

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 13, 2019

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- PETER SHAPIRO, COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- HILLARY LOVICK, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

JONATHAN KIRSCHEBAUM  
STEPHEN MORDFIN  
CRYSTAL MYERS  
STEVEN COCHRAN

The transcript constitutes the minutes from the  
Public Hearing or held on February 13, 2019.

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10:01 a.m.

CHAIRPERSON HILL: All right, Mr. Moy, whenever you like you can call our first hearing case.

MR. MOY: Yes, sir. Okay, that would be case application number 19851 of RUPSHA 2011 LLC as captioned and advertised for variances from the side yard requirements of Subtitle D Section 307.4 to construct two new semi-detached principal dwelling units in the R-3 zone.

This is at 233-235 Valley Avenue SE square 6153 lots 35 and 36.

CHAIRPERSON HILL: Okay. Could the applicant come forward? You can come on forward. Before you start -- that's okay. Just have a seat and if you could please in yourself for the record. Just push the button.

MS. LUDMILA: Hi, good morning, ladies and gentlemen. This is Sarah Ludmila from District Properties. We're presenting this case 19851 RUPSHA 2011 LLC.

CHAIRPERSON HILL: Okay. Could you spell your last name for me?

MS. LUDMILA: Ludmila. L-U-D-M-I-L-A.

CHAIRPERSON HILL: Okay. All right, Ms. Ludmila. So you were going to start I guess, or you were going to go through the presentation.

I had a couple of questions before you do that.

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1 As is even with the previous case this particular relief that  
2 you're requesting is going to not be needed after February  
3 22 which is when the text amendment would actually go into  
4 the Register. Are you aware of this?

5 MS. LUDMILA: Yes. Actually we got an email from  
6 Board of Zoning. But still I think someone called from Board  
7 of Zoning and said that somebody from our office need to be  
8 present over here for the case.

9 CHAIRPERSON HILL: Okay. Yes, that's true. So,  
10 because we don't have -- well first of all, we have the  
11 record before us in a way that you could go ahead and walk  
12 us through your application.

13 However, we don't have anything from the ANC. And  
14 so what I would actually just even be interested in knowing  
15 is if you would be willing to perhaps postpone this until  
16 after February 22 wherein you might even end up withdrawing  
17 the application.

18 But if you don't -- which I don't see why you  
19 wouldn't withdraw the application, but if for some reason you  
20 didn't withdraw the application we would want to hear  
21 something from the ANC. Okay?

22 MS. LUDMILA: So the application should be  
23 postponed until February 22?

24 CHAIRPERSON HILL: After February 22. And I'm  
25 just kind of looking at the board here in terms of this is

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1 what I was going to suggest we do is to go ahead and postpone  
2 this until after February 22 when the text amendment will  
3 actually take effect.

4 And then you can speak with the Office of Zoning  
5 as to whether or not you want to withdraw the case.

6 MS. LUDMILA: All right.

7 CHAIRPERSON HILL: Okay?

8 MS. LUDMILA: Thank you.

9 CHAIRPERSON HILL: So, Mr. Moy, when would we  
10 reschedule this?

11 MR. MOY: I'll leave it at the hands of the board.  
12 Either February 27 or March 6.

13 CHAIRPERSON HILL: Go ahead and put it on for  
14 March 6.

15 MR. MOY: Okay.

16 CHAIRPERSON HILL: Okay. That way it will give  
17 Ms. Ludmila time to actually speak with the Office of Zoning  
18 to make sure you understand what's going on. And then you  
19 can decide whether or not you want to come back to us on  
20 March 6 with information from the ANC, or you want to  
21 withdraw the case because you don't need the relief anymore.

22 MS. LUDMILA: Yes.

23 CHAIRPERSON HILL: Okay?

24 MS. LUDMILA: All right.

25 CHAIRPERSON HILL: You understand?

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1 MS. LUDMILA: Yes.

2 CHAIRPERSON HILL: Okay, thank you.

3 MS. LUDMILA: Thank you very much. Thank you,  
4 everybody.

5 MR. MOY: The next case application before the  
6 board is application number 19915 of Martin Hardy captioned  
7 and advertised for a special exceptions under the residential  
8 conversion requirements Subtitle U Section 320.2 and Subtitle  
9 C Section 303.2 from the minimum parking requirements of  
10 Subtitle C Section 701.5 and pursuant to Subtitle X Chapter  
11 10 for an area variance from the residential conversion  
12 requirements of Subtitle U Section 320.2(d).

13 This would add a third unit to an existing flat  
14 and convert it to an apartment house. RF-1 zone. This is  
15 at 1000 Rhode Island Avenue NW square 337 lot 19.

16 CHAIRPERSON HILL: Good morning. If you could  
17 please in yourself, for the record?

18 MR. HARDY: Good morning. My name is Martin  
19 Hardy. I live at 871 Dolly Madison Boulevard in McLean,  
20 Virginia.

21 CHAIRPERSON HILL: Oh, okay. I went to Langley  
22 High School so that's in that area there.

23 MR. HARDY: I'm the owner and the builder of 1000  
24 Rhode Island Avenue.

25 CHAIRPERSON HILL: Okay. So Mr. Hardy, I'm going

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1 to give you 15 minutes to go ahead and kind of tell us what  
2 you're trying to do in terms of the application. Also if you  
3 kind of could walk us through the relief you're requesting  
4 as well as the standard in which you're meeting that relief  
5 that you're requesting.

6 And I don't really have any particular questions.  
7 I mean, your burden of proof I thought was also pretty  
8 thorough. But if you want to go ahead and just kind of tell  
9 the board about your application and if we have any questions  
10 for you we'll ask them at that time. And you can begin  
11 whenever you like.

12 MR. MOY: Pardon me, Mr. Chairman.

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: If I can ask Mr. Hardy to angle the  
15 board off my camera right here. That's fine too, but if you  
16 can angle it so it's perpendicular to the camera so that we  
17 can see it on the screen as well. Thank you.

18 MR. HARDY: Good morning. I spent my career as  
19 a development economist at the International Monetary Fund  
20 and I took early retirement in 1999 and began a second career  
21 restoring historic buildings in Washington, D.C.

22 The building that used to stand at 1000 Rhode  
23 Island Avenue on the corner of 10th and Rhode Island Avenue  
24 burnt down in a spectacular fire in 1998. And it was mostly  
25 demolished by the city.

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1           It was just a crumbling ruin when I bought that  
2 building. I have one picture showing it but in the  
3 submission there are many more pictures of what the condition  
4 of the building was.

5           It was in fact considered to be one of the 10  
6 worst eyesores in the city by the Washington Post which  
7 published an article on that.

8           The previous building before it burned occupied  
9 the entire building lot, 100 percent of the lot. It had no  
10 rear access, no side access, no parking or anything.

11           The building had been largely demolished. Some  
12 of the first floor was still standing as you can see. It was  
13 just a pile of rubble and the footprint was there and as I  
14 said part of the round tower.

15           What I was hoping to do was build a grand building  
16 that would be leading into Logan Circle coming down Rhode  
17 Island Avenue.

18           And with my architect Michael Allen we designed  
19 a four story building. The limit was three stories in the  
20 RF-1 zone but including the existing cellar which was already  
21 9 foot ceilings.

22           And we designed a tower that was trying to make  
23 reference to Rennie Mackintosh and the Glasgow school, the  
24 Scotland school building at the beginning of the 20th  
25 century.

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1           So we put in these five floor to ceiling windows  
2 in the tower as you can see in the picture.

3           We submitted the project to the BZA in December  
4 of 2001. We submitted it as two duplex apartments and the  
5 basement cellar area was considered to be storage. I'm going  
6 to get back to that later.

7           The board I think was very enthusiastic about the  
8 proposal. They approved all of the variances that were  
9 required. They considered it to be a very suitable  
10 transition to Logan Circle.

11           And when we executed the building I tried to make  
12 a grand building and paid every attention to all the details  
13 of it. We used a lot of decorative brickwork, bands of black  
14 brick and highlights of blue brick and checkerboard.

15           We used molded stone, lintels, brownstone around  
16 the base, stone bands, copper finials. I found two antique  
17 cast iron staircases which is not easy to find to put on it.  
18 Copper down spouts. All kinds of details.

19           You see the picture of what was done afterwards  
20 and you've seen the pictures of what was before. And in fact  
21 the building was very well regarded. The Historic  
22 Preservation Office nominated it for the Mayor's award for  
23 historic preservation in 2007. It was awarded that honor so  
24 I was very proud of that. This is part of the background of  
25 today's case.

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1           At the time I did the application for zoning  
2 relief in 2001 it was self-certified and it was applied as  
3 two duplexes and a cellar storage on the advice that I  
4 received at the time which I was not too happy with.

5           I would have preferred for the cellar to have been  
6 a separate unit. But I was new to the complexities of real  
7 estate in Washington and the zoning process and all so I  
8 followed the advice that was given me by the architect to  
9 present it in that way.

10           And as it happened during the discussion of the  
11 case some of the board members -- some of them focusing on  
12 the cellar actually wondered why it was that I was not  
13 seeking a use variance to allow for three residential units  
14 especially given the previous history of the building and the  
15 fact that they were approving four stories above and the  
16 cellar. And the basement was preexisting.

17           And the Office of Planning spokesman at the time  
18 said as long as the basement or the cellar area complies with  
19 all the zoning requirements there's no reason why it could  
20 not be a residential unit.

21           But I guess I was not sort of flexible enough or  
22 familiar with the situation to as it were on the run change  
23 the application and take that suggestion though that was what  
24 would have been most appropriate at the case at the time.

25           And I think that if I had I'm sure -- well, I'm

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1 pretty convinced that the BZA at the time would have approved  
2 that use variance because in fact the main decision was the  
3 size of the building, the additional story and not really  
4 just the number of dwelling units per se.

5 But the failure to apply for -- as a three-unit  
6 building I think was a major error because in fact there is  
7 no demand for that area of storage. The units above are  
8 three-bedroom units. They're rental units. They don't have  
9 anything else to store. There's nothing I can do with the  
10 cellar area.

11 And I have to keep it air conditioned because it  
12 will get moldy otherwise and it has to have a separate  
13 utilities. As vacant it's an invitation to vandals to break  
14 in and so forth. It's costly to maintain and it's useless  
15 space at the moment.

16 Speaking as an economist it's just a waste of  
17 resources.

18 At the time I thought it would be simply an  
19 administrative matter to deal with this issue. Especially  
20 because the previous building before it burned was on record  
21 as being a three-unit building.

22 It had two apartments and a beauty parlor. And  
23 there are copies of the certificates of occupancy are on file  
24 in the application of the previous building.

25 But it was not something that could be done and

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1 it has to come to the Board of Zoning and so it's been kind  
2 of languishing as I've been occupied with other things and  
3 not quite sure how to proceed.

4 So, this is the background of the present  
5 application. The cellar itself is around 1,100 square feet  
6 in size. It has eight, not six, eight large window wells.  
7 It has 9 foot ceilings and it has two separate entrances, one  
8 from Rhode Island Avenue side and one from the 10th Street  
9 side.

10 The building is four floors and a cellar. The  
11 space already exists. And absolutely no change is required  
12 to the exterior of the building. It's all inside.

13 So this application has been supported by the  
14 Office of Planning and the ANC which supported it  
15 unanimously. And it's supported by the neighbors.

16 In terms of the detailed presentation which you  
17 asked me to go through of the justification they are spelled  
18 out in some detail in the application.

19 Essentially the hardship is that I have to keep  
20 an air conditioned space and I cannot use it. And I think  
21 it's -- because the building exists and no changes are to be  
22 made to the building the argument is that there's no further  
23 issue in terms of the fabric of the city, or changing the  
24 aspect of the building so that no further waivers or  
25 modifications or special exceptions are required.

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1           So it's just simply a use variance to be able to  
2 use this space as a residence.

3           CHAIRPERSON HILL:   Okay, sure.   Thank you, Mr.  
4 Hardy.

5           VICE CHAIR HART:   Thank you very much, Mr. Hardy.  
6 I've got to say I do appreciate the architecture of the  
7 building.   I was very surprised to see the building, the  
8 images that you provided in the record.   So I was definitely  
9 a fan of the architecture.   I think that's great.

10           I will ask, however, about a couple of things.  
11 One of them it really is -- unfortunately with use variances,  
12 with any variance there is a higher standard for us granting  
13 that variance than a special exception.

14           A special exception are things that are of course  
15 provided for in the zoning code and you kind of have to meet  
16 these particular, whatever the criteria that's specified in  
17 the zoning code.

18           For variances it's -- they're seen as being things  
19 that are outside of the zoning -- or more than what the  
20 zoning would allow and so it requires that an applicant come  
21 before us and say these are the reasons why.   And then we  
22 have to agree with that and grant it or not agree with it and  
23 deny it.

24           The question I had was really, actually there are  
25 kind of two questions.   One of them is you've maintained that

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1 there is an issue about the cost of the space. But we really  
2 don't understand what that cost is on a monthly or annual  
3 basis. That would be helpful information for us to have to  
4 be able to understand that fully.

5 And also is there an interior connection between  
6 the two units that are above and this basement level? I  
7 don't know if there is because we didn't get the floor plans,  
8 but you did talk about the two exterior connections.

9 As a storage space it would be somewhat odd to  
10 have to go outside of your unit to go downstairs into a  
11 storage area which may be why it hasn't been used.

12 I'm not saying that it is, I'm just saying that  
13 there may be other reasons why that space hasn't been used.

14 And actually, just a third question which is more  
15 just clarity on my part. The property lot is 995 square  
16 feet?

17 MR. HARDY: Nine seventy-nine I think.

18 VICE CHAIR HART: Nine seventy-nine. But the  
19 lower level is 1,100 square feet. So are you including the  
20 window wells in that? I just couldn't quite understand --  
21 I couldn't understand how it was bigger than the actual lot  
22 area. So if you could just explain that that would be  
23 helpful. Thank you.

24 MR. HARDY: Start with the last. The actual lot  
25 line, the building actually already projected way beyond the

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1 lot line in terms of the round tower and the window wells.  
2 The lot line actually runs along the line of the straight  
3 walls that are recessed.

4 And all of the space in front of that to the  
5 sidewalk is public space. So that's the reason why the  
6 building footprint is actually bigger than the lot.

7 VICE CHAIR HART: Part of this building is in  
8 public space you're saying.

9 MR. HARDY: Yes.

10 VICE CHAIR HART: So they're just projections into  
11 it.

12 MR. HARDY: Exactly. The round tower --

13 VICE CHAIR HART: The plane is the actual -- the  
14 plane of most of the -- not most of it, a portion of the  
15 facade is where that lot line is.

16 MR. HARDY: Correct.

17 VICE CHAIR HART: Okay.

18 MR. HARDY: So as you can see from the picture.

19 VICE CHAIR HART: Sure.

20 MR. HARDY: In terms of the cost of maintaining  
21 it the cellar space is separately metered and it also has  
22 separate utilities so that I have to pay the electricity, air  
23 conditioning and heating for that area.

24 And it was designed without -- well, it has no  
25 direct access to the floors above. It was always designed

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1 as a separate space. That's because the top duplex apartment  
2 is in any case totally separated from the cellar.

3 And that's one of the issues for me because in  
4 discussing how I could come back to the BZA 10 years later  
5 and do what I should have done in the beginning I looked at  
6 -- it was suggested to me that one other -- possibly other  
7 option might be to attach the cellar to the unit above it.

8 But in fact the building was laid out without that  
9 concept. So all the joists, I looked at all the joists and  
10 the joists do not line up in any way that we can run a  
11 staircase up. So structurally it's not possible to link it  
12 to the units above.

13 VICE CHAIR HART: I think it would be helpful, and  
14 I don't know about the rest of the board members, but just  
15 to understand that would be helpful.

16 Because again the use variance is a much higher  
17 thing that we have to understand, a bar to have to go over.

18 And what is the monthly cost for you for  
19 conditioning this space?

20 MR. HARDY: It's approximately I'd say \$200, \$250.

21 VICE CHAIR HART: So you're looking at about  
22 \$2,400 a year.

23 MR. HARDY: Yes. Mostly for air conditioning and  
24 heating.

25 VICE CHAIR HART: I think it would be -- again,

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1 I think it would be helpful to understand why it cannot be  
2 added to the bottom unit. I mean, it would be a very large  
3 unit.

4 I understand you're saying that the stairs are an  
5 issue, but again we don't have anything that shows us why  
6 that is a problem. It is helpful for us to understand that  
7 again so that we can apply that to why we should be granting  
8 this variance.

9 If this were a special exception I'd be more  
10 willing to just think about that and listen to your  
11 presentation. As it is a variance again I think it is our  
12 obligation to be able to understand that in a little bit more  
13 detail and right now we just don't have that information to  
14 be able to do that.

15 At least I don't think we have that information.  
16 And that's the last question.

17 CHAIRPERSON HILL: Commissioner Shapiro, you had  
18 a question.

19 COMMISSIONER SHAPIRO: I do. Thank you, Mr.  
20 Chair. Mr. Hardy, you were talking about the building in its  
21 previous incarnation. Was there a below grade use in the  
22 building before?

