I think, as he mentioned, or somebody  
6 mentioned, maybe Board Member White, whoever mentioned it,  
7 thank you for mentioning it, because I agree with you.

8 We need to try to instill in people to change  
9 their mindset. And I don't know if \$2,200 -- not putting a  
10 dollar amount on it.

11 And also, another question I was sitting here  
12 thinking when we were talking about car sharing, does that  
13 include the Uber and the -- I mean, the Lyft that people do?

14 Because they have cards and stuff that they use  
15 that for too now. So I'm wondering -- maybe that's some --  
16 a question to be asked of DDOT.

17 When they're doing their analysis, do they include  
18 that as well? Because a lot of people are getting Uber and  
19 Lyft. Maybe I need to start driving it.

20 But a lot of people are doing that.

21 MS. MOLDENHAUER: Right.

22 ZC CHAIR HOOD: So I'm just curious, I think that  
23 \$2,200 limit is very light if we're trying to do what was  
24 mentioned about trying to get people to change their mindset  
25 and their frame of thinking.

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1           So we might need to look at some things, Mr.  
2 Chairman, from our standpoint.

3           BZA CHAIR HILL: And I agree. And before you even  
4 respond, or you can respond obviously, but not just yet. The  
5 -- I was trying to get through this to at least understand  
6 kind of where I was in terms of the same page.

7           And then I think that there still is going to have  
8 to be a discussion after this as to what we thought was  
9 actually going to ease the adverse impact from four, you  
10 know, the four parking spaces.

11           So why don't we just kind of go through this real  
12 quick, so I understand at least where we kind of were. And  
13 then we can go back to -- but I appreciate that, Chairman  
14 Hood.

15           So the 2,200, that was for the \$85 per -- for  
16 whatever for the units, right? Okay. And then your number  
17 three is their number two, I thought? Right?

18           MS. MOLDENHAUER: Correct, yes.

19           BZA CHAIR HILL: Oh, we've already talked about  
20 that. So your number three is their number two. And  
21 permanent -- and permanent, right?

22           Then your number four is their number four. And  
23 provide additional long-term bicycle parking if space  
24 permits.

25           And yours is the project will provide all -- and

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1 again, I'm reading off of this. And I don't know what's  
2 different now for the record.

3 The project will provide all record -- all  
4 required short-term and long-term bicycle parking, including  
5 the provision of a room for long-term bicycle storage in the  
6 cellar level.

7 The Applicant will provide one additional long-  
8 term bicycle parking space in the long-term bicycle storage  
9 room at the cellar level.

10 Following the BZA process, the Applicant will work  
11 with DDOT to find a suitable area to provide more than the  
12 minimum short-term bicycle parking.

13 So that seems stronger than their number four.  
14 But -- okay, so I'm okay with number four. All right. Then  
15 -- then I've already made my comments about the flexibility.

16 And my fellow Board Members can chime in with  
17 that. So now back to Chairman Hood. You know, what do you  
18 or the Board think?

19 I mean, I'm still kind of -- I've kind of got  
20 through this. I think I'm kind of where I understand the  
21 Application.

22 What I'd like to see, I guess a little bit is --  
23 and I don't know how to do this, so I'll let the developer  
24 or, you know, the attorney figure out how to do this.

25 Like, it's just kind of coming up with some

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1 conditions that seem -- I will agree with Chairman Hood, \$85  
2 for one time, for one year, seems pretty sad considering what  
3 you're trying to do.

4 And so in terms of creating a long-term or habit  
5 if you will, of like you know, people -- I mean \$85 you know,  
6 is that a year? \$85 a year. Yeah, I spend that in a week.

7 You know, so -- and actually that's not true. So,  
8 let's see, so I'm -- I think maybe if you all could like talk  
9 together a little bit and then submit something in the  
10 record, we can figure out what to do. I don't know. It's  
11 up to -- now you all let me know your suggestions please.

12 MS. MOLDENHAUER: We're ready right now just to  
13 respond to that. Allow us to potentially --

14 MEMBER JOHN: Mr. Chairman, may I add something  
15 to what you said? So as I read this, and I thought well, the  
16 first set of tenants would receive this benefit.