23 MR. HARDY: I couldn't tell you that because as  
24 I say when I saw the building it was just full of rubble.  
25 There was nothing surviving from below.

1 But all I can tell you is it did have a complete  
2 basement cellar area because when we excavated out that was  
3 there. And it did have certificates of occupancy for three  
4 units. One of the units was a beauty salon I believe. I'm  
5 not sure if that was on the first floor or in the cellar.  
6 Probably it was in the cellar. I'm not sure.

7 COMMISSIONER SHAPIRO: Part of what you were --  
8 I'm not quite sure it's relevant. You bring up the issue of  
9 part of the practical difficulty is incurring costs  
10 associated with it. So it begs the question for me to  
11 explore a little bit more about the costs involved.

12 And part of costs, not just the expense of  
13 maintaining but also there's a lost revenue. There's also  
14 an issue of potentially adding another housing unit which is  
15 useful for D.C. as there's all sorts of issues around supply  
16 of housing.

17 So, I guess my question is I don't have -- these  
18 look like very large, well they are large three-bedroom  
19 duplex units that probably rent for a fair bit.

20 This basement unit that you're talking about I  
21 imagine you are not going to be -- if this were allowed you  
22 wouldn't be renting for as much.

23 MR. HARDY: No, not so much.

24 COMMISSIONER SHAPIRO: So, give me a ballpark.  
25 What would a unit like that, what would this basement unit

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1 rent for?

2 MR. HARDY: Probably somewhere in the region of  
3 \$1,800 a month, something like that.

4 COMMISSIONER SHAPIRO: Well, the 1,100 square  
5 feet, is that accurate? That's how you would advertise it,  
6 as 1,100 square feet?

7 MR. HARDY: Yes.

8 COMMISSIONER SHAPIRO: Because I was taken by Vice  
9 Chair Hart's question about are you counting the window wells  
10 as part of that. So the interior space is 1,100 square feet?

11 MR. HARDY: Correct.

12 COMMISSIONER SHAPIRO: Okay. That's all I have,  
13 Mr. Chair.

14 MR. HARDY: To go back to Mr. Hart's question I  
15 do have the layouts of the apartments. I can explain to you  
16 briefly so it doesn't sort of hold us up, but --

17 CHAIRPERSON HILL: Actually, Mr. Hardy, let's do  
18 this. I'll get back to Vice Chair Hart's questions and such.  
19 I just want to get through the Office of Planning, we'll get  
20 through the rest of the testimony here and see if we get to  
21 a deliberation today or not.

22 So does anyone have any other questions for Mr.  
23 Hardy at this point? Okay. I'm going to turn to the Office  
24 of Planning.

25 MR. MORDFIN: Good morning, Chair, members of the

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1 board. I'm Stephen Mordfin and the Office of Planning  
2 recommends approval of this application.

3 There are three areas of relief that were  
4 requested. One is an area relief for the 900 square feet per  
5 lot -- 900 square feet of lot area per unit. And the Office  
6 of Planning recommends approval of that as it's an existing  
7 building on an existing lot and there is no new construction.

8 The Office of Planning also recommends approval  
9 of two special exceptions. One is to convert the building,  
10 an existing building to a three-unit apartment house and the  
11 second is to reduce the parking as none can be provided  
12 onsite to reduce it from one space required to none.

13 So therefore the Office of Planning recommends  
14 approval of this application and is available for questions.

15 CHAIRPERSON HILL: Okay. Does anybody have  
16 questions for the Office of Planning?

17 VICE CHAIR HART: Just kind of a similar question  
18 that I had for Mr. Hardy. With regards to the issue of  
19 whether or not this could be added to the bottom unit.

20 I understand it will be a very large unit, so it's  
21 not that I'm saying that I'm just -- did you all look at  
22 that? Did you look at the cost issue, or I guess the space  
23 issue in terms of how much money they're losing in revenue  
24 versus how much money that it's costing for monthly to  
25 maintain it? Did that play a part in your calculation or

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1 your analysis?

2 MR. MORDFIN: No, we did not look at that. What  
3 we looked at, the criteria for reducing the lot area from the  
4 900 square feet, we just found that there is no way to -- the  
5 building exists. You cannot increase the size of this lot.

6 You cannot change the way the building is built.  
7 And so that we looked at as the exceptional situation is that  
8 this building exists with a cellar that is not used. It is  
9 not part of either of the two units above.

10 We did not look at whether or not the applicant  
11 could connect it. That's not what the applicant applied for.  
12 The applicant applied for whether or not a third unit could  
13 be added. So we would either recommend approval of the third  
14 unit or we would recommend denial of it. We wouldn't  
15 recommend alternatives for the applicant to use his property.

16 We didn't think that there would be a substantial  
17 detriment to the public good as this unit exists. There  
18 would be no changes to the exterior. There would be no  
19 additional doors added, no additional windows added. The  
20 exterior would remain the same as it is today.

21 The only changes would be to the interior of the  
22 building which would not be visible or would be minimally  
23 perceptible to the public that anything has changed from the  
24 interior.

25 And then we didn't think that there would be

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1 substantial harm to the zoning regulations because the  
2 building already has variance relief from I believe it's 2007  
3 from order 16801. And because nothing is going to change it  
4 wouldn't look any different from today it's a two-unit  
5 building and tomorrow it's a three-unit building we didn't  
6 see that that was really going to have a significant increase  
7 on the neighborhood or the surrounding community or the  
8 building itself.

9           It's one unit on the cellar level. So therefore  
10 we recommended approval of that variance.

11           VICE CHAIR HART: Okay. I appreciate that and I  
12 understand what you are saying.

13           The question that I had was really the building  
14 itself had already gone through -- had been created whatever  
15 that was, however many years ago in the early two thousands  
16 using variance and special exception relief to get to this  
17 point.

18           And now they're coming forward for it with another  
19 variance. And that's the question is really in some ways  
20 they kind of created this problem. And so now we're kind of  
21 looking at it and trying to deal with it.

22           I understand that it's now an existing condition,  
23 but it's an existing condition that they created. So that's  
24 the -- and I understand that it's one unit. I'm not trying  
25 to fight that.

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1 I'm trying to make sure that we are understanding  
2 all of this and being able to see well okay, I can kind of  
3 see that and I'm fine with that. So I'm kind of pressing  
4 just to make sure that -- to understand where, how you've  
5 gotten to the recommendation that you got to. But I  
6 appreciate the explanation. Thank you.

7 CHAIRPERSON HILL: Okay. Mr. Hardy, before you  
8 answer whatever you're about to say do you have any questions  
9 for the Office of Planning?

10 MR. HARDY: No.

11 CHAIRPERSON HILL: Okay. Mr. Hardy, you had  
12 something you wanted to say?

13 MR. HARDY: Yes, just briefly on Mr. Hart's last  
14 point. I tried to explain to you that I consider this to be  
15 an error that I did not apply for it in the original package.

16 But there doesn't seem to be a mechanism to be  
17 able to come back on that error because the building was  
18 approved by the Board of Zoning as it is and it has all that  
19 space already in it.

20 So I'm not asking for additional space or anything  
21 like that.

22 CHAIRPERSON HILL: No, Mr. Hardy, we understand  
23 that. Mr. Hart, and I don't have any issues with what Vice  
24 Chair Hart is speaking to in terms of the standard that we  
25 need to go through in order to approve this. It's not an

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1 easy standard.

2           And by the way, I don't even know if necessarily  
3 -- I don't know what the board was like back in the early two  
4 thousands but I mean things have changed a little bit. You  
5 might be better off here now than you would have been then.  
6 I don't know.

7           And so, but regardless this is where you are now.  
8 So, okay. Does anybody have any other questions for Mr.  
9 Hardy?

10           Is there anybody here wishing to speak in support?  
11 Is there anyone here wishing to speak in opposition? Okay.

12           So I guess what we can kind of -- I mean, I would  
13 be able to deliberate on this, but I'm also comfortable if  
14 we need to take a little bit more time or ask for a couple  
15 of things in terms of like a small cost analysis in terms of  
16 the bottom floor as well as if you were interested in, Vice  
17 Chair Hart, or any other board members if they need any other  
18 information.

19           I don't think that a week or two is going to  
20 change the situation in terms of if there's more information  
21 that somebody would like to have in order to feel more  
22 comfortable in terms of deliberation.

23           So, first I'll ask I guess is there anything else  
24 anyone would like to have or hear in addition to some of the  
25 things that Vice Chair Hart might have asked for.

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1           MEMBER JOHN: Mr. Chairman, I am fine with the  
2 information we have now, especially as clarified by the  
3 Office of Planning. And the testimony of the applicant that  
4 the average cost of maintaining the storage unit just for  
5 electricity and heating and so on is approximately \$200 per  
6 month, that the lost revenue is approximately \$1,800 per  
7 month.

8           I thought those questions and the answers were  
9 very helpful in terms of showing that there is some level of  
10 undue hardship in maintaining this storage space when it  
11 could be put to good use as a residential apartment.

12           So I am satisfied with the record as it is and I'm  
13 prepared to deliberate.

14           CHAIRPERSON HILL: Okay. So, it appears as though  
15 we could deliberate. Vice Chair Hart, would you like  
16 anything additional?

17           VICE CHAIR HART: I think that if folks want to  
18 deliberate that's fine. I can deliberate as well today if  
19 we want to using the information that we have and we'll see  
20 from there.

21           CHAIRPERSON HILL: Okay, all right. Okay.

22           MEMBER WHITE: I could deliberate as well. I  
23 mean, I understand that a professional architect has asked  
24 for some items that do make sense to me in terms of the cost  
25 analysis, but I still think that based upon what's currently

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1 in the record and the testimony that I've heard I think I  
2 could reach a decision today.

3 CHAIRPERSON HILL: Okay. So I have a question for  
4 OAG actually. I haven't processed this before in this way.

5 So, once the hearing is closed and we begin  
6 deliberations if during deliberations we determine that we  
7 might like some additional information we would have to then  
8 reopen the hearing, ask for the additional information, and  
9 then set a time again for deliberations. Is that correct?

10 MS. LOVICK: Well, you wouldn't have to  
11 necessarily reopen the hearing unless you wanted testimony.  
12 You could continue the deliberations and ask for some  
13 additional submissions before you continued the  
14 deliberations.

15 CHAIRPERSON HILL: Okay, so then that's different.  
16 Okay, all right. Okay. So, Mr. Hardy, do you have anything  
17 you'd like to add in conclusion?

18 MR. HARDY: No, Mr. Chairman.

19 CHAIRPERSON HILL: Okay, all right. Mr. Hardy,  
20 if you don't mind turning off your microphone. We get a  
21 little feedback up here sometimes. All right, great.

22 Okay, then I'm going to go ahead and close the  
23 hearing. I guess the board is ready to deliberate. Who  
24 would like to start the deliberations?

25 MEMBER JOHN: Okay, I see you looking at me, Mr.

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1 Chairman. So, I'll make this sort of short. I thought that  
2 the applicant offered a compelling reason to convert this  
3 unusable space to residential space.

4 I think that the Office of Planning's report as  
5 clarified in further testimony about OP's analysis and how  
6 OP came to the decision that the conversion was appropriate.

7 The variance is for lot occupancy. And the  
8 building is already built. So there isn't -- I agree with  
9 the Office of Planning that there isn't any significant  
10 impact because the building is already there and it had that  
11 unit, if we believe the testimony of the applicant it had  
12 that unit in that configuration before it was burned down.

13 And so I -- beyond what's in the record, beyond  
14 the applicant's testimony, OP's analysis I am able to support  
15 the application.

16 CHAIRPERSON HILL: Mr. Commissioner.

17 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
18 agree with my colleague's points and the only thing I would  
19 add is that to Vice Chair Hart's point the more challenging  
20 piece here is the area variance.

21 And as I look at the test for this specifically  
22 related to practical difficulty I don't just factor in the  
23 cost of maintaining, but I also factor in the lost revenue  
24 and actually an additional unit in a walkable urban area I  
25 think is a benefit to the District of Columbia as well.

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1 I'm sensitive to Vice Chair Hart's point about  
2 this was something that the applicant brought on himself.  
3 And I think we factor that in, we weigh that in, but that's  
4 not for me in this situation that's not a reason to stop this  
5 from going forward. So I would be supportive of this, Mr.  
6 Chair.

7 CHAIRPERSON HILL: Okay, thank you. Ms. White.

8 MEMBER WHITE: So again, this is a conversion from  
9 a two-unit flat to a three-unit apartment house. And you're  
10 requesting special exception pursuant to U 320.2 for a  
11 residential conversion to three units and also for relief  
12 from the minimum parking requirements, right, under C 703.2.

13 So you're requesting an area variance for this  
14 residential conversion which requires that there be 900  
15 square feet of land area per dwelling unit. With the third  
16 unit they'll only have 331 square feet of land area per  
17 dwelling unit.

18 So you need a variance in this case. So you're  
19 requesting special exception parking relief under as I  
20 mentioned C 703.2 where currently one space is required and  
21 you're proposing that zero parking be provided for this  
22 particular application.

23 Looking at the special exception criteria I found  
24 that you did meet the burden of proof. But obviously the  
25 more high profile aspect of the case is the variance relief

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1 that you're requesting.

2           And looking specifically at the variance test I  
3 found that given the current configuration of the building,  
4 you're not really expanding the footprint at all, that there  
5 is a practical difficulty in terms of the usage of that  
6 cellar space.

7           I did find that there was an exceptional condition  
8 in this particular case and it did -- the layout was not  
9 practical so there was a practical difficulty for you, Mr.  
10 Hardy, even though some of this has kind of been kind of not  
11 necessarily something that -- well, kind of brought on early.

12           But this was obviously -- for me I felt as though  
13 the test was met in terms of the practical difficulty and  
14 that it would be no harm to the public. I mean, it's  
15 obviously a very attractive beautiful design.

16           The necessity for housing is pretty high in that  
17 area. So you're not increasing -- you can't increase the  
18 size of the lot. You're not changing the footprint. But  
19 with the support of the ANC and OP I'm comfortable that you  
20 should get the variance relief that you're seeking. So I  
21 would be in support of this application.

22           CHAIRPERSON HILL: Okay, thank you. Vice Chair  
23 Hart.

24           VICE CHAIR HART: Sure. I didn't want to be the  
25 person throwing the cold water on the proceedings, but the

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1 questions that I was raising were really around -- I  
2 understand what the applicant is trying to do and I do  
3 understand that the situation and the background, I  
4 appreciate the background that you provided because I think  
5 it's helpful to understand all of that.

6           And the issue that I have is really around I just  
7 don't think that we have enough information or at least full  
8 enough information for me to be able to say that I would  
9 support it. And that was part of kind of the questioning.

10           I appreciate the information regarding the cost  
11 because I think that that is one factor in it. I think it  
12 would have been helpful to understand why you couldn't make  
13 a connection between that top unit and the -- the top unit,  
14 the first unit, the bottom two floors and the basement. I  
15 really don't understand why that can't happen.

16           I understand that there was an issue with it, but  
17 we didn't have any information in the record to be able to  
18 say we agree with you beyond the testimony that you've  
19 provided.

20           And I do understand that the Office of Planning  
21 is supportive. I understand that this is a -- the building  
22 is at 100 percent or maybe a little more than 100 percent  
23 occupancy, and I get all of that.

24           It's more the point of I think that we should be  
25 looking at the variance test as a fairly high bar and that

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1 I don't think that we've gotten sufficient information to be  
2 able to kind of say yes, okay, I'm okay with that.

3 I understand that my colleagues, they have looked  
4 at this information and they have a different opinion on it.  
5 That's fine. That's why there are five of us.

6 So, I don't think I'd be able to support the  
7 application, but really because I don't think that I have  
8 sufficient information to be able to do that. And I will  
9 leave it there and that's it.

10 CHAIRPERSON HILL: Okay. So, I mean this was an  
11 interesting discussion. The day is pretty light today and  
12 so I'm glad that we had kind of an opportunity to talk this  
13 through a little bit more even though Mr. Hardy I'm sure  
14 would have appreciated that we didn't have any time to talk  
15 about things a little more.

16 But the building I think is a lovely building.  
17 I don't think that's in dispute. I think that actually I  
18 mean, I can only imagine what it was like in the early two  
19 thousands to take on this project and to go ahead and do  
20 that, and to do it in such a way that it didn't take  
21 advantage of the fact that the materials could have been much  
22 cheaper and done in a way that they could have easily gotten  
23 away with it in the two thousands in a different shape or  
24 form.

25 I don't know whether in the two thousands, I'm

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1 going to go back and look and see who was on the board in the  
2 two thousands, but I don't know whether in the two thousands  
3 necessarily this would have also been such an easy decision  
4 because I mean, as Vice Chair Hart is mentioning it is an  
5 area variance and the standard is very high, and kind of  
6 going through the motions in terms of the discussion as to  
7 whether or not those standards are being met I think is --  
8 I'm glad we're going through that.