17 But when the lease turns over, that tenant would  
18 not, you know, receive any benefit. And I agree that \$85 a  
19 year is nominal. That's not going to encourage anybody to  
20 change their behavior.

21 I can just see, you know, the family with the two  
22 kids, and I can tell you, I know that drill, you know,  
23 needing a car. They're not going to go out and get a Zipcar.

24 So, yeah, I -- I get where you are with the  
25 inability to get the curb cut. But at the same time, you

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1 know, you had four single family houses, now there are 26  
2 residents, new residents.

3           Twenty-six -- no, and possibly more. So those are  
4 just my -- my thoughts at the moment.

5           BZA CHAIR HILL: Okay. So I mean, and Ms.  
6 Moldenhauer, and I do appreciate that. I mean, like our  
7 doing this on the fly right here to try to figure it out,  
8 like I mean, I -- as far as the Board's concerned, I'm happy  
9 to come back and deliberate on this as quickly as possible.

10           But for your Applicant to meet with the ANC, at  
11 least the Chair, and see if there's any, you know, we --  
12 there's a variety of things that have been discussed here.

13           And I would be willing to -- I guess I'd be  
14 willing to, I guess, continue to talk through some of them.  
15 I just don't know if I can make a decision today based upon  
16 I really want to understand whether the conditions that are  
17 being put forth are actually going to do what they're  
18 supposed to do.

19           ZC CHAIR HOOD: Excuse me.

20           BZA CHAIR HILL: Yeah, sure.

21           ZC CHAIR HOOD: Yeah, Mr. Chairman, I would agree  
22 with where you're going. I think there needs to be some  
23 thought put into it. If you come back with nothing, you come  
24 back with what you have now, I understand.

25           But I think from what I've heard from Chairman

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1 Boese is that he would like to see -- even though they -- you  
2 might not get ANC approval, but at least we need to try to  
3 put some preventative measures in place if this relief is  
4 allowed.

5           And I think we can do that. I would rather -- I  
6 would agree with the Chairman, I'd rather not do it off the  
7 cuff.

8           It needs to be some thought, well put thought into  
9 this. Not just trying to hurry up and get it past the BZA.  
10 Even though I understand that too.

11           But I think there needs to be some thought put  
12 into this equation.

13           BZA CHAIR HILL: And as far as the developer, just  
14 to let you know, like I think it's great that you've worked  
15 this much -- you've gone and presented twice.

16           You know, you've changed your design from a modern  
17 design to where you are now. So we know that you're trying  
18 to work with the community.

19           It's that they are an objection. And so, you  
20 know, just trying to see how we can make sure that the  
21 adverse impact is as strong as it can be.

22           Do you want to consult with your attorney and talk  
23 about how maybe we can -- I'm trying to figure out how you  
24 get back here, you know.

25           Like if you go and meet with, you know, talk --

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1 or, Commissioner, whatever you think about how you would feel  
2 most comfortable, you know, working with your ANC. And  
3 whether you want to talk a little bit more.

4 And then go back to the ANC and/or -- and I'm  
5 looking at the developers here now, because I know the  
6 finances and all that, you know, in terms of like delay.

7 Do you have an idea as to how to move forward at  
8 this point, given everything you've heard from the Board?

9 MR. RISLEY: Thank you for the questions. And  
10 what I wanted to actually do is directly answer the \$85  
11 scenario and kind of how it even came to be. Briefly, just  
12 for education.

13 In the original TDM plan suggested for the Capital  
14 Bikeshare key, which the \$85 gets you a key to use for the  
15 entire year. There's no additional cost, you use it  
16 unlimited, as long as your bikes are, I think, 30 minutes or  
17 less, you can use that key throughout the year.

18 It was brought up actually during the ANC meeting  
19 that not everybody uses bikes. That, you know, some people  
20 aren't mobile enough to use them.

21 And so we said, well, you know, that's not fair.  
22 Let's look at an option that is an equal comparison to the  
23 \$85 key. We can't give \$85 worth to someone and then more  
24 to someone else who uses Metro.

25 So we just tried to keep it parallel, right. So

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1 the \$85 was actually instantiated by the TDM original plan.  
2 The goal was really to create a culture of change, right?

3 We all know when you try to get on the wagon, it's  
4 hard to do that. You need more time to do that. So we're  
5 open to doing it for more than a year. That makes sense.  
6 It's reasonable.

7 We do want to create a culture of non-driving in  
8 the city. Cars2Go and more than just, you know, the express  
9 car systems, there's new systems coming into the city all the  
10 time. Everybody sees the scooters now around.

11 You know, we're open to even having different  
12 areas for scooters to park so they're not littering the  
13 streets, which is another issue.

14 So, there's, I think, overall we're trying to be  
15 open to listen to the community specifically about, you know,  
16 the concern about just Capital Bikeshare keys, which is what  
17 was suggested.

18 So I think I just wanted to mention what that \$85  
19 gets you and then why the \$85 would have been the equivalent  
20 for the Metro. And we're open to doing it for longer than  
21 a year.

22 BZA CHAIR HILL: Okay. Well, Mr. Risley, I  
23 appreciate that. Because now I learned something new. I  
24 mean, I don't use the bike, so.

25 MR. RISLEY: That's okay.

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1           BZA CHAIR HILL:     That's nice to know.     I  
2 understand now how you got to that number.     What I would  
3 suggest, and this is where I -- as far as the time line goes,  
4 like I'd like to, you know, I don't need to know anything  
5 else about -- unless the Board does, I don't need any more  
6 further information.

7           Like -- I'd like to see if there's a way that we  
8 can get to one document in terms of conditions that have all  
9 of DDOT's conditions in there.     That you -- I just want  
10 something in the -- I have to look back, because now your  
11 slides are different than the one that was in 46a.

12           And so if you could just submit something into the  
13 record that is actually the conditions that you would be in  
14 agreement with, and then the Board can deliberate.     And  
15 hopefully they will include all of the DDOT conditions.

16           And the Board can deliberate whether or not we  
17 think those conditions are the conditions that we want to  
18 adopt.     And also in terms of the adverse impact.

19           Before you did that, I'd like you to go ahead and  
20 meet with the Chairman here.     And then, Mr. Chairman, I don't  
21 know if you have what ways -- what would make you feel most  
22 comfortable in terms of would you want to go back to your ANC  
23 or go back to one of your committees to discuss this?     What  
24 do you -- your comments or thoughts?

25           COMMISSIONER BOESE:     Well, our next ANC meeting

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1 isn't until January because we recess in December. Usually  
2 with holidays it's hard to get people, and meetings with no  
3 quorums don't work. At least we found that to be true.

4           What I think would be a better course of action,  
5 especially with the timeliness, is getting together perhaps  
6 a small number of Commissioners, especially that represent  
7 this area. And just sitting down in a meeting situation and  
8 talking through it.

9           If I'm understanding this correctly, and as I  
10 understood this project initially, my instinct is that this  
11 will be approved depending upon what's negotiated with  
12 transportation.

13           And being able to take that back to some of the  
14 Commissioners who may have been trying to say no to the  
15 project in general, that having parameters for the discussion  
16 are very helpful.

17           I know you're not taking a position. But based  
18 on my understanding and what I can go back, having been here,  
19 what I can tell them, my initial instincts are it's going to  
20 help, I think, direct the conversation to focus on how do we  
21 mitigate the parking?

22           Because really, that's -- that's the big thing  
23 being asked.

24           BZA CHAIR HILL: And when do you think -- when do  
25 you think you could do that?

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1           COMMISSIONER BOESE: I can do it in December for  
2 sure. We do have -- half of our Commission is turning over  
3 at the end of the month.

4           BZA CHAIR HILL: Oh, yeah. A lot of people are.

5           COMMISSIONER BOESE: So I would like to at least  
6 do something in December --

7           BZA CHAIR HILL: Right.

8           COMMISSIONER BOESE: Before the people who are  
9 familiar with this are gone.

10          BZA CHAIR HILL: So, Mr. Risley -- is Risley  
11 correct? I'm sorry.

12          MR. RISLEY: Yes, Risley.

13          BZA CHAIR HILL: So, Mr. Risley, I mean, I guess  
14 if you could get with the Commissioner and just kind of come  
15 up with, I think that we're all clear in terms. But I just  
16 want to see some -- whatever the conditions are in one  
17 document.