9           The 900 square feet actually is something that  
10 very rarely the Office of Planning actually is in approval  
11 of. But the fact that this was possibly even brought on by  
12 the applicant themselves, that's also another interesting  
13 point.

14           However, I do feel comfortable with the applicant.  
15 The votes are already 3 to 1 at this point without my vote.  
16 But I think that the applicant has made their argument.

17           I think that I would agree also based upon what  
18 my colleagues have pointed out in terms of the practical  
19 difficulty and the undue burden with terms of the cost.

20           And also I would agree that the -- even though the  
21 applicant has not provided drawings for the fact that the  
22 access to the basement from the first floor would be  
23 impractical or there is an undue hardship I also would  
24 believe the testimony that the applicant has put forward, and  
25 also they'd just be really large, it would be a very large

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1 unit in that -- although now it's a lot different, the big  
2 unit now, in that area now than a big unit was in the early  
3 two thousands.

4           Actually even I think it was probably difficult  
5 for those units in the early two thousands.

6           So in any case I would concur with the Office of  
7 Planning's analysis as well as the support of the ANC.

8           I will add one other item is that I think that had  
9 we gotten information from the applicant concerning some of  
10 the things that Vice Chair Hart might have been interested  
11 in hearing we might still be back at this same place. So I  
12 don't necessarily -- I don't know whether that would change.

13           So, that being the case I'll go ahead and make a  
14 motion to approve application number 19915 as captioned and  
15 read by the secretary and ask for a second.

16           MEMBER WHITE: Second.

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

19           (Chorus of ayes)

20           CHAIRPERSON HILL: All those opposed.

21           (Chorus of nays)

22           CHAIRPERSON HILL: The motion passes, Mr. Moy.

23           MR. MOY: Staff would record the vote as 4-1-0.

24 This on the motion of Chairman Hill to approve the  
25 application for the relief requested. Seconding the motion

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1 Ms. White. Also in support Ms. John, Mr. Peter Shapiro and  
2 Vice Chair Hart is opposed. Motion carries 4-1-0.

3 CHAIRPERSON HILL: Okay, great. We're going to  
4 take a quick break actually. Okay, Mr. Moy? Is that all  
5 right with the board? Thank you, Mr. Hardy.

6 (Whereupon, the above-entitled matter went off the  
7 record at 10:47 a.m. and resumed at 11:00 a.m.)

8 CHAIRPERSON HILL: All right, Mr. Moy, can you  
9 call the next case?

10 MR. MOY: Yes. Thank you, Mr. Chairman. The  
11 board is reconvening and it is about 11 o'clock a.m.

12 If we can have parties to the table to case  
13 application number 19916 of Continental Mortgage and  
14 Investment Corporation captioned and advertised for area  
15 variance from the non-conforming structure requirements of  
16 Subtitle C Section 202.2(b) and for a use variance from the  
17 non-conforming use requirements Subtitle C Section 204.1.

18 This would renovate and construct a rear addition  
19 to an existing six-unit apartment house R-3 zone 1217-1219  
20 Division Avenue NE square 5203 lot 861.

21 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
22 Moy. Could you please introduce yourselves for the record  
23 from my right to left.

24 MR. YOON: My name is Jae Yoon. I work as a  
25 construction manager for Continental Mortgage and Investment

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1 Corporation.

2 MR. FEINSTEIN: I'm Marc Feinstein, architect with  
3 Miner Feinstein Architects.

4 MR. CRAWFORD: Mark Crawford, counsel for  
5 Continental Mortgage and Investment Corp., the applicant.

6 MR. WALTERS: Mark Walters, president of  
7 Continental Mortgage and Investment Corporation.

8 CHAIRPERSON HILL: Okay, great, thank you. Mr.  
9 Crawford, I assume you're going to be presenting to us, or  
10 at least starting the presentation.

11 MR. CRAWFORD: That's correct, Mr. Chair.

12 CHAIRPERSON HILL: Okay. All right. So I guess  
13 some of the initial thoughts, as you're kind of going through  
14 the presentation I guess there is -- this is obviously for  
15 a use variance, or one aspect of it is for a use variance.

16 I know you've heard some of the discussion already  
17 from the previous case about the use variances and what we're  
18 kind of like looking for.

19 The other is that I'm going to pull up the record.  
20 I don't have anything from the ANC yet. Is that correct?

21 MR. CRAWFORD: The ANC emailed its letter in  
22 support to Mr. Moy and I.

23 CHAIRPERSON HILL: Oh, wait hold on. I got that.  
24 That's the one -- is that in the record now?

25 MR. MOY: Under exhibit 35, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay, so that's that one. And  
2 then the other is there was the issue with the text amendment  
3 taking effect. Where there's a text amendment taking effect  
4 at some point and you could speak to that if you like as well  
5 during your presentation.

6 And let's see. So with that being the case I'm  
7 going to go ahead and put 15 minutes up on the clock, Mr.  
8 Crawford, and if you could again walk us through what you're  
9 proposing and what is the relief that you need and how you're  
10 meeting the standard for us to grant that relief. And you  
11 can begin whenever you like.

12 MR. CRAWFORD: Thank you, Mr. Chair. Again my  
13 name is Mark Crawford and I'm here on behalf of the applicant  
14 Continental Mortgage and Investment Corp. with respect to our  
15 application for two variances at 1217 and 1219 Division  
16 Avenue NE.

17 As the board knows these are two street addresses  
18 but one single structure that shares those addresses.

19 The property was constructed in 1941 and the  
20 proposal is to renovate to expand the size of the structure  
21 and because the structure was already non-conforming for the  
22 area zoned we need an area variance and a use variance.

23 The tests and the questions and the relevant facts  
24 I think are not identical for each of those variance  
25 applications, but I do believe that there's a significant

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1 amount of overlap between the two issues.

2           So, the basic issue as set forth in our papers in  
3 our submission is this structure is a six-unit apartment  
4 building and is very small. And as constructed, as built it  
5 has essentially three slices if you will of units on the  
6 first and second floor going from left to right.

7           There's the units that are to the far left and  
8 have windows and light and so forth in that direction.  
9 There's units to the right, and then there's units in the  
10 middle that are sandwiched between the right and the left.

11           And the property was acquired in a state of  
12 significant neglect and disrepair. Renovation is essential  
13 and the property can't be renovated and meet current code  
14 requirements as to natural light, ventilation, emergency  
15 ingress, egress and the like. And the citations to those  
16 particular sections of the building code are also set forth  
17 in our submission. And Mr. Feinstein of Miner Feinstein  
18 Architects is here to speak to those issues to the extent  
19 necessary.

20           In order to meet those code requirements it's  
21 necessary to expand the building. What we're proposing to  
22 do is keep the shell of the building on three sides one of  
23 which already is -- has a side yard that is less than the  
24 dimension required for that particular area. It's 3 and a  
25 half feet whereas there's a 5 foot side yard required.

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1           But taking the front and the sides of the  
2 building, leaving them in place and extending the structure  
3 back by 25 feet in order to be able to build in conformity  
4 with current code requirements and also to modernize this  
5 structure which to my knowledge has not been -- has not  
6 really been modernized since the nineteen forties.

7           As a point of procedure I wanted to make sure that  
8 the ANC letter in support was in the record. I understand  
9 that it is as exhibit number 35.

10           We've met on several occasions with the ANC in  
11 their executive sessions and at two of their monthly meetings  
12 and received their strong support. Their letter, I believe  
13 the language that they use, they applaud Continental for its  
14 intent to upgrade and modernize the property.

15           The ANC's own letter states that they believe it  
16 conforms to the existing buildings in the neighborhood and  
17 they appreciate the economic diversity that the market rate  
18 apartments will build -- will bring.

19           A couple of things that I would like to emphasize  
20 are first, this is not a case where we are asking you to look  
21 at something that's currently put to a permitted use and  
22 change it to a non-conforming use.

23           And the use to which this will be put if the  
24 variances are granted is the same use to which it's always  
25 been put which is a six-unit apartment complex. And we

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1 believe that the proposed renovation not only is it not to  
2 the detriment or impairment of the neighborhood, we believe  
3 it is to the contrary to the benefit of the neighborhood.

4 And we have the support of the ANC and the Office  
5 of Planning has filed their report in support as well.

6 In terms of the test and the burden of proof we  
7 have this piece of property and these conditions that are  
8 unique to this piece of property with an existing footprint  
9 for an apartment building that is extremely small and doesn't  
10 permit renovation in conformance with code requirements.

11 And if that's the case and if the zoning rules are  
12 strictly enforced both as to area and as to use that would  
13 we submit result in exceptional and peculiar hardship to the  
14 owner and an unnecessary burden.

15 And we're not proposing to do anything other than  
16 keep the use the same as it has always been and improve the  
17 condition of the structure.

18 If you have specific questions as to the  
19 renovation plan I would be happy to hand the presentation  
20 over to Mr. Feinstein if you have questions about the burden  
21 of proof or any other aspect of this. I will be happy to  
22 answer them as best I'm able.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Crawford.  
24 We'll see where we are.

25 Mr. Feinstein, you're not in our book of approved

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1 experts at this point, is that correct?

2 MR. FEINSTEIN: What do you mean? In terms of  
3 actual --

4 CHAIRPERSON HILL: You haven't testified before  
5 us, have you?

6 MR. FEINSTEIN: I have previously, a couple of  
7 years ago.

8 CHAIRPERSON HILL: Okay. Well, I'm unclear as to  
9 whether -- it's something that is not difficult for us to  
10 determine. I just wasn't sure whether you were already in  
11 our expert book.

12 MR. FEINSTEIN: I'm not sure about that.

13 CHAIRPERSON HILL: Okay. That's okay.

14 MR. CRAWFORD: If I may, Your Honor, I was  
15 involved in that case as well and I appeared with Mr.  
16 Feinstein.

17 CHAIRPERSON HILL: Okay. Mr. Crawford, it's funny  
18 you call me Your Honor. That's okay.

19 MR. CRAWFORD: I know you hear it all the time,  
20 Mr. Chair. I apologize.

21 CHAIRPERSON HILL: I don't, but it's so funny to  
22 hear. But thanks. My wife tells me all the time I'm not a  
23 judge.

24 Okay. Because she's a lawyer. So in terms of  
25 your expertise, Mr. Feinstein, unless the board has any other

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1 problems. I've read through his resume and I think that he  
2 qualifies as an expert and we'll include him into our expert  
3 book. Okay, so Mr. Feinstein, just for formality's sake you  
4 now are included in our expert book.

5 So does anyone have any questions for Mr.  
6 Feinstein or the applicant?

7 MEMBER JOHN: Mr. Chairman, I have just one  
8 question of the architect. I'm not understanding this issue  
9 with the two interior apartments.

10 Using this diagram can you walk through that for  
11 me? And while you're doing that please explain why you could  
12 not do four apartments.

13 MR. FEINSTEIN: Why?

14 MEMBER JOHN: Why you could not do four apartments  
15 without an expansion.

16 MR. FEINSTEIN: It's currently six apartments.

17 MEMBER JOHN: You're expanding, am I correct?

18 MR. FEINSTEIN: We're maintaining six apartments.  
19 There's currently six apartments.

20 MEMBER JOHN: Yes, but you're requesting a  
21 variance and you need to expand it to bring them into code.

22 MR. FEINSTEIN: Certainly.

23 MEMBER JOHN: Okay, if you could just walk through  
24 the architectural considerations and the design.

25 MR. FEINSTEIN: It may be easier to get up. Can

1 I stand up?

2 MEMBER JOHN: Sure, absolutely.

3 VICE CHAIR HART: You need a mike. Mr. Moy.

4 MR. FEINSTEIN: Okay, thank you. So it may be  
5 easier to explain with a different diagram. Actually I don't  
6 have the floor plan with that. I'll explain with this one  
7 here.

8 So, the six units that currently exist, there's  
9 two units coming off of this entranceway here and one unit  
10 coming off of the other entranceway on each floor.

11 COMMISSIONER SHAPIRO: What perspective are we  
12 looking at? I'm sorry. It's overhead?

13 MR. FEINSTEIN: This is an overhead plan, yes.

14 COMMISSIONER SHAPIRO: Thank you.

15 MR. FEINSTEIN: So the entrance is the street here  
16 walking back and this is the footprint of the building. It's  
17 a two story building.

18 The big problem is the two units that sit in the  
19 middle of this structure, they are classified right now as  
20 one-bedroom units. However, you have on the back you have  
21 a kitchen and bathroom and on the front you have -- on the  
22 first floor you have a bedroom with a living room that's  
23 landlocked. So there's no windows to the living room.

24 On the second floor you have it the opposite way.  
25 So you have the bedroom that has no windows and you have a

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1 living room on the front.

2           So in either of those cases you have on those two  
3 units, the two middle units you have either a bedroom with  
4 no window or you have a living room with no window. So we  
5 don't have ventilation. You don't have egress from those  
6 places, et cetera.

7           So that's what prompted the need to do an addition  
8 because these are -- right now they're 450 square foot units  
9 to begin with. So reconfiguration within the existing  
10 footprint to allow for those two middle units to have both  
11 a living room and a bedroom with a window is pretty much  
12 impossible while maintaining the bathrooms and kitchens in  
13 the rear and et cetera.

14           So that's what got us thinking, okay, if we're  
15 going to do an expansion let's make it something that is more  
16 useful for the neighborhood.

17           So at that point we because of the addition and  
18 because of the need that we saw in the neighborhood, Mr.  
19 Walters saw in the neighborhood for increasing the number of  
20 bedrooms per dwelling unit we said let's go with two bedrooms  
21 instead of the existing one bedroom for each of the same six  
22 dwelling units.

23           And we have the footprint on the site. So if you  
24 can see the site is a large property. The existing footprint  
25 only 1,707 square feet. With the new footprint we're still

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1 at 3,946 square feet which is below the 40 percent lot  
2 occupancy limit that if this was an allowable use in the zone  
3 would be the maximum.

4 So we're trying to be sensitive to -- even though  
5 it's a non-conforming use and it's an existing non-conforming  
6 use we're trying to be sensitive to not doing something that  
7 would overwhelm the neighborhood.

8 It's still within the same two story max height.  
9 It's still within the same lot occupancy percentage. It's  
10 just larger to allow for the dwelling units to be one,  
11 conforming, and then two, more useful for the neighborhood  
12 in terms of bedrooms. I hope that explains it.

13 MEMBER JOHN: Thank you.

14 VICE CHAIR HART: Actually, I don't know if you  
15 have A3, the image.

16 MR. FEINSTEIN: I don't have it blown up.

17 VICE CHAIR HART: Okay. That's fine. What I was  
18 asking about is the existing -- there are existing floor  
19 plans.

20 MR. FEINSTEIN: Yes.

21 VICE CHAIR HART: And I'm just a little bit  
22 confused as to what they are showing. So, each of the units  
23 have a kitchen and a living room, and then a room between the  
24 kitchen and the living room.

25 MR. FEINSTEIN: Correct.

1                   VICE CHAIR HART:     And you've labeled them  
2 bedrooms, but wouldn't that be like a dining room? There are  
3 no doors on them so how do you have a bedroom without --

4                   MR. FEINSTEIN:   That's the problem. That's the  
5 way it was being utilized. It was being utilized as that  
6 central room as a bedroom with a living room.

7                   VICE CHAIR HART:   But they were really dining  
8 rooms.

9                   MR. FEINSTEIN:   Well, then you had no bedrooms.

10                  VICE CHAIR HART:   Okay.

11                  MR. FEINSTEIN:   No, I mean if they are dining  
12 rooms like you're saying you have the kitchen and the  
13 bathroom in the rear like you see. Then you have the central  
14 room which we're labeling as a bedroom. And then you have  
15 the room where you enter into the dwelling unit which we're  
16 calling a living room.

17                  So these are one-bedroom units. So you either  
18 enter -- you would either enter into the bedroom and then  
19 have a landlocked living room, or you'd enter into the -- or  
20 vice versa. So either way it's a problem.

21                  VICE CHAIR HART:   Okay.

22                  MR. FEINSTEIN:   Yes.

23                  VICE CHAIR HART:   Either way it would have been --  
24 they're strange --

25                  MR. FEINSTEIN:   They're strange.

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1 VICE CHAIR HART: -- layouts. And so what you're  
2 trying to do again --

3 MR. FEINSTEIN: We're trying to make them useful.

4 VICE CHAIR HART: -- is to -- well, make them into  
5 some modern thing that somebody would be willing to rent out.

6 MR. FEINSTEIN: Yes. We like the idea of having  
7 the bedrooms with windows. We think that's a good thing.

8 VICE CHAIR HART: Not to make light of that, but  
9 it's also to have a -- some sort of delineation between them.

10 MR. FEINSTEIN: Correct.

11 VICE CHAIR HART: I understand that. I just was  
12 trying to understand how --

13 MR. FEINSTEIN: No, I understand why it's hard to  
14 comprehend because it's really abnormal.

15 MEMBER JOHN: So I have another question. Is  
16 there a certificate of occupancy for a six-unit building?

17 MR. FEINSTEIN: I believe so, yes.

18 VICE CHAIR HART: Put your mike on.

19 MR. WALTERS: I'm sorry.

20 VICE CHAIR HART: It's okay.

21 MR. WALTERS: The building was vacant when we got  
22 it so we never applied for an occupancy permit. I don't know  
23 that there was an existing one.

24 MR. FEINSTEIN: There has to be somewhere but we  
25 don't have it in our possession.

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1 MEMBER JOHN: But when you -- okay. So you're  
2 saying it was in that configuration, but you don't know if  
3 it was legally a six-unit configuration.

4 MR. FEINSTEIN: There were six different  
5 addresses. There was two different street addresses and two  
6 units for one street address and then four units for the  
7 other street address. It was always being rented out by the  
8 previous owner as six separate dwelling units. I just don't  
9 know if there was the certificate.

10 VICE CHAIR HART: Making sure --

11 CHAIRPERSON HILL: Does anybody have more  
12 questions?

13 COMMISSIONER SHAPIRO: Just real quick. Following  
14 up on the previous questions.

15 So when you bought this it was not occupied. Do  
16 you have any idea how long it had been vacant when you got  
17 it?

18 MR. WALTERS: I believe it was completely vacant.  
19 They had someone looking at the -- or monitoring the property  
20 that was staying there, but it wasn't habitable.

21 COMMISSIONER SHAPIRO: Okay, thank you. Thank  
22 you, Mr. Chair.

23 MR. WALTERS: Thank you.

24 CHAIRPERSON HILL: And just for the record again  
25 you said that you didn't have the no, sir when you first had

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1 the microphone on. What was the question again? You asked  
2 whether it was what, occupied when you bought it? Can you  
3 just say no for the record.

4 MR. WALTERS: No.

5 CHAIRPERSON HILL: Okay, thanks. All right. Mr.  
6 Feinstein, you can have a seat.

7 MR. FEINSTEIN: Thank you.

8 CHAIRPERSON HILL: All right. I'm going to turn  
9 to the Office of Planning.

10 MS. MYERS: Hello, Crystal Myers for the Office  
11 of Planning. The Office of Planning is recommending approval  
12 of this case and stands on the record of the staff report.

13 CHAIRPERSON HILL: Okay. Does anybody have any  
14 questions for the Office of Planning?

15 MEMBER JOHN: One question. Do you know if there  
16 was a certificate of occupancy for a six-unit apartment  
17 building?

18 MS. MYERS: No, we did not look that up. We based  
19 our analysis off of the applicant's submittal and that was  
20 not part of it.

21 CHAIRPERSON HILL: All right. Anybody else for  
22 the Office of Planning? Okay.

23 Is there anyone here wishing to speak in support?  
24 Is there anyone here wishing to speak in opposition? Okay.

25 All right, let's see. Does the board have any

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1 final questions of the applicant? I do actually, or at least  
2 want to talk through something.

3 So, Mr. Crawford, there was kind of the discussion  
4 again how there's a text amendment out that's going to take  
5 effect on February 22. And there was something about the  
6 area variance under D 307.5 is going to now change to D  
7 206.7. I think it's D. It's D, right? It's D 307.5.  
8 That's what I thought too actually, Commissioner, and I got  
9 a little confused.

10 So, it is within C 202.2(b) because you're -- so,  
11 well first of all, there is a text amendment that's going to  
12 be taking effect on the 22nd.

13 And I don't think it is going to change any of the  
14 discussion for what we're going to be necessarily looking at.  
15 Meaning it's not going to change any of your testimony.

16 But I do want to have that in effect prior to us  
17 deliberating. And so I'm going to ask the Office of the  
18 Attorney General to help provide some clarification for me.

19 But basically we would need the applicant to  
20 revise their self-cert to include D 206.7. And so am I --  
21 OAG, am I explaining this correctly?

22 MS. LOVICK: That's if you decide not to vote  
23 today. If you were to decide that you wanted to vote after  
24 February 22 then the applicant should just revise the self-  
25 cert to indicate that they're requesting relief from the side

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1 yard provisions in D 206.7. Because D 307.5 will no longer  
2 exist.

3 CHAIRPERSON HILL: Right. And so what I'm  
4 offering up for the board, and I'm kind of sharing this with  
5 the applicant as I kind of offer this up to the board is that  
6 I would prefer to wait until after the text amendment takes  
7 effect to have this discussion so that it's in its cleanest  
8 form since it's so close to being the 22nd when it comes up.

9 And so I'll ask that first. Does the board have  
10 any thoughts on that discussion?

11 MEMBER WHITE: I would prefer to wait as well.  
12 It just makes more sense to me.

13 CHAIRPERSON HILL: Okay. I see everybody kind of  
14 nodding their heads.

15 So that being the case would the applicant like  
16 to add anything at the end of the presentation here? You  
17 need to turn on your microphone, sir.

18 MR. CRAWFORD: Thank you, Mr. Chair. So, the  
19 recent developments in Zoning Commission case 17-23 which I  
20 believe is the case that has the proposed text amendments to  
21 which you're referring, that recently came to my attention.

22 My understanding is that while some of the  
23 numbering will change and some of the -- some provisions will  
24 be deleted and some new provisions will be enacted my  
25 understanding is that the issues, that the requirements

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1 themselves, the substance of what's required will not be  
2 affected.

3 This is relatively new to me. Based on my quick  
4 read that's my understanding.

5 CHAIRPERSON HILL: Sure, Mr. Crawford.

6 MR. CRAWFORD: I'm sorry, I don't mean --

7 CHAIRPERSON HILL: That's all right. That's as  
8 I understand it as well. And I'm just saying since this is  
9 happening so close to now it would just be cleaner for even  
10 you as the applicant for this to -- so when you go to  
11 permitting it's a much cleaner application in terms of our  
12 deliberations.

13 And so what I would suggest is you could check  
14 with the Office of the Attorney General after this hearing  
15 and then just clarify if there's anything in terms of  
16 changing the self-certification to include D 206.7.

17 What you said is accurate. In terms of what our  
18 deliberations will take place we don't need any new  
19 information. I just would prefer that we're all -- it's very  
20 tidy. So that we can not be concerned about moving forward.

21 So, I'm just asking in terms of your case. This  
22 doesn't change your case. In terms of your case do you have  
23 anything else you'd like to add concerning your presentation,  
24 concerning your argument.

25 MR. CRAWFORD: Unless there are any further

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1 questions I believe that's everything, Mr. Chair.

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

4 Okay, all right. Then I'll go ahead and --

5 MEMBER JOHN: Mr. Chairman.

6 CHAIRPERSON HILL: Yes, sure, of course.

7 MEMBER JOHN: I have -- I get that we're probably  
8 going to continue this case for sometime after now?

9 CHAIRPERSON HILL: What I'm suggesting is we wait  
10 until after the text amendment takes effect to have our  
11 deliberations.

12 MEMBER JOHN: So in that case I would like to find  
13 out if there is a certificate of occupancy for a six-unit  
14 building.

15 CHAIRPERSON HILL: Okay, so you'd like some  
16 additional information from the applicant?

17 MEMBER JOHN: Yes.

18 CHAIRPERSON HILL: Okay. And so does the  
19 applicant -- your question is does the applicant have a  
20 certificate of occupancy for a six-unit building, or try to  
21 find one?

22 MEMBER JOHN: Well, if the request is for  
23 conversion from a six-unit building -- right. I'm assuming  
24 it is a six-unit building, but there's nothing in the record  
25 that says it has a certificate of occupancy as a six-unit

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1 building. Because it seems to me that having two interior  
2 units, that's just how I'm thinking it might be incorrect.

3 I'm not sure how they could have been approved as  
4 a legal unit. And it could be that the owner reconfigured  
5 it after.

6 I don't know, Mr. Chairman. These are questions  
7 that I --

8 CHAIRPERSON HILL: That's all right. I'm only  
9 smiling because the two to my right are nodding heads  
10 together.

11 So what your question is, does the applicant have  
12 a certificate of occupancy for a six-unit building.

13 MR. CRAWFORD: Well, the unit right now or the  
14 building right now is uninhabitable. And obviously we don't  
15 have a CO for the renovated project. We're not at that  
16 stage.

17 But if I'm hearing correctly we're being asked can  
18 we look back through the record to determine was there at  
19 some point in time a certificate of occupancy showing that  
20 this was in existence legally as a six-unit.

21 CHAIRPERSON HILL: Yes.

22 MR. CRAWFORD: And if not what would we say to  
23 establish that this was in existence as a six-unit apartment  
24 building.

25 MEMBER JOHN: I guess that's my question. But I'm

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1 interested hearing from my fellow board members if they would  
2 also be interested. Maybe it's not important.

3 VICE CHAIR HART: No, I think so. I think it  
4 would be helpful to have. To me it's as Board Member John  
5 said it is something that we should probably understand.

6 And while it may have a configuration that way  
7 again the property owner may have done something that was not  
8 necessarily legal and we just don't know what that is.

9 And we understand that your testimony is that it  
10 was a six-unit configuration. That's fine, but the  
11 configuration doesn't mean that that actually had a C of O  
12 that stated that as well.

13 And I think we're probably looking at the most  
14 recent C of O. So, whichever, however many years you need  
15 to go back to get to that most recent one would be helpful.

16 I don't want one that's from 1950 that may not be  
17 -- that may have been superseded from then. If you could  
18 find the one that was most current. And again I don't know  
19 what that year is, but it would be helpful to at least see  
20 that and understand that.

21 Because you may find out that it was actually four  
22 units that they had, or some other configuration that was  
23 changed by the previous property owner.

24 MR. CRAWFORD: We would be happy to look into that  
25 information and to provide whatever we're able to find in

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1 terms of --

2 VICE CHAIR HART: And I was going to say I would  
3 appreciate having a response regardless of if you find  
4 something or not.

5 MR. CRAWFORD: Of course.

6 VICE CHAIR HART: To be able to say yes, we have  
7 looked back for the last whatever, 20 years and found -- I'm  
8 not giving you a timeline, I'm just saying whatever that  
9 information is.

10 Or say we didn't find one and we've looked back  
11 now 20 years and couldn't find one from then. So it's  
12 helpful for us to understand where that ends as opposed to  
13 not having any information and having to kind of -- well,  
14 just not having that information.

15 MR. CRAWFORD: Sure. And we will follow through  
16 and provide that as soon as we're able.

17 In terms of -- in light of the question in terms  
18 of your question, Mr. Chair, about is there anything to add  
19 before we finish here for today I'll just say that there's  
20 nothing about the structure to suggest that it was ever  
21 anything other than a six-unit apartment building and there's  
22 no indication that anything was renovated.

23 Everything is consistent in terms of the layouts  
24 of the various apartments and it's all nineteen forties era  
25 construction and claw foot bathtubs and tiny, small

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1 bathrooms. And the whole plumbing and wiring and mechanical  
2 system looks as though it was all --

3 CHAIRPERSON HILL: Okay, Mr. Crawford. So, I'll  
4 follow up what Board Member John just mentioned. Other than  
5 that does anybody need anything? Okay.

6 So to the comments that you just made, Mr.  
7 Crawford, again if you can find a certificate of occupancy  
8 for the six units, or if you can explain why you can't,  
9 and/or explain what you just said again which is why you  
10 believe it is to be a six-unit apartment building.

11 And if you could give that to us, and we'll set  
12 some dates, Mr. Moy. Because if the text amendment is going  
13 to go in the Register on the 22nd then we could get back here  
14 on the 27th.

15 If you, Mr. Crawford, could try to do whatever you  
16 can get to us by the 22nd which is Friday. Yes, we can have.

17 MR. CRAWFORD: I believe that should be plenty of  
18 time.

19 CHAIRPERSON HILL: Okay. So, does anyone have  
20 anything else they'd like? Okay. Does that sound good?  
21 Okay.

22 All right. Then so first of all I'm going to  
23 close the hearing. The hearing is closed. The only thing  
24 we need is the information I just asked for, Mr. Crawford,  
25 that you seem to understand Board Member John had questions

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1 about.

2           And then if you can get that to us by the 22nd  
3 then we can set this for decision on the 27th, Mr. Moy. And  
4 then if you also could just clarify with the Office of Zoning  
5 in terms of the self-certified application to include the D  
6 206.7.

7           Or if you have any questions about that just talk  
8 with -- you can step up to OAG right now after the hearing  
9 here and they can provide some clarification. And then we  
10 can deliberate on this on the 27th. You can push the button  
11 if you need to say anything.

12           MR. CRAWFORD: Thank you, Mr. Chair. And would  
13 you -- would it be helpful to have the whole team?

14           CHAIRPERSON HILL: No, we don't talk to anybody  
15 during the deliberations. We don't ask anything of anyone.  
16 You can watch it on the web.

17           MR. CRAWFORD: Okay. If you were looking for  
18 someone to appear I just wanted --

19           CHAIRPERSON HILL: Sure, I understand. That's  
20 just bringing up a subject that I'm actually in somewhat  
21 disagreement about.

22           We are advised not to take testimony from people  
23 during deliberations because then it kind of turns into a  
24 hearing again. And so there's no point in you being here,  
25 unless you just want to stare us down as we're kind of

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1 deciding which is what people do.

2 So, all right, Mr. Moy, you got all that?

3 MR. MOY: Yes, sir. Decision on February 27.  
4 Applicant to file the additional information by Friday,  
5 February 22. Did I say that right? Yes. Decision on the  
6 27th.

7 CHAIRPERSON HILL: Twenty-seventh, twenty-seventh  
8 is the decision. Okay. All right, great. Do you have any  
9 questions, Mr. Crawford?

10 MR. CRAWFORD: One more.

11 CHAIRPERSON HILL: Sure.

12 MR. CRAWFORD: Would it be helpful to the board  
13 if we submitted some photographs of the property in its as  
14 acquired condition that demonstrate the necessity of  
15 renovation?

16 CHAIRPERSON HILL: I don't need anything. Do you?

17 COMMISSIONER SHAPIRO: No, I think I would just  
18 reiterate what the chair said which is that we're looking for  
19 that information about what was previously granted.

20 If you have nothing else to show but those  
21 photographs because you can't find anything else that would  
22 be one thing. But if you find the C of O I believe that's  
23 all we're looking for.

24 MR. CRAWFORD: Right. Okay. By the 22nd. That  
25 sounds great.

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1 CHAIRPERSON HILL: Okay, great. All right, thank  
2 you, gentlemen.

3 MR. CRAWFORD: Thank you, Mr. Chair.

4 MR. MOY: All right, I would call parties to the  
5 table to case application number 19919 of Jaz, J-A-Z,  
6 Construction LLC.

7 This was captioned and advertised for a special  
8 exception under the residential conversion requirements  
9 Subtitle U Section 320.2, under Subtitle E Section 5201 from  
10 the existing non-conformity requirements of Subtitle C  
11 Section 202.2 and under Subtitle C Section 703.2 from the  
12 minimum parking requirements of Subtitle C Section 701.5.

13 This would construct a three story side addition  
14 and a three story rear addition and convert the existing  
15 semi-detached principal dwelling unit to a three-unit  
16 apartment house, RF-1 zone.

17 This is at premises 436 Park Road NW square 3044  
18 lot 54. And I would also if the applicant wished to clarify  
19 the relief that I've cited that's been advertised.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. If  
21 you could please introduce yourselves for the record from my  
22 right to left.

23 MR. AZAT: John Azat, principal, Jaz Construction  
24 LLC.

25 CHAIRPERSON HILL: Could you spell your last name

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1 for me, sir?

2 MR. AZAT: A-Z-A-T. Alpha zebra alpha Tom.

3 CHAIRPERSON HILL: Okay, great.

4 MR. SULLIVAN: Good morning, Mr. Chair, members  
5 of the board. My name is Marty Sullivan with the law firm  
6 of Sullivan & Barros on behalf of the applicant.

7 MS. HIRST: Good morning, my name is Emily Hirst.  
8 I am the architect for John Azat of Jaz Construction.

9 CHAIRPERSON HILL: Okay, great. Mr. Sullivan, I  
10 assume you're going to be presenting to us.

11 MR. SULLIVAN: Yes, sir.

12 CHAIRPERSON HILL: Okay. I guess there's a little  
13 bit of -- anyway, this is going to take a little bit of while  
14 for me to kind of like walk through in terms of some of the  
15 things you've asked for.

16 I guess there was a preliminary matter that we  
17 need to address and then there seems to be questions I'm  
18 going to have about the parking and the substandard space and  
19 whether or not you think you need a variance for that  
20 substandard space.

21 And kind of that's the whole part of the -- after  
22 you walk through us in terms of what you're trying to do.  
23 And again the standard with which you're meeting for us to  
24 grant these -- grant this application the substandard parking  
25 is the thing that kind of -- because it's tying into the ANC

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1 and what they're requesting for us.

2           So if you can go ahead. I'm going to put 15  
3 minutes up there on the clock, Mr. Moy, just so we know where  
4 we are, but I don't know how long this is going to take.