18                 And that we can kind of take a look at. And I  
19 think what you're hearing from the Board in terms of -- I  
20 mean, I don't -- again, to your comment, Commissioner Boese,  
21 like I don't know where we're going to end up being.

22                 But what I hear from the conditions at least is  
23 that, you know, a little bit more longevity in terms of the  
24 commitment to try to get people on board, the word permanent  
25 in the -- for the sign, just because it was also brought up

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1 to me at some point.

2           And so that's why that's there. The actual number  
3 put in there in terms of -- I know you have it here on your  
4 slide deck, but if you could put it into whatever the end  
5 document, then I think we can deliberate.

6           So if you can do that, when could we be back here  
7 for deliberation? Or to -- Chairman Hood, you got something?

8           ZC CHAIR HOOD: Yeah, Mr. Chairman, I just want  
9 to say, I think it's very important that we recognize, we  
10 wouldn't want to put any applicant to have to go through, you  
11 know, they've been working with this ANC. And I know that  
12 there's going to be a change in January.

13           I think it's unfair to put any applicant that has  
14 to deal with two different ANCs. Because that's almost like  
15 starting all over again. So I just wanted to put that on the  
16 record.

17           So, Chairman Boese, I know with your knowledge and  
18 your institutional knowledge of how to get things done, I'm  
19 sure you'll be able to get that done in December.

20           COMMISSIONER BOESE: I'm getting okay with cat  
21 wrangling.

22           ZC CHAIR HOOD: Okay.

23           COMMISSIONER BOESE: Yeah.

24           ZC CHAIR HOOD: All right.

25           BZA CHAIR HILL: Did you -- are you still here

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1 next year?

2 COMMISSIONER BOESE: You're going to have to do  
3 more to get rid of me. Yes.

4 (LAUGHTER)

5 BZA CHAIR HILL: Oh, okay. Hey, that's right.  
6 I've only got one more year. So, you know.

7 All right, Ms. Moldenhauer, does that all seem  
8 clear enough?

9 MS. MOLDENHAUER: I think it's crystal. So we  
10 will work with the ANC and try and get -- not, I want to be  
11 clear, not a new resolution, because there will not be a  
12 public resolution.

13 But rather some sort of letter indicating that we  
14 had a meeting. We will put together a very clear list of  
15 conditions.

16 And, you know, based on a discussion about  
17 enhanced TDM measures, we could get that in the record  
18 hopefully by the 14th, I'm hoping. That gives us another --  
19 a week and a half to meet.

20 With then potentially a decision on the 19th. I  
21 don't know if that's possible. That would be your last  
22 hearing before the end of this year.

23 BZA CHAIR HILL: Okay. Yeah, so two things. We  
24 don't -- exactly. You're correct. You are not getting a  
25 resolution from the ANC.

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1           And just some kind of acknowledgment, I suppose,  
2 that you met. I mean, again as to Chairman Hood's thought,  
3 you know, you all might not even still agree.

4           Okay. Like I'm just -- just that you had the  
5 meeting. The discussion that I think you're hearing from the  
6 Board is, you know, we would like to see, you know, again,  
7 the longevity and all the other things that we kind of just  
8 went over.

9           Unless you all are in like a big hurry, you know,  
10 and I know you are in a hurry in general. But like, you're  
11 going to have to tell me why you're in that big a hurry.

12           Because if I can at least get you to the first  
13 week in January, then because we've got -- I don't know what  
14 we have. Or, Mr. Moy, if you can tell us.

15           Because I think that 19th -- how -- I know that  
16 the 19th was supposedly going to keep somewhat -- how badly  
17 are we on the 19th?

18           MR. MOY: If the intent from the Board is to bring  
19 this application before the Board for decision making, then  
20 I think there's room for the Board to be able to address  
21 that.

22           But the other thing, before I forget, Mr.  
23 Chairman, is that just a reminder that the official letter  
24 from the ANC is in -- is in denial. Because I want to make  
25 sure the fact is with the Board.