5           In terms of the preliminary matter would you, Mr.  
6 Sullivan, please explain to us the preliminary matter and how  
7 you think you're meeting the requirements for us to waive.

8           MR. SULLIVAN: And if I'm clear the preliminary  
9 matter is clarifying the relief that we're requesting.

10           CHAIRPERSON HILL: Oh no, I thought there was a  
11 time requirement. The 21-day filing and the change in the  
12 design. You had -- wasn't there something.

13           MR. SULLIVAN: Oh yes, we did ask for relief from  
14 -- yes. We were working with the Office of Planning and  
15 responding to the ANC's requests about providing space for  
16 parking. And another revision suggested in our dealings with  
17 the Office of Planning. So that was the reason for the late  
18 filing. I think it was two days.

19           CHAIRPERSON HILL: Okay. So under the Y 101.9  
20 waiver standard I didn't have any issues with waiving the  
21 time requirements. Does the board have any? Okay, so we're  
22 going to go ahead and allow that into the record.

23           Then after that you can go ahead and walk us  
24 through the application.

25           MR. SULLIVAN: Okay. Thank you, Mr. Chairman.

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1 I would like to clarify the relief being requested because  
2 I realized in discussions yesterday and today as I look at  
3 this we did -- within the application relief from 306 for  
4 rear yard relief is requested.

5           However, it didn't make it onto the notice and I  
6 think that's because on the application the section that was  
7 included was the special exception section for rear yard  
8 relief that includes both the non-conforming aspect of it 202  
9 and the actual rear yard relief of 306.

10           And so 202 was included but 306 wasn't. But  
11 within the applicant's statement we talked about 306 and  
12 relief from that, and on page 2 of form 135 we noted that  
13 we're seeking variance relief from the rear yard -- or  
14 special exception relief from the rear yard. I'm sorry.

15           And so that's -- I don't know if I need to  
16 formally amend to include that section now. It's in there  
17 throughout the application but I don't know if it's  
18 technically correct for your purposes at this point.

19           CHAIRPERSON HILL: I'm looking at OAG.

20           MS. LOVICK: You can amend the application just  
21 for clarification purposes, but I don't think that there's  
22 a need for re-noticing it.

23           CHAIRPERSON HILL: Okay. So then can he verbally  
24 amend it right now?

25           MS. LOVICK: He can do that on the record, but it

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1 would need to be followed up with a revised self-cert.

2 CHAIRPERSON HILL: All right. So Mr. Sullivan,  
3 you can do that. And then we'll hear from the Office of  
4 Planning concerning that as well when we get to them.

5 All right, so that again being the case, Mr.  
6 Sullivan, you can start whenever you like.

7 MR. SULLIVAN: Okay, thank you. I'll speak  
8 briefly and then turn it over to the architect and then I'll  
9 go back and explain how we meet the criteria. And maybe we  
10 can discuss the parking issue at the end of all that.

11 So, the overview. We're requesting special  
12 exception relief pursuant to U 320.2 to convert the property  
13 to three units.

14 And within that the applicant is requesting one  
15 waiver of the requirements under 320 and that's 320.2(h) for  
16 the alteration and removal of architectural elements.

17 We're asking for special exception relief from E  
18 306.2 and C 202 both relating to the rear yard.

19 There is a provision that says you can build up --

20 CHAIRPERSON HILL: I'm sorry, you said 306.2 or  
21 306.1? You said 306.2. I just want to make sure --

22 MR. SULLIVAN: I'll look that up. And special  
23 exception relief pursuant to C 703.2 from the parking  
24 requirement.

25 So we're asking for relief from the requirement

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1 to have a required parking space.

2           And that's both because we don't have the room for  
3 a parking space and also the alley is only 8 feet wide and  
4 so it's impossible to get a legal space in there because we  
5 don't have the 10 foot wide access which is also required.

6           So I'll turn it over to Ms. Hirst to present the  
7 project.

8           MS. HIRST: The existing structure is a single  
9 family semi-attached dwelling on Park Road. It's a beautiful  
10 rowhouse characteristic of many that we see in D.C. but in  
11 serious need of rehabilitation.

12           The intent for the proposed design is a three-unit  
13 residential building. And in order to do so we are proposing  
14 both a side and rear addition, the rear addition occurring  
15 above what is now currently an existing garage attached to  
16 the house.

17           The intent of the design was not to create a  
18 situation where it looked like two separate buildings joined  
19 together. So the idea was to extend the existing  
20 characteristics of the building to fit the new footprint and  
21 maintaining the symmetry and characteristic of both the  
22 existing house and the neighboring houses in the immediate  
23 area.

24           VICE CHAIR HART: Ms. Hirst, sorry, just one quick  
25 question. What part of it is existing again? Are we looking

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1 at like this being the existing building?

2 MS. HIRST: No. So really we're extending it  
3 beyond where the front facade is. So where you see the porch  
4 we're really just extending it further in that direction.

5 But yes, from where the bay is, where you can see  
6 the side elevation of the bay that's being removed and the  
7 building is pushing out beyond that point.

8 VICE CHAIR HART: Thank you.

9 MS. HIRST: So we are maintaining the existing  
10 profile of the roof. The roof needs to be completely  
11 repaired and rebuilt, but we are maintaining the existing  
12 profile as well as the extended parapet at the side  
13 elevation.

14 We are maintaining a brick skin to the building.  
15 We do not change materials until we get to the rear. And  
16 again the idea was to maintain the existing character of the  
17 building and its surroundings.

18 Each unit is provided with outdoor space and  
19 landscaped area around the yard and at the request we have  
20 provided an enclosed fenced area for trash storage at the  
21 front of the yard and a small parking space at the rear in  
22 addition to permanent bike storage also at the rear of the  
23 building.

24 I think that pretty much sums up the general  
25 intent for the design. If you have any questions certainly

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1 feel free to ask.

2 MR. SULLIVAN: Thank you. Now, I'll go through  
3 the requirements for the special exception relief for U  
4 320.2. The building is limited to 35 feet or less. There's  
5 only three units so IZ does not apply.

6 It was an existing residential building at the  
7 time of filing. The lot area is 3,011 square feet so we have  
8 the minimum lot area of 900 square feet per unit.

9 The addition does not extend more than 10 feet  
10 past the rear wall of an adjoining building. The neighboring  
11 building to the east is just as long as this building.

12 The addition will not block a chimney or vent and  
13 will not interfere with solar panels. In addition, the  
14 original rooftop architectural elements will be altered, they  
15 are being altered -- that's a typo there -- as Ms. Hirst  
16 explained.

17 And Ms. Hirst went through the design and how the  
18 architectural elements are compatible and fit in the change  
19 to meet the test for compatibility.

20 Light and air. The light and air available to  
21 neighboring properties shall not be unduly affected.  
22 Regarding the property to the west at 438 Park the western  
23 wall of the proposed building would be still between 13 and  
24 17 feet from the closest wall of the house to the west. So  
25 there's a good bit of space there.

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1           And the property to the east which is attached  
2 shares a building all the way back. And they have no rear  
3 yard. And that property owner is in support of the  
4 application as well.

5           Regarding privacy, again privacy, use and  
6 enjoyment. The neighboring properties is not unduly  
7 compromised.

8           Again, because of the distance between the two  
9 properties, the property to the west and the rear addition  
10 which is attached to the furthest -- and goes to the furthest  
11 wall of the adjoining principal building as well. So there's  
12 no privacy issues to the east or the west.

13           Conversion and any associated additions as viewed  
14 from the street does not substantially visually intrude upon  
15 the character, scale and pattern of houses along the subject  
16 street or alley.

17           We're not increasing the height of the building  
18 in the back. We're asking for rear yard relief. It's just  
19 two stories. And again it's up against the neighboring  
20 building so it matches that footprint.

21           And that same analysis applies to the relief for  
22 the rear yard as well as the relief from U 320.

23           Now, the parking relief. We've requested special  
24 exception from the requirement to have a legal parking space.

25           Now, initially we were not showing any area at all

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1 for parking in the plans. And so we're requesting special  
2 exception relief for two reasons.

3 The 8 foot wide alley makes it impossible to have  
4 a legal parking space because we obviously can't change the  
5 width of the alley and access -- 10 foot wide public alley  
6 access is required to have a legal parking space.

7 And the other issue is because of a light pole  
8 that's there and restrictions from the existing building and  
9 the space the best we could provide was a compact space, a  
10 16 by 8 space.

11 So, there was no space provided but when we went  
12 to the ANC there were concerns about parking. And they asked  
13 us if we could get a parking space in there.

14 My initial reaction was it's a 6 foot wide alley  
15 because it was showing up as 6 feet on one of the drawings.

16 And there were people there that said there are  
17 some cars that actually pull into that alley and park. And  
18 so Mr. Azat said he would look at that.

19 And we did and it turns out we can provide a  
20 parking space. Now, somebody is going to be able to pull  
21 into that parking space and they'll back out and then  
22 continue down the alley. There's not really room to turn  
23 around and go back that way. But it's doable. And actually  
24 we've managed to get a whole compact size in there which is  
25 pretty sizeable space.

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1           So, I think -- so in discussions with OAG I've  
2 been told that I need to be asking for variance relief from  
3 the size and the access requirements as opposed to asking for  
4 special exception relief from having a required space at all  
5 because we're showing a parking space.

6           Obviously if we weren't showing any parking space  
7 at all I'd still be asking for special exception relief. And  
8 I assume OAG can get involved in this discussion, but as I  
9 understand it they're saying that the board can't approve a  
10 plan that shows a compact parking space because that compact  
11 parking space is not legal.

12           One way to look at it would be to say we're asking  
13 for special exception relief from the requirement to have a  
14 legal parking space. Once that's done it doesn't really  
15 matter what I have. I'm not prohibited from having a compact  
16 parking space.

17           But I get where the confusion is. And I think the  
18 answer might be to not call it a parking space, or to call  
19 it an open space, or an open pad. Because it could be used  
20 for parking.

21           And frankly, even if we called it a parking space  
22 that doesn't guarantee that somebody is going to use it for  
23 parking anyway. So we can't guarantee that it will be used  
24 for parking.

25           But obviously the highest and best use for the

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1 owner is to have that and convey it as a parking space one  
2 way or another, or as a space where you may park a car.

3 So, one of my suggestions would be we could revise  
4 the plan, not call it a compact parking space and just call  
5 it an open space. It's obviously conditioned. It has to  
6 remain open. We can't put a building there. It's open to  
7 the alley and it would obviously be used as a parking space.

8 I've had discussions --

9 CHAIRPERSON HILL: Mr. Sullivan, keep talking, but  
10 can you flip back to that slide that showed the parking pad.  
11 There you go. Great, thanks.

12 MR. SULLIVAN: I've talked to the chairman, the  
13 ANC chair about doing a covenant and we decided that wasn't  
14 necessary because he knows that the site plan and the platt  
15 are conditioned, and that that space has to remain open.

16 Now, we didn't talk about the specific question  
17 of compact parking space versus calling it open space for  
18 parking. And we can get clarification on that.

19 They were comfortable that it's obviously going  
20 to be used for parking if we provide that space. And so the  
21 change that we made to trim the building back to get that  
22 space in there.

23 That's the issue as I understand it.

24 CHAIRPERSON HILL: Okay, that's fine. All right.  
25 Does anybody have any questions for the applicant before I

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1 turn to the Office of Planning?

2 VICE CHAIR HART: So, Mr. Sullivan, so you're  
3 saying that you would be amenable to basically taking out the  
4 word parking or whatever you want to -- changing that to  
5 something else other than compact parking space.

6 I kind of understand that if it's included it kind  
7 of -- it makes it seem as though we are approving that and  
8 then it becomes a well, how do you approve that if -- you  
9 know, what standard were you using to approve that.

10 I think that that would be -- that could be an  
11 issue to have to deal with.

12 But regardless of that you're saying that you're  
13 willing to not have that, to change the drawing to show that  
14 that does not -- that's something else.

15 MR. SULLIVAN: Right. If that's what's required  
16 to get us over the hump. I do think it's -- I really don't  
17 think it's necessary because I think once you grant special  
18 exception relief from the required parking space if you were  
19 to do that then I think we're free to do with that space what  
20 we want to do.

21 There's no restrictions on parking, on non-  
22 required parking. Like we can have parking space. But --  
23 and so I'm not --

24 CHAIRPERSON HILL: That's okay. We can talk this  
25 through. We can talk this through, but the drawing would

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1 then say 8 by 16 open space.

2 MR. SULLIVAN: Yes, we could call it --

3 CHAIRPERSON HILL: Open space. Open pad. It  
4 wouldn't use the word parking. It would say 8 by 16 open  
5 pad. That was one option. We're kind of going through this  
6 but that's something that you've kind of talked about.

7 Okay. All right. Anyone else?

8 MEMBER WHITE: So, the question I have is whether  
9 or not the ANC would be comfortable with that.

10 MR. SULLIVAN: So I was going to add if we said  
11 open pad to potentially be used for parking on the plans that  
12 would make them feel even better.

13 But I think in my discussions -- and I shouldn't  
14 speak for the chair. They may have the opportunity to weigh  
15 in. But he -- everybody understands that if we have an open  
16 space its highest and best use is obviously for parking.

17 So he didn't seem concerned about that. However,  
18 in all honesty we did not talk about changing the language  
19 because I didn't know about that possible solution until  
20 today.

21 VICE CHAIR HART: Just out of a little curiosity  
22 how do you access it? How do you get to it?

23 MR. SULLIVAN: You come from --

24 VICE CHAIR HART: No, I'm sorry. How do you get  
25 from the parking space into the building, to walk into the

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1 building.

2 CHAIRPERSON HILL: You need to turn on your  
3 microphone.

4 MS. HIRST: Sorry. There is a retaining wall that  
5 encloses the parking space and I'm showing now because the  
6 elevation at the landscaped area is about almost 4 feet  
7 higher than that alley.

8 So you would have to return to the alley and walk  
9 up the stairs you see at the southwesternmost corner.

10 VICE CHAIR HART: And then you walk around where  
11 that -- like this direction. Because these are window wells,  
12 right?

13 MS. HIRST: Yes.

14 VICE CHAIR HART: So you're not walking over the  
15 window wells.

16 MS. HIRST: Correct.

17 VICE CHAIR HART: So -- and I understand this is  
18 outside of -- I just was curious as to how you get to it.  
19 I thought there was a -- there may be a door on the back side  
20 but there's a bedroom there and there doesn't seem to be a  
21 door there. So you would literally have to walk around the  
22 house to get to where that is.

23 MS. HIRST: Right.

24 VICE CHAIR HART: Okay, that's fine. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Sullivan, what was

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1 wrong with the covenant again? You talked about with the  
2 ANC.

3 MR. SULLIVAN: We can do a covenant if we need to  
4 do that. My discussion with the ANC and he agreed it's going  
5 to be conditioned as a result of you conditioning the plans  
6 and the platt.

7 We can't as it stands now. Whatever we call it  
8 we obviously can't put a building there. We have to build --

9 CHAIRPERSON HILL: I'm just trying to think  
10 through it again. You're here with the ANC. One of the  
11 conditions is the subcompact space. We can't give you the  
12 subcompact space because you'd have to then have to come back  
13 for a variance.

14 You're going to now call it -- I'm just walking  
15 through it. You're now going to call it a pad or an open  
16 space. So we'll get to wherever we get to with this  
17 discussion.

18 I didn't understand the covenant issue and you're  
19 saying you'd be fine with a covenant or -- that's all I'm  
20 just trying to --

21 MR. SULLIVAN: It was just more difficult. I  
22 thought they were better -- more efficiently protected by the  
23 fact that they can go to the Zoning Administrator and say  
24 hey, they're not complying with the plan, the approved plans.

25 CHAIRPERSON HILL: But if the approved plan says

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1 open pad then it's just an open pad. People could grill on  
2 it or like they could hang out. I'm talking this through.

3 MR. SULLIVAN: They can do that anyway. I don't  
4 think our covenant can say here's a parking space but you are  
5 required to have a car in there and you must use it.

6 CHAIRPERSON HILL: I'm just trying to talk it  
7 through. So, okay. All right. You all can -- helpful at  
8 all today. All right, sorry. Go ahead, Ms. John.

9 MEMBER JOHN: So, Mr. Sullivan, you are building  
10 over the existing garage. Or you're demolishing the garage  
11 and building the addition within that footprint. Is that  
12 correct?

13 MS. HIRST: The proposed building is going over  
14 the existing footprint of the garage, yes. And the existing  
15 garage is held off close to 7 feet from the rear property  
16 line which is probably the only reason we were able to get  
17 some sort of parking space or pad there to give a car enough  
18 room to turn into the space. Otherwise it would not have  
19 been possible, the size of the alley.

20 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. So  
21 in terms of this parking pad space piece I think that -- I  
22 can't speak for my colleagues but I'm not comfortable  
23 approving a parking space there because it just won't be  
24 conforming.

25 I would be curious to hear what the ANC would have

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1 to say about this given this conversation.

2           Also, one other thing. The other piece that the  
3 ANC was asking about was the location of the -- that there  
4 be adequate trash receptacles and the location of it. Is  
5 that something that they're aware of where this is being  
6 designed in and they're okay with that, or have you not --  
7 have they seen these plans I guess is the short answer.

8           MR. SULLIVAN: Yes, and we've been to them. We  
9 went to the ANC twice. So we went back with the revised  
10 plan.

11           COMMISSIONER SHAPIRO: And also, I think I'm just  
12 curious about this, but I don't quite understand the layout.  
13 I've seen -- this is for the architect. Go back a few slides  
14 back and show me -- the side view again, the side elevation.

15           I'm just trying to figure out how the units are  
16 being -- who's living where? What are the three units?

17           MS. HIRST: The entire cellar floor is a three-  
18 bedroom two-bathroom unit. The first floor is also a three-  
19 bedroom two-bath unit.

20           And then the upper unit comprises both the second  
21 floor and the partial third story.

22           COMMISSIONER SHAPIRO: And that's with the  
23 additional dormer.

24           MS. HIRST: That is correct.

25           COMMISSIONER SHAPIRO: Okay. All right, thank

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1 you. That's all I have, Mr. Chair.

2 CHAIRPERSON HILL: Okay. I'm going to turn to the  
3 Office of Planning, please.

4 MR. COCHRAN: Thank you, Mr. Chair. I'll try to  
5 focus on providing a little bit of clarity on some of the  
6 more confusing elements of the application.

7 Yes, it's a conversion to three units under U  
8 320.2. As part of that conversion they are requesting the  
9 expansion of an existing non-conformity for the rear yard and  
10 relief on the parking. I'll specify what kind of relief when  
11 we get to that.

12 It does seem to meet all the criteria in U  
13 320.2(a) through (f) and then (i) through (m). They are,  
14 however, asking for relief from one criterion, the  
15 architectural elements at the rooftop.

16 OP has looked at this. We feel like the changes  
17 they're proposing comport with the general design of the  
18 existing building and don't contradict the character of the  
19 semi-detached pairings along the entire block.

20 Yes, they are expanding 7 feet to the west.  
21 They're adding another dormer and they are getting rid of a  
22 couple of architectural elements, but it does seem to be  
23 congruent with the overall appearance of the neighborhood.

24 For the rear yard there is some question about  
25 whether it's simply an expansion upwards of an existing non-

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1 conformity or a larger expansion of a non-conformity. And  
2 that depends on whether they are raising the structure or  
3 demolishing it.

4           Either way it turns out being the same. They  
5 would still have a 6 foot 7 inch rear yard.

6           If they raise it which means if they keep the good  
7 portion of the existing footprint then the rear yard always  
8 remains 6 feet 7 inches.

9           If they demolish it then the rear yard goes to  
10 about 19 feet 10 inches which is still non-conforming. And  
11 then they would construct back into the footprint of the  
12 existing garage.

13           Either way, whether that non-conformity remains  
14 the whole time at 6 feet 7 inches or it temporarily goes to  
15 19 feet 10 inches it's an existing non-conformity. So  
16 they're simply expanding a non-conformity upwards under one  
17 scenario and they're expanding an existing non-conformity  
18 both horizontally and upwards under the other scenario. So  
19 either way we would recommend that you approve that relief  
20 from the requirements of E 306.1 under E 5201.

21           When it comes to the parking there have been a  
22 number of conversations about this with OAG and with the  
23 applicant.

24           OP felt that the cleanest way to approach this,  
25 and this is what we had recommended to the applicant was that

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1 they do a covenant with the ANC because that's the only way  
2 that what the ANC's condition that's being requested could  
3 be enforced.

4 And it could either be just a covenant with the  
5 ANC or up to the applicant and the ANC on whether that  
6 actually gets tied into the land records.

7 However, if the ANC is comfortable without having  
8 something that's enforceable then OP had thought that going  
9 for the special exception and therefore not having a required  
10 parking space and not labeling it as a parking space would --  
11 they would meet the criteria for that kind of special  
12 exception because they have an alley that goes from 8 feet  
13 down to 6 feet because of a light pole.

14 They are -- if you could flip to the diagram that  
15 shows the plan with the bike parking. Great, that one. You  
16 can see that it becomes increasingly difficult to get a  
17 conforming space in there.

18 So I obviously have to defer to OAG on this. I  
19 think we might have had some misunderstanding on where OAG  
20 landed on this. We thought that special exception was going  
21 to be acceptable as long as it wasn't labeled a parking  
22 space.

23 But again if that route is taken then we would  
24 suggest that the ANC's condition is best met by having an  
25 enforceable covenant with the ANC.

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1 CHAIRPERSON HILL: Okay, thank you. Does anyone  
2 have any questions for the Office of Planning?

3 MEMBER WHITE: Just one question. Did you ever  
4 weigh in on whether or not a variance would be appropriate  
5 here? Or did you feel as though the standard with the  
6 criteria couldn't be met in this particular application?  
7 With respect to the parking.

8 MR. COCHRAN: We did not weigh in on whether a  
9 variance -- we may have had some thoughts about it, but we  
10 did not weigh in.

11 MEMBER WHITE: Okay.

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.  
13 They're not required to have the parking space.

14 MR. COCHRAN: Yes, they are. Once it becomes a  
15 three-unit building it is required to have one parking space.

16 COMMISSIONER SHAPIRO: Apologies for not tracking  
17 this well enough. If they ask for a -- we could waive that  
18 and that would be a special exception?

19 MR. COCHRAN: If they have something on the plans  
20 as I understand it that is labeled a parking space then that  
21 would require a variance from the dimensional requirements  
22 for the parking space and for the alley access.

23 OP would not necessarily have a problem with  
24 supporting that.

25 COMMISSIONER SHAPIRO: Okay. I'll keep pondering

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1 this in my head. Okay, thank you.

2 CHAIRPERSON HILL: Okay. Does anybody have any  
3 further questions for the Office of Planning? Does the  
4 applicant have any questions for the Office of Planning?

5 MR. SULLIVAN: No, thank you.

6 CHAIRPERSON HILL: Is there anyone here wishing  
7 to speak in support? Is there anyone here wishing to speak  
8 in opposition? Okay. All right.

9 Okay. Sure.

10 VICE CHAIR HART: Mr. Sullivan, just a quick  
11 question. This plan shows in the front yard there's a fence  
12 enclosure for trash, recycling and storage. Is that in  
13 public space?

14 MS. HIRST: No. The property line is up closer  
15 to the sidewalk. It cuts through maybe the second riser of  
16 the stairs from the lead walk.

17 VICE CHAIR HART: No, no, I see the property line,  
18 but public space is -- sometimes you have like a building  
19 restriction line or something that's there. I just didn't  
20 know.

21 There's a line that's -- I don't know what that  
22 line is that's showing where you see where it says --  
23 actually this line right here, this line right there. What's  
24 that line?

25 MS. HIRST: That is a dimension string. So the

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1 32 foot 6, that's just the dimension string.

2 VICE CHAIR HART: Gotcha, okay.

3 MS. HIRST: But no, we do not have a building  
4 restriction line.

5 VICE CHAIR HART: Okay. I was just more curious  
6 because I'm like wow, that's a lot of trash cans. And I  
7 realize it's recycling and trash. So, thank you.

8 CHAIRPERSON HILL: All right, so I guess this is  
9 kind of where I am and we can talk about this a little bit  
10 more.

11 I think I'd like to have a revised plan. Well,  
12 we can talk this through a little bit with the applicant  
13 because I haven't closed the hearing yet.

14 Something that has a revised plan that we can look  
15 at and that doesn't have the parking space on there. And  
16 then have a cleaned up self-cert or caption that has now  
17 306.1 included.

18 And then also something from the ANC, either a  
19 covenant or that they are comfortable with the plans the way  
20 they are concerning the open space in the drawing to have an  
21 opportunity to then deliberate upon this application.

22 I'm glad that the Office of Planning has spoken  
23 to U 320.2 in terms of the waiver for the rooftop  
24 architecture. And so that's where I am. I don't know what  
25 the board thinks.

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1           VICE CHAIR HART: Mr. Chairman, I would be in  
2 support of all of that. I think that that's just helpful  
3 just so that we have some finality to some of the kind of  
4 questions that are I think lingering.

5           But I think that all of those things would be  
6 helpful for me to understand and then be able to be kind of  
7 comfortable with the application that is before us. So, I  
8 would concur with your comments.

9           MEMBER JOHN: Mr. Chairman, I think the applicant  
10 satisfies the condition for the special exception for the  
11 parking, for not having a parking space. Just talking  
12 through.

13           So it seems to me to be an added requirement to  
14 then impose on the applicant the obligation to come back and  
15 justify this as a variance. And that would just be to  
16 accommodate the ANC whose considerations are not entitled to  
17 great weight.

18           And so while I do appreciate the need for parking  
19 I think the fact that the space will still be there and it  
20 could be used for parking makes sense.

21           I'm not in support of the board requiring a  
22 covenant because we would not be enforcing that covenant.  
23 If we put it in the order, what good would it do to put that  
24 in the order.

25           So I would think that your recommendation is good

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1 that we have revised drawings that remove the parking space.  
2 And it would just be vacant.

3 CHAIRPERSON HILL: Okay. So I wasn't suggesting  
4 that they come back and ask for a variance to get the  
5 parking. I was just saying that they were going to -- as  
6 what was originally proposed in terms of the providing  
7 something in the drawings that say open space, 8 by 16 open  
8 space just to indicate to the ANC what we were discussing in  
9 terms of that we can't approve something that we can't  
10 approve, right.

11 And that my concern and my discussion in terms of  
12 the covenant was more that whatever it is that the ANC felt  
13 comfortable with. Like you know they, the ANC -- and we  
14 haven't gone into deliberations yet. We don't know whether  
15 we're necessarily going to approve this or not.

16 But I'm going along with this path of thought  
17 which is that the ANC is giving their support based on the  
18 subcompact space. So that's what they're giving their  
19 support on.

20 So now we can't approve that because they're not  
21 asking for it because if they were asking for it it would  
22 need to be a variance and we would have to go through that  
23 process.

24 So now I'm just trying to figure out what I would  
25 think, what I would feel comfortable knowing that the ANC is

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1 now comfortable with. So whether that be a covenant, whether  
2 that be just something that they've looked at the plans and  
3 they're comfortable with the way the plans are, that's fine.

4 But I need something that says the ANC is  
5 comfortable with this the way it is moving forward. So I  
6 just want to finish with Ms. John, finish your thought.

7 MEMBER JOHN: So the reason I asked the applicant  
8 whether they were building on the original footprint was to  
9 determine if the applicant could provide the parking space  
10 by moving the building back if the applicant was not building  
11 to the original footprint.

12 Let's say the applicant was building something  
13 more than it originally had. Then one could reasonably say  
14 the applicant could reduce the space and provide a larger  
15 parking space.

16 But you would still have the problem of the 6 foot  
17 alley and the light pole. So that's my thinking now and I'd  
18 love to hear what other people think.

19 CHAIRPERSON HILL: We're not arguing the variance  
20 here, but you know, that could be an argument. That's not  
21 what we're having. Go ahead, Mr. Commissioner.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
23 agree with Board Member John. I guess maybe if I'm  
24 understanding this correctly where you are, Mr. Chair, I  
25 would like to see this rewritten without a parking space

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1 there.

2 I'd be curious to see where the ANC is when they  
3 see this. And take that into consideration as we make our  
4 decision.

5 So it certainly -- the one piece that I want to  
6 emphasize in my agreement with Board Member John is that I'm  
7 not looking for a covenant from the ANC though if that  
8 happened that would be data.

9 I'm just more looking to see what the reaction is  
10 from the ANC around this and then we'd factor that in.

11 CHAIRPERSON HILL: Okay. It looked like the  
12 Office of Planning had something additional? No? Okay. All  
13 right. Ms. White.

14 MEMBER WHITE: I'm just adding on that I would  
15 like to get some feedback from the ANC on this because I  
16 think their approval was largely based on the condition with  
17 respect to parking.

18 So I just want to make sure -- I don't know if  
19 they're here today, but I just want to make sure that they  
20 have an opportunity to weigh in on the solution.

21 It seems like -- we're going to come up with a  
22 solution assuming that all the criteria are met, but I am  
23 interested in making sure that the ANC is incorporated into  
24 this process. Because there has been some opposition with  
25 respect to parking in this neighborhood which is pretty

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1 substantial as far as lack of parking.

2 CHAIRPERSON HILL: Okay. So Mr. Sullivan, where  
3 I think we are here, right, is go ahead and go back and  
4 revise the drawing so that you change that 8 by 16 space to  
5 whatever you and the ANC determine they're comfortable with  
6 calling it. Or at least that's one avenue, go back and talk  
7 to the ANC.

8 And then I don't particularly care whether it's  
9 a covenant or something from the ANC just saying that they're  
10 comfortable with this in terms of -- because currently what  
11 they have as a condition is a compact parking space.

12 And so you know, whether or not I agree with the  
13 ANC or don't agree with the ANC, just to get it to a place  
14 that's more clean for us to deliberate upon, change the --  
15 submit the drawings, revised drawings. Do a revised self-  
16 cert with the 306.1 on there.

17 And then anything else you need to do to clean up  
18 the caption so that I can get that right when we're doing  
19 deliberations.

20 And then something from the ANC concerning the  
21 issues that we're talking about. They could clarify again  
22 that they're comfortable with the trash. It seems like  
23 they've satisfied that. But they could re-clarify that as  
24 well.

25 And then do you have any other questions for us?

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1 MR. SULLIVAN: No, I just -- I want to acknowledge  
2 that there is this other path too which is the variance. And  
3 it would be variance from the size. So do compact rather  
4 than full. And a variance from the access width  
5 requirements.

6 And we do, I believe we do have a unique variance  
7 argument mostly because of the utility pole and the existing  
8 footprint.

9 And that might be the cleanest way to get there.  
10 I would suggest we even get there today if possible because  
11 the 8 by 16 compact parking space can now stay there if we  
12 do that. But we would need to ask for a waiver of the notice  
13 requirements.

14 Now, we're asking for something less than what  
15 we're asking for. We're asking for a special exception for  
16 the whole thing. We don't want a parking space.

17 Now we would just be asking for a variance to have  
18 a smaller parking space. So we're adding to it technically.

19 CHAIRPERSON HILL: We can talk this through. I  
20 understand what you're asking. So, I just --

21 (Simultaneous speaking)

22 CHAIRPERSON HILL: You're trying to add variance  
23 relief right here.

24 MR. SULLIVAN: Well, I'm throwing that out there  
25 as it might be a cleaner path and then I would expect the OAG

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1 to weigh in here too.

2 CHAIRPERSON HILL: Okay, we can try this. I  
3 thought we were going to have lunch, and now we're not going  
4 to have lunch and this is going on longer now. We're talking  
5 about adding a variance at the last minute. I had the time  
6 thing going on.

7 Okay, let's see what OAG has to say first about  
8 this throwing a variance thing. Oh sorry, OAG. We'll do OAG  
9 first.

10 MS. LOVICK: That would be fine. I mean, if the  
11 applicant wants to revise the application to add that  
12 variance that's --

13 COMMISSIONER SHAPIRO: Right here, right now  
14 without any notice?

15 MS. LOVICK: Well, because of the fact that the  
16 public knows about the parking issue and that was noticed in  
17 the original special exception relief I wouldn't say that  
18 there needs to be additional notice for them to make the  
19 revision.

20 But they would need to submit a new self-cert  
21 showing the variance relief.

22 CHAIRPERSON HILL: We can talk about. I don't  
23 like this. I don't like at the last minute throwing the --  
24 the ANC doesn't know about it. I know they know about the  
25 parking.

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1           And then the next time Mr. Sullivan's in here  
2 again he's going to be like you know what we did last time,  
3 we just kind of like -- so but, okay. So OAG is okay with  
4 this. Now I'm just kind of learning whether the board's  
5 okay.

6           So, would OP have been okay moving forward in this  
7 way?

8           MR. COCHRAN: We would of course defer to OAG.

9           CHAIRPERSON HILL: Okay. So our advisors, where  
10 our advisors are, where are you all?

11           COMMISSIONER SHAPIRO: Mr. Chair, I'm mindful of  
12 if there's any kind of precedent this sets, but the ANC is  
13 in support of this. It's a way to solve the problem in a way  
14 that gives great weight to the ANC. I don't have a problem  
15 with that.

16           MEMBER WHITE: The variance is a higher test, but  
17 I think one, if we did it we wouldn't have to re-notice this  
18 because the plans haven't substantially changed.

19           I think I would -- in my head I would make sure  
20 that all the criteria are met. And I think it's an unusual  
21 position in terms of where this parking space is.

22           I would probably be in support of moving in that  
23 direction as well as a way to make sure the ANC gets what  
24 they need to get with respect to the parking relief.

25           COMMISSIONER SHAPIRO: If I may, Mr. Vice Chair.

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1 VICE CHAIR HART: Sure.