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1           BZA CHAIR HILL: Yeah, absolutely. We understand  
2 that. I don't think that's going to change. Unless -- I  
3 know it's not going to change, because you're not going to  
4 be present again to the ANC.

5           Do -- I thought -- do we have two appeals on the  
6 19th?

7           MR. MOY: We have -- yeah, one is returning, and  
8 one is for decision making.

9           BZA CHAIR HILL: That's not bad.

10          MR. MOY: Okay.

11          BZA CHAIR HILL: Okay. Okay. All right, we'll  
12 put you on the 19th. If you can try to get that,  
13 Commissioner Boese, and try to get, you know, I mean, you're  
14 very -- I'm trying to think what the word -- I was going to  
15 -- you're committed.

16          You're very committed. And for your community,  
17 and that's great. I mean, you've been here all day. You're  
18 going to try to get this done before the holidays.

19          You should be commended. And so, you know, I hope  
20 that you can, you know, work with your property -- your  
21 developer there.

22          So, we're going to -- oh, when, Mr. Moy, then we  
23 would need -- would we need to get it?

24          MR. MOY: Just a second, Mr. Chairman. So, we  
25 gave the date of -- the Applicant to -- she said that she

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1 would make a submission by December 14.

2 And I don't have a date of when Mr. Boese can work  
3 his magic. But if the decision is on the 19th, we could give  
4 the ANC as much time as he needs.

5 So, you know, it could be Monday the 17th, I  
6 guess.

7 BZA CHAIR HILL: Or even the 18th on the Tuesday.

8 COMMISSIONER BOESE: I'll work with what you give  
9 me. Let me put it to you that way.

10 MR. MOY: Let's make it Monday the 17th then.

11 COMMISSIONER BOESE: Sure.

12 BZA CHAIR HILL: So what happens is, I mean, what  
13 I understand, or what I just -- I thought I understood from  
14 Mr. Moy is you're going to give us what you're going to give  
15 us by the 14th.

16 Is that what you got, Mr. Moy?

17 MR. MOY: Yes.

18 BZA CHAIR HILL: Okay. And then -- and then  
19 you're giving the ANC until when again? The same day as --  
20 no, just repeat that then.

21 MR. MOY: No. It would be --

22 BZA CHAIR HILL: Oh, the 17th. The 14th, right.  
23 So the 14th is a Friday. Okay. And then the 17th -- you'd  
24 have until the 17th to -- you know, you could submit it at  
25 the same time on the 14th, if you knew whatever you were

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1 going to submit.

2 MR. MOY: Right.

3 BZA CHAIR HILL: In terms of just something that  
4 says you've worked together and this is where you are. So,  
5 okay.

6 And so just to be clear again for me. The easiest  
7 thing for us to look at is one document that has everything  
8 in there that, you know, that DDOT is -- we can compare at  
9 least what the condition was.

10 Actually, I don't even need a comparison. Just  
11 put it in one document that I can reference and we can talk  
12 about in terms of what's in the record.

13 So the record is now closed, Mr. Moy, other than  
14 the document for conditions that we're going to get from the  
15 Applicant and the comments from the ANC.

16 Okay? Does anybody else have anything else?

17 Okay. Oh, yeah. Hold on. So we haven't actually  
18 finished. So you had rebuttal. You've done your rebuttal,  
19 I guess.

20 Or do you want a rebuttal?

21 MS. MOLDENHAUER: We are fine.

22 BZA CHAIR HILL: Okay. So then now you have an  
23 opportunity -- or you also have an opportunity for rebuttal.  
24 Do you have any rebuttal of the non-rebuttal?

25 COMMISSIONER BOESE: I'm good.

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1 BZA CHAIR HILL: Just in the microphone.

2 COMMISSIONER BOESE: I'm very good.

3 BZA CHAIR HILL: Okay. And do you have a  
4 conclusion, Ms. Moldenhauer?

5 MS. MOLDENHAUER: Our conclusion is that we  
6 believe that we satisfy the standards, but we will be happy  
7 to continue to work on a more robust TDM plan and to  
8 communicate with the ANC.

9 And look forward to coming back for a decision on  
10 the 12 -- 19th. And would hope that the Board would be able  
11 to be supportive of both the rear yard and the parking  
12 relief.