2 COMMISSIONER SHAPIRO: I was looking at the  
3 letters in opposition and almost everything -- almost all the  
4 concerns were around parking. And so there is -- one thing  
5 that I think is helpful to send the message out to the  
6 community is that we are attentive to the concerns around  
7 parking.

8 And that's why there's a part of me that wants to  
9 keep the words parking space here. That is a piece of why  
10 I think this isn't a bad route to go.

11 CHAIRPERSON HILL: I'm being somewhat convinced  
12 even though this is messy. So, there's one yes. Did  
13 somebody else vote?

14 MEMBER JOHN: Mr. Chairman, I could go either way.  
15 I believe the applicant if I were to vote now no I would say  
16 the applicant has met the standard for a special exception  
17 for the parking space and leaving the open space is on notice  
18 that there is room to park a small car. That's the way I  
19 would go.

20 But I also understand my colleague's concern to  
21 show to the ANC and the neighborhood that the applicant is  
22 responsive to their needs.

23 So, and I would also say I believe the applicant  
24 could make a very good case for getting a variance. So if  
25 it's in everyone's interest to keep those words compact

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1 parking space on the plan I think I can go with a variance.  
2 So I can go either way.

3 VICE CHAIR HART: The one issue about the variance  
4 is that we don't really have any written -- well, you have  
5 testified. We don't really have any written information on  
6 it.

7 And so while I understand that -- I think that we  
8 would still need to have something that says as for the  
9 variance even that this is why we are saying that.

10 I'm not saying it needs to be weeks and weeks and  
11 weeks. I'm just saying that I think it would be helpful for  
12 our record to indicate that because I think because there has  
13 been -- this has been a moving target it's going to be very  
14 difficult for anybody looking at this to be able to say what  
15 were they doing and to try to understand that without  
16 literally listening to this entire conversation that we're  
17 having right now.

18 And so while I understand the need for moving --  
19 well, I understand that the applicant would like to move on  
20 this I just caution that while we could make a decision on  
21 it I think that the information that we need to have should  
22 be in the record so that we can then say well, exhibit such  
23 and such says this and this is how we can support that.

24 Even though we have heard that OP is kind of  
25 listening to OAG, and OAG is kind of okay with it. And Mr.

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1 Sullivan, you've actually added some information as to why  
2 you think that you could make the argument.

3 I do think that we need to have something written  
4 to be able to supplement the record. And maybe it's just  
5 that we get that information and then we have a decision  
6 meeting and we don't have -- we can close the public hearing  
7 then.

8 I don't know what the chairman would like to do  
9 for that, but my recommendation or whatever, my preference  
10 would be to get a page written about, or two pages, or five  
11 pages, whatever you want to do, but if you're going to go  
12 down that then do that.

13 I think that would be actually cleaner. And  
14 either way if we go for the special exception getting the  
15 information that the chairman asked for previously, if we go  
16 down the variance, getting the things that I just stated and  
17 then we can make a decision on either direction.

18 But right now I think it's kind of, I don't know,  
19 we're kind of in two different places and I think that's kind  
20 of messy if someone is trying to figure out the record. So  
21 that's just my two cents.

22 MR. SULLIVAN: Well, I need to amend anyway the  
23 form 135 as well.

24 CHAIRPERSON HILL: Okay. So, I got another no.  
25 No, no, I got another no like not right now at this moment.

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1 VICE CHAIR HART: Oh yes. I think that we should  
2 wait.

3 CHAIRPERSON HILL: And I don't know where Board  
4 Member John was on that one. She wasn't sure, right.

5 COMMISSIONER SHAPIRO: I agree with the vice  
6 chair.

7 CHAIRPERSON HILL: No, you were a yes. You can't  
8 change. Okay.

9 So because what some of the information that I was  
10 also getting was in terms of like the variance relief from  
11 C 711 and C 712, like you know you would have to at least  
12 give us an argument even verbally here as to why we should  
13 grant that.

14 As I said before it's just making me  
15 uncomfortable. There's just too many things going on here.

16 So what I would prefer you do is go back and  
17 determine what you'd like to do. Speak with your client.  
18 And if you want to go and change the -- well, actually let's  
19 put it that way.

20 And I think Commissioner Shapiro makes a valid  
21 point which is that he was more comfortable having the word  
22 parking space in there.

23 So in order to have that you would have to go  
24 through the variance. And so I'm not as concerned as long  
25 as the ANC is comfortable with whatever the resolution is.

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1           And I do need to say -- I'm just curious, could  
2 we leave it on the applicant to determine whatever they come  
3 back here with us, meaning if they go back to the ANC.

4           Because really we're trying to -- even beyond  
5 whether or not we think they're meeting the standard I'm just  
6 talking about this one specific condition that the ANC had  
7 concerns about.

8           And as long as the ANC is satisfied, whether that  
9 says 8 by 16 open pad, or a covenant, or they want to see  
10 compact parking space in there. And if they do need to do  
11 that then they have to come back and argue even in writing  
12 that they need a variance.

13           So Commissioner Shapiro, you're open to any of  
14 those as long as the ANC is satisfied?

15           COMMISSIONER SHAPIRO: I would go like everything  
16 you're saying except for that last part. The ANC doesn't  
17 need to be satisfied. I'm curious to hear where the ANC is  
18 and give that great weight.

19           CHAIRPERSON HILL: Yes. I will use the word that  
20 is a more unloaded word. I would also be curious as to hear  
21 what the ANC has to say on any of these issues.

22           COMMISSIONER SHAPIRO: Yes.

23           CHAIRPERSON HILL: Okay. Okay, so I think, Mr.  
24 Sullivan, as far as where my position is again is that we're  
25 going to set some dates. You come back to us with something

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1 that's a little bit more clean with whatever that is.

2 I think it sounds as though the Office of Planning  
3 and the OAG is comfortable, at least the Office of Planning  
4 is comfortable, and this is where do I need a supplemental  
5 report now from the Office of Planning in terms of if they  
6 now are asking for variance relief. If I want one. If I  
7 would like one.

8 MR. COCHRAN: If you would like to leave us the  
9 option on submitting we may, we may not.

10 CHAIRPERSON HILL: I like that. The vocabulary --  
11 English is a fascinating language. I would like to provide  
12 the Office of Planning with the option of providing a report  
13 after we hear back from the applicant.

14 So, back to this. Mr. Sullivan, you can go ahead  
15 and submit something to us that is a little bit more clean  
16 in terms of either -- well, definitely put 306.1 in there,  
17 right, okay.

18 And whether you want to come back with -- I would  
19 think the cleanest thing actually is to get the variance in  
20 there and get the parking space in there because then you  
21 have a parking space. And so that's something the client  
22 would then have, your client would then have. He might have  
23 to pay a little bit more for you to go through the paperwork  
24 on it, or maybe not. I don't know how much time that takes  
25 you.

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1           So anyway, I'm repeating myself. Come back with  
2 whatever you have in terms of your drawing. It might be the  
3 exact same drawing actually is what I'm trying to understand,  
4 the exact same drawing with the variance with an argument as  
5 to how you're meeting the variance.

6           If the Office of Planning would like to submit a  
7 supplemental they may. I don't need it. Unless the board  
8 really needs it. Do I see anybody shaking their head yes?  
9 No. Okay. So then we don't have to have it, but you can if  
10 you want to.

11           So then in terms of dates, Mr. Moy, we could do  
12 the same thing that we did last time which is that I don't  
13 know -- hold on, OAG.

14           MS. LOVICK: I just want to clarify something.  
15 Are you continuing the hearing or are you setting the case  
16 for decision when you have those submissions filed?

17           CHAIRPERSON HILL: I appreciate that. I  
18 personally would be happy with a decision if we get the  
19 information into the record.

20           VICE CHAIR HART: One point of clarification from  
21 OAG. Does the applicant have to provide a waiver I guess for  
22 if they want to change to a variance? I know that we've kind  
23 of -- we haven't really kind of ruled on that yet, and I just  
24 wanted to understand how we -- do they have to provide  
25 anything to say -- time requirements. Like they would have

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1 had to have noticed if it was --

2 MS. LOVICK: No, I mean you would have -- if you  
3 were requiring additional notice then you would be giving the  
4 public notice and there would be a hearing that would be  
5 specific to the relief.

6 If you're waiving you're not going to require re-  
7 noticing the issue of adding the variance relief all that's  
8 happening is the applicant is revising the application and  
9 providing some kind of burden of proof statement into the  
10 record to support that relief.

11 VICE CHAIR HART: Okay. But we don't have to --  
12 do we have to make like a --

13 MS. LOVICK: You don't have to vote on that. You  
14 can just make a determination that re-noticing is not  
15 necessary.

16 VICE CHAIR HART: And we should do that now.

17 MS. LOVICK: I thought you had done that, but  
18 maybe you didn't.

19 VICE CHAIR HART: We were kind of trying to figure  
20 out where we were with it, so that's why I was just trying  
21 to understand.

22 MS. LOVICK: You can formally state that.

23 VICE CHAIR HART: Okay. That's my only issue, to  
24 basically say that we are waiving whatever the time  
25 requirements are for --

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1 MS. LOVICK: Re-noticing.

2 VICE CHAIR HART: -- re-noticing.

3 MS. LOVICK: Yes, you can do that.

4 VICE CHAIR HART: Okay, thank you.

5 CHAIRPERSON HILL: So actually now I'm going to  
6 follow up again. So they don't have to ask for that? We can  
7 waive those time requirements now even though they haven't  
8 done anything new.

9 That's the problem that I'm having with this.  
10 They haven't asked for anything yet.

11 MS. LOVICK: Right, that's true, but you can let  
12 it be known that you don't see a need for re-noticing in the  
13 event that they decide to revise the application.

14 CHAIRPERSON HILL: Okay, okay. So on the record  
15 and if the board is okay with this if the applicant would  
16 want to come back with variance relief I don't see a need for  
17 them to re-notice and I would be comfortable waiving the  
18 requirement. Everybody's shaking their head.

19 MEMBER JOHN: And Mr. Chairman, I would just say  
20 that the plans would not have changed from the time they were  
21 noticed. Although I'm not even sure if that's true because  
22 at first there was no parking space.

23 MS. LOVICK: Well, the relief --

24 MEMBER JOHN: The relief.

25 MS. LOVICK: The fact that there is parking relief

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1 being requested.

2 MEMBER JOHN: Right. So parking relief was always  
3 requested. The only question was the standard of relief.  
4 So the plans, well.

5 MS. LOVICK: It's not specific to the plans. It's  
6 just specific to the public having notice of the fact that  
7 there was a parking issue so that they would have had an  
8 opportunity to come and participate in this hearing and  
9 testify.

10 MEMBER JOHN: And the public did respond because  
11 we had statements in the file.

12 MS. LOVICK: And parking was clearly the most  
13 contentious issue.

14 MEMBER JOHN: Okay. I'm good. Thank you.

15 CHAIRPERSON HILL: Okay. It always concerns me  
16 when the attorney leans back and starts talking with the  
17 client again at the last minute. Like you know what, why  
18 don't we do this.

19 So, Mr. Sullivan, I think you've heard everything  
20 you need to hear, right, okay. And so you can come back to  
21 us.

22 So my thought again is that if you can come back  
23 -- now, I don't know how long it would take you to get back  
24 to the ANC or talk to whomever or whatever. The 22nd is what  
25 for our previous case we asked for paperwork so that we could

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1 have a deliberation on the 27th.

2           So by the 22nd you will have talked to the ANC and  
3 either determined that you're coming back for a variance and  
4 if so put something into the record to argue your case for  
5 that variance.

6           And you would have something -- I guess you  
7 wouldn't need anything from the ANC because you're going to  
8 be providing the parking.

9           MR. SULLIVAN: Well, they meet tonight and I'm  
10 going to try to ask them to consider something.

11           CHAIRPERSON HILL: Okay. But I'm just saying now  
12 that if you did come back for a variance they're comfortable  
13 with the plans the way they are.

14           MR. SULLIVAN: This is one of those cases where  
15 the variance is of a smaller degree than the special  
16 exception. So they're aware of it.

17           CHAIRPERSON HILL: Right. No, no, but what I'm  
18 saying is that you wouldn't necessarily have to go back to  
19 them. Nothing is changing. Your drawings are not changing.  
20 Your drawings would remain the same.

21           So, on the 22nd we'll know where you landed.  
22 However you landed, but we need the ANC -- I don't  
23 necessarily need anything new from the ANC if you're keeping  
24 the plans the way they are. Just an argument as to how  
25 you're meeting the variance test.

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1           And then yes, so that's on the 22nd. And then we  
2 can set it for decision on the 27th. You don't happen to be  
3 back here on the 27th, Mr. Shapiro, are you? Your  
4 microphone's not on.

5           COMMISSIONER SHAPIRO: Sorry, Mr. Chair. So we're  
6 going to carry both these over.

7           CHAIRPERSON HILL: They're just for deliberation.

8           COMMISSIONER SHAPIRO: For deliberation on the  
9 27th.

10          CHAIRPERSON HILL: Yes, the 27th.

11          COMMISSIONER SHAPIRO: That's fine.

12          CHAIRPERSON HILL: We'll figure it out. But  
13 you're not, you're not here, right. Okay. So you can also  
14 put in absentee.

15          So, Mr. Sullivan, do you have any questions?

16          MR. SULLIVAN: No.

17          CHAIRPERSON HILL: Okay. Mr. Moy, is that good,  
18 Mr. Moy, in terms of the dates? Let the OAG talk more.

19          MR. MOY: Mr. Chairman, just to note, Mr.  
20 Chairman, if the ANC chooses to respond to the applicant's  
21 filing I'm reminded that we need to allow seven days for a  
22 response period for the ANC which by doing that that would  
23 take us out to actually March 6 for decision-making.

24          CHAIRPERSON HILL: Okay. There are two things.  
25 It's up to the applicant. If you can get this back by the

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1 19th, if you can get your information to us by the 19th which  
2 is Tuesday we can still decide by the 27th because it would  
3 give the ANC time.

4 If you don't think so then we're just going to put  
5 you back another week which is the 6th.

6 MR. SULLIVAN: The earlier date is fine.

7 CHAIRPERSON HILL: So you're going to give us our  
8 submittals by the 19th. Mr. Moy, is that okay? And then the  
9 ANC has enough time to respond.

10 MR. MOY: February 19 for the applicant's filing,  
11 right. And then allowing the ANC to respond by Tuesday, the  
12 26th and decision-making on the next day on the 27th.

13 CHAIRPERSON HILL: If OP wants to submit they can  
14 do it whenever.

15 MR. MOY: Whenever.

16 CHAIRPERSON HILL: I forget how the time -- then  
17 does the ANC have to have seven days after the OP report?

18 MR. MOY: No. No, just seven days from the  
19 applicant's filing.

20 CHAIRPERSON HILL: Okay. All right. Okay. So  
21 you've got your dates. Okay. Anybody got anything else?  
22 Okay. Thank you very much.

23 Just to be clear actually, hold on. So just to  
24 be clear, Mr. Moy, I'm closing this hearing. We're closing  
25 this hearing except for the information that we've requested

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1 from the applicant at this point. We've gone through  
2 testimony, we've gone through support, opposition and so this  
3 hearing is now closed except for the information requested  
4 by the board on those dates that you proposed as well as  
5 decision-making on the 27th.

6 MR. MOY: That's correct.

7 CHAIRPERSON HILL: Okay, I just wanted to be  
8 clear. Okay. Thank you all very much. All right, Mr. Moy,  
9 you can call our last case.

10 MR. MOY: Thank you, Mr. Chairman. That would be  
11 application number 19921 of Garfield Malcolm as amended for  
12 special exceptions under Subtitle D Section 5201 from the lot  
13 occupancy requirements of Subtitle D Section 304.1, non-  
14 conforming structure requirements Subtitle C Section 202.2  
15 and then there's Subtitle D Section 306.4 and 5201 from the  
16 rear addition requirements of Subtitle D Section 306.3 under  
17 the penthouse requirements of Subtitle C Section 1500.4 and  
18 under Subtitle C Section 1504 from the penthouse setback  
19 requirements of Subtitle C Section 1502.1(b) and (c) to  
20 permit an existing rear addition and to construct a rooftop  
21 access penthouse on an existing semi-detached principal  
22 dwelling unit in R-3 zone at premises 4414 9th Street NW  
23 square 3020 lot 36.

24 And just to repeat myself I think I mentioned  
25 special exception from the lot occupancy under Subtitle D

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1 Section 304.1.

2 CHAIRPERSON HILL: Okay. If you could please  
3 introduce yourselves from my right to left.

4 MS. UARZI: My name is Kim and I'm ANC 4C07.

5 CHAIRPERSON HILL: Oh dear lord, Commissioner,  
6 you've been here this long. Okay, all right. What's your  
7 last name?