13 And I would just indicate that obviously right now  
14 there's four parking credits on the property. And so the  
15 goal here is to build a new project.

16 And to provide that a more qualified design with  
17 the four parking spaces that we're asking for relief.

18 BZA CHAIR HILL: Okay. Thank you. And then to  
19 also mention, I mean, I guess you can leave them in there if  
20 you want.

21 But I don't -- based upon what we've done thus  
22 far, I don't think the flexibility is something that we're  
23 going to be granting.

24 But you can leave it in there for our discussion  
25 in your filing.

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1 MS. MOLDENHAUER: And just to answer that  
2 question. We haven't really talked about that yet.

3 I mean, the request for flexibility, especially  
4 just more on the interior layouts, it's something that just  
5 simply identifies and allows for those interior layouts to  
6 be reconfigured. The zoning regulations do now state that  
7 obviously the plans that are filed, have to then be the plans  
8 that are approved.

9 And this is asking for specific language to say  
10 that if we reconfigure, re-jockey those plans, but don't add  
11 any new zoning relief, and those -- that that would be  
12 permitted.

13 And so that's our point number one that we would  
14 obviously ask for flexibility on.

15 BZA CHAIR HILL: Okay. So you can go ahead and  
16 put -- I mean, you can put whatever you want to put in there.  
17 And we'll have an opportunity to deliberate on that.

18 I actually don't necessarily have an issue with  
19 the interior flexibility. I guess what we've done in the  
20 past that has -- at least I've found the Board has had issue  
21 with, is changes in material or -- I mean, we're kind of  
22 looking at plans.

23 And then we're approving plans. And then people  
24 are asking for flexibility to change those plans. And then  
25 we just get into this whole thing of, well how much are they

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1 actually changing that we're approving flexibility for?

2           And that seems like something that would just not  
3 even really affect zoning necessarily. But if it did, then  
4 you'd be back before us.

5           But please go ahead and put the flexibility  
6 request that you'd like in there. And we can discuss it on  
7 the dais.

8           MS. MOLDENHAUER: And so what we'll do is we'll  
9 remove two and three. But we would like to keep number one.

10          BZA CHAIR HILL: Okay.

11          MS. MOLDENHAUER: Just as I'm looking at it, at  
12 the Exhibit 25.

13          BZA CHAIR HILL: Okay. Then we can see --

14          MS. MOLDENHAUER: And then that will be open to  
15 questions -- okay.

16          BZA CHAIR HILL: We'll discuss that. Does anybody  
17 have any questions on that one?

18          ZC CHAIR HOOD: Number two was really, I was --  
19 I hate to vote against the whole thing for number two. But  
20 she's going to remove those.

21                 So I'm fine.

22          BZA CHAIR HILL: She said number two and number  
23 three she was going to remove. And number one is the  
24 interior flexibility that she's requesting.

25          ZC CHAIR HOOD: The interior I'm not too concerned

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1 with. It's two and three that I have an issue with.

2 BZA CHAIR HILL: Okay.

3 ZC CHAIR HOOD: Two especially.

4 BZA CHAIR HILL: Okay. Does anybody else have any  
5 comments?

6 MEMBER JOHN: Mr. Chairman, I agree that two and  
7 three should be removed.

8 BZA CHAIR HILL: Okay. All right. So, okay we're  
9 back to the end. Correct?

10 MS. MOLDENHAUER: Thank you very much. No further  
11 comments.

12 BZA CHAIR HILL: Okay. Great. All right, thank  
13 you all so much. We're again, Mr. Moy, the record is closed  
14 except for the conditions that were requested from the Board,  
15 and input from the ANC.

16 And we'll get those on the dates that were  
17 supplied. And then we'll come back here for decision on the  
18 19th before the holidays.

19 So that's the end of this case, correct? Okay,  
20 thank you all very much.

21 Mr. Moy, do we have anything else before us today?

22 MR. MOY: Nothing from the staff, sir.

23 BZA CHAIR HILL: Okay. We stand adjourned.

24 (Whereupon, the above-entitled matter went off the  
25 record at 2:14 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 12-05-18

Place: Washington, DC

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