8 MS. UARZI: Uarzi.

9 CHAIRPERSON HILL: Uarzi.

10 MS. UARZI: I'm new so really it's been a learning  
11 experience.

12 CHAIRPERSON HILL: Oh, okay.

13 MS. UARZI: So thank you.

14 CHAIRPERSON HILL: I'm glad -- you're welcome.  
15 All right, okay.

16 MR. MALCOLM: Garfield Malcolm and the homeowner.

17 CHAIRPERSON HILL: Okay.

18 MR. AHMANN: Thomas Ahmann, architect for Garfield  
19 Malcolm.

20 CHAIRPERSON HILL: All right. Mr. Ahmann, I guess  
21 you're going to be presenting to us?

22 MR. AHMANN: Yes.

23 CHAIRPERSON HILL: Okay, all right. So Mr.  
24 Ahmann, you can go ahead and kind of walk us through. I  
25 mean, there are some questions that we may or may not have

1 for you. Since you're standing in the way of lunch you might  
2 get a better -- because there's some questions as to how this  
3 thing even got there. Okay, right. I'm just throwing that  
4 out, but you need to speak to it right now.

5 So, go ahead and talk to us about what you're  
6 trying to accomplish and how you're meeting the standard for  
7 us to grant the application. I'm going to put 15 minutes on  
8 the clock just so I know where we are. The clock is on  
9 either side of you above your head. And you can begin  
10 whenever you want.

11 MR. AHMANN: Sure. Mr. Malcolm had received  
12 permits to build additions and renovations to his home and  
13 proceeded and hired a contractor. Things didn't go so well  
14 with that contractor. At some point he brought me over and  
15 said I'm going to be firing my contractor.

16 And I said well, before you do let's see where you  
17 are with your permits -- I mean with your inspections. There  
18 was a wall check required. Has your contractor gotten that  
19 for you.

20 And it turned out none of that had occurred. So  
21 I described to him the best thing would be to get a private  
22 inspector to establish the inspections going and to have a  
23 wall check called in.

24 The wall check then proceeded to point out that  
25 the back addition had been built larger than the plans that

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1 the permit had allowed, and that caused two issues.

2 One is it went past the 10 foot rule and it also,  
3 it changed the lot occupancy calculation which we were then  
4 above 60, I think 61 and some change.

5 So we then proceeded to need to work on that  
6 issue.

7 Mr. Malcolm had also had issues in construction  
8 in terms of getting equipment on the roof so he built a stair  
9 up to the roof and then proceeded to enclose that.

10 So we flagged that and said hey, this is an issue.  
11 We need to include this in the special exception.

12 We've discussed this project with the ANC. We  
13 have 19 letters of support I believe from neighbors. The ANC  
14 was very supportive. Office of Planning also submitted a  
15 report suggesting that this be approved.

16 We feel we meet the burden of the proof  
17 essentially because we're barely to the -- just over the 60  
18 percent lot occupancy. He will be as part of the project  
19 tearing down his garage which is sort of the tradeoff in lot  
20 occupancy that allows us to work.

21 I think with the support of the neighborhood that  
22 shows sort of where we stand with -- and they're actually  
23 seeing a physical thing and not just drawings at this point.  
24 It's all there so it's not hidden from them in any fashion  
25 as to what he's asking for.

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1 CHAIRPERSON HILL: Okay. And you know that -- so  
2 you were adding D 304.1 and you're aware of that?

3 MR. AHMANN: D 304.

4 CHAIRPERSON HILL: Lot occupancy.

5 MR. AHMANN: Yes, that was in here. I believe  
6 that was in here.

7 CHAIRPERSON HILL: That's okay, it was -- so  
8 you're saying yes.

9 MR. AHMANN: Yes.

10 CHAIRPERSON HILL: Okay, thank you. All right.  
11 Let's see. So did you get a stop work order when you failed  
12 the wall check?

13 MR. AHMANN: There's been no stop work order. No.

14 CHAIRPERSON HILL: Okay.

15 MR. AHMANN: He's not working on it.

16 CHAIRPERSON HILL: You have to push your  
17 microphone.

18 MR. MALCOLM: Yes. So, the inspections up to the  
19 point that prior to the wall check.

20 CHAIRPERSON HILL: I'm just trying to figure out  
21 when you fired your general contractor. So you fired the  
22 general contractor after it already had been built.

23 MR. MALCOLM: I fired him when he wasn't producing  
24 the inspection reports that I was requesting.

25 CHAIRPERSON HILL: Okay.

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1 MR. MALCOLM: So we had the private inspector --

2 CHAIRPERSON HILL: Got it. Third party inspector.

3 MR. MALCOLM: Yes. So I scheduled a meeting  
4 between myself, the architect and the inspector to go over  
5 where we are.

6 CHAIRPERSON HILL: Okay. It's at that point.  
7 It's all the way at the end pretty much when you found this  
8 out. During the inspections.

9 MR. MALCOLM: Yes.

10 CHAIRPERSON HILL: Okay, all right. Does anybody  
11 have any questions for the applicant?

12 COMMISSIONER SHAPIRO: Just quickly. This is your  
13 residence?

14 MR. MALCOLM: Yes. Actually my parents live there  
15 so I live in another location.

16 COMMISSIONER SHAPIRO: Okay. Is this your first  
17 trip to this rodeo?

18 MR. MALCOLM: Yes. So my dad has mobility issues  
19 so this all started because he can't go up the steps. So  
20 we're doing an addition on the back so he wouldn't have to  
21 go up the steps. So that's how this all started.

22 COMMISSIONER SHAPIRO: Okay. Thank you. Thank  
23 you, Mr. Chair.

24 CHAIRPERSON HILL: All right, thanks. Mr.  
25 Malcolm, the commissioner wanted to know if you'd ever been

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1 here to this rodeo before. So the answer is no, right?

2 MR. MALCOLM: No.

3 CHAIRPERSON HILL: So Commissioner Uarzi. So  
4 Commissioner Uarzi, just to let you know, thank you for  
5 coming and really hanging out here with us.

6 Oftentimes, and this is in the future if you do  
7 come if you let the staff know that you're here meaning the  
8 ANC, when we know that the ANC is here we do our best to try  
9 to push them forward in the agenda. We don't leave them till  
10 last unless we can't do anything about it and then you get --  
11 and that's what happens.

12 And so just since you have been here this whole  
13 time what normally happens with the ANCs is you're an  
14 automatic party. And so you would have an opportunity to  
15 cross examine. You'd have an opportunity to ask questions.  
16 Of everybody. And so we're going to do that as well now  
17 since you've been here and we'll take some testimony from you  
18 as well when that time comes.

19 However, do you have any questions of the  
20 applicant based upon the testimony that he's given?

21 MS. UARZI: I do not. I saw his presentation in  
22 November even before becoming elected. And Mr. Malcolm's  
23 parents are a neighbor of mine.

24 CHAIRPERSON HILL: Okay, great. Well,  
25 congratulations on winning your election.

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1 MS. UARZI: Thanks.

2 CHAIRPERSON HILL: So let's see. All right. I'm  
3 going to turn to the Office of Planning.

4 MR. KIRSCHEBAUM: Good afternoon, Chair and  
5 members of the board. Jonathan Kirschebaum from the Office  
6 of Planning.

7 We recommend approval of the special exception  
8 relief requested and we'll rest on the record. Please let  
9 me know if you have any questions.

10 CHAIRPERSON HILL: Okay. Does anybody have any  
11 questions for the Office of Planning? Does the applicant  
12 have any questions for the Office of Planning? You have to  
13 say no in the mike.

14 MR. MALCOLM: No, sir.

15 CHAIRPERSON HILL: Okay. Does the ANC have any  
16 questions for the Office of Planning?

17 MS. UARZI: No.

18 CHAIRPERSON HILL: All right. Is there anyone  
19 here wishing to speak in support? Is there anyone here  
20 wishing to speak in opposition? Would the ANC like to say  
21 anything on behalf of the applicant?

22 MS. UARZI: The ANC approves and is supportive of  
23 the applicant.

24 CHAIRPERSON HILL: Okay.

25 MS. UARZI: So that's about all.

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1 CHAIRPERSON HILL: Okay, great. Just so you know  
2 again, Commissioner, when you are here in hopefully a  
3 capacity that's again in a support capacity or in objection  
4 the ANC -- actually the ANC is always a party. I don't know  
5 how that five minute thing ever happened.

6 So, you would have -- and I'm just again  
7 clarifying for you which clarifies for me that you would have  
8 just as much time as the applicant to present. And so if the  
9 applicant got 15 minutes the ANC would then have 15 minutes.

10 The applicant would then have an opportunity to  
11 cross examine you or ask questions of your presentation.  
12 Just so then we can get all of the information out on the  
13 record.

14 So again since you've been here the whole time  
15 trying to tell you as much as I know.

16 MS. UARZI: Thank you very much. I appreciate it.  
17 And I was told that this would be a good hearing to come to  
18 since as like a first one.

19 CHAIRPERSON HILL: I agree, actually.

20 MS. UARZI: It's been pretty easy listening. I've  
21 been listening to your comments about the ANC and the parking  
22 on Park Road. I've been taking it all in and I've been  
23 reading your website at the same time.

24 CHAIRPERSON HILL: Okay, great.

25 MS. UARZI: A good learning experience. Hopefully

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1 I will never have 15 minutes to talk, but thank you.

2 CHAIRPERSON HILL: Well, you never know. You  
3 never know. It's an interesting job you've been elected to.

4 So, yes go ahead.

5 VICE CHAIR HART: Just a really quick question for  
6 Ms. Uarzi. Just the vote, 6-0-3? There were three  
7 abstentions.

8 MS. UARZI: Okay, and since I wasn't there for the  
9 actual voting process. I believe it took place in December.  
10 I think perhaps abstentions were some people had checked out  
11 kind of since they weren't coming back. Do you know what I  
12 mean?

13 VICE CHAIR HART: I just didn't know if there was  
14 something like somebody was like well, I'm not willing to  
15 vote for it but I don't want to vote against it. If you  
16 could, Mr. Malcolm.

17 MR. MALCOLM: They weren't there. They weren't  
18 present.

19 VICE CHAIR HART: Sometimes people abstain because  
20 there's an issue that they may have, but they don't  
21 necessarily want to vote against it or you know, they just  
22 may want to -- I just was curious as to why it wasn't nine  
23 nothing.

24 MS. UARZI: I wasn't told about anyone being  
25 opposed to it for any reason.

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1 VICE CHAIR HART: That's fine.

2 MS. UARZI: And I've been reading all the email  
3 chains.

4 VICE CHAIR HART: As the chairman said I do  
5 appreciate it.

6 MS. UARZI: I did see the six and the three so I  
7 wondered.

8 VICE CHAIR HART: Yes.

9 MS. UARZI: Maybe it was December, the last  
10 meeting of the term.

11 VICE CHAIR HART: It's always interesting to hear  
12 kind of how they got to the vote. And you've provided  
13 sufficient information for me. I just was more curious than  
14 anything.

15 MS. UARZI: I'll ask tonight. Our meeting is  
16 tonight. So thank you.

17 CHAIRPERSON HILL: Okay. All right. Well  
18 hopefully you can take a good impression back to your ANC  
19 then.

20 So let's see. All right. Does the board have any  
21 further questions? Does the applicant have anything they'd  
22 like to add in conclusion?

23 MR. AHMANN: No. Sorry, no.

24 CHAIRPERSON HILL: Okay. All right. I'm going  
25 to go ahead and close the hearing. Is the board ready to

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1 deliberate? Okay, I can begin.

2 I think that based again upon the record and the  
3 burden of proof as well as the testimony that was given by  
4 the applicant I would agree that they've met the standards  
5 for which we can grant this application.

6 I think that I would also be in agreement with the  
7 Office of Planning. It seems that there was some conditions  
8 the Office of Planning had had concerning the design, but the  
9 applicant has met those conditions. And so I don't have any  
10 issues with the new plans that are in exhibit 44.

11 There are again 19 letters in support. And yes,  
12 I'm going to be voting in support. Does anybody have  
13 anything they'd like to add?

14 VICE CHAIR HART: Just a minor thing and that is  
15 we definitely look at each case individually. It is hard for  
16 us sometimes to see that somebody has actually created  
17 something and then is actually trying to get some relief  
18 after the work has been done.

19 It's helpful for us to understand what the kind  
20 of back story is. And I appreciate your architect and you  
21 to kind of give us some information so that we understand the  
22 full picture.

23 I'd be in support of this. It is more just  
24 understanding how we got to this point. And you know, we  
25 fully understand that sometimes you hire somebody and they

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1 may not do what you want them to do in the way that you want  
2 them to do it, and you kind of have to deal with it. And  
3 that's it. Thanks.

4 CHAIRPERSON HILL: Okay. To follow on that  
5 comment and just for me like, right, what you were saying and  
6 I agree is that this is not something that we do lightly and  
7 oftentimes there has happened before they've had to tear down  
8 what has been there. And the applicant did say that they had  
9 torn down a garage I guess to try to get it to this point.

10 But fortunately we believe the applicant to the  
11 point -- even though it's a small, or could be considered a  
12 little bit more of a minimal increase I agree with you that  
13 we don't take this lightly and that people have had to tear  
14 down things.

15 Anyone else?

16 MEMBER WHITE: Yes, I'd just like to say that I  
17 support the application. I think you met the criteria. I  
18 also take my hat off to you for supporting the  
19 reconfiguration in order to help your dad. Obviously that's  
20 not a part of the analysis in terms of my thought process,  
21 but it's just a nice thing that you did.

22 So welcome, Ms. Uarzi. Thank you for showing up  
23 and showing support. But obviously looking at this and  
24 looking at the testimony that Mr. Ahmann gave I'm prepared  
25 to support the special exception relief that they're

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1 requesting.

2 CHAIRPERSON HILL: Okay. I'm going to go ahead  
3 and make a motion to approve application number 19921 as  
4 captioned and read by the secretary and ask for a second.

5 VICE CHAIR HART: Second.

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

8 (Chorus of ayes)

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

11 MR. MOY: Staff would record the vote as 5-0-0.  
12 This is on the motion of Chairman Hill to approve the  
13 application for the amended relief. Seconding the motion  
14 Vice Chair Hart. Also in support Ms. John, Ms. White and  
15 Commissioner Peter Shapiro. The motion carries, sir.

16 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.  
17 Thank you very much.

18 MR. AHMANN: Thank you.

19 CHAIRPERSON HILL: Okay, Mr. Moy, there's one more  
20 preliminary matter, correct?

21 MR. MOY: Yes, sir. To tee you up slightly as to  
22 appeal number 19441 of Richardson Place Neighborhood  
23 Association there's been a filing for a motion for a stay of  
24 the order.

25 CHAIRPERSON HILL: Okay. Is the board ready to

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1 deliberate on this motion?

2 MEMBER WHITE: Yes.

3 CHAIRPERSON HILL: Okay, all right. Well, I can  
4 talk us through it also.

5 So, on February 4, 2019 the board issued an order  
6 granting this appeal. So then on February 11, 2019 the  
7 property owner filed a motion to stay the effectiveness of  
8 the board's order.

9 That motion was served on the other parties, i.e.,  
10 the appellant RPNA as well as DCRA and ANC 5E who has seven  
11 days to file a response. Any filings from the parties in  
12 response to the motion for stay are due on Tuesday, February  
13 19. So we need to hear from them by Tuesday, February 19 in  
14 terms of granting the motion.

15 I would go ahead and suggest that the board  
16 schedule a public meeting to consider the motion for stay on  
17 February 20, so a week from today at 1 p.m. We have training  
18 that we have to do in the morning I think and so we'd be able  
19 to kind of like have this discussion on this motion at 1 p.m.  
20 on February 20 and then the parties would have had by the day  
21 before to give us any responses to the motion.

22 The proceeding will be a public meeting at which  
23 the board may decide the request for a stay on the basis of  
24 written submissions by the parties.

25 So this is only going to be a meeting. So just

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1 so that the public is aware we're not going to be taking  
2 testimony. We're not going to be asking for anything of the  
3 public live.

4           However, those parties that are affected are able  
5 to submit submissions to us by February 19 and then we will  
6 base our determination on the request from the written  
7 record.

8           Does anyone have any questions about what I said?  
9 And then I guess the board, I guess we could -- yes. And  
10 then the board will make a decision on whether to grant or  
11 stay at the conclusion of the public meeting on February 20.

12           So we're going to get all the information by the  
13 19th, then on the 20th we can determine, have a discussion  
14 about whether or not we want to grant the stay.

15           Does anyone have any questions about any of that?

16           VICE CHAIR HART: Just one point of clarification.  
17 Because the ANC is a party that they could also provide some  
18 information if they would like.

19           CHAIRPERSON HILL: Yes. They've been given -- so  
20 RPNA as well as DCRA as well as ANC 5E, they were all  
21 parties. So they all have until the 19th to give us any  
22 information into the record.

23           But only parties. So that's just for the public  
24 to know. Did I miss anything, OAG?

25           MS. LOVICK: No. Very well done.



1 CHAIRPERSON HILL: Okay. Thank you. Gold star.  
2 Okay. All right. So then that's it. Is that consensus, Mr.  
3 Moy? I don't need to take a motion or anything, right?

4 MR. MOY: No, the consensus is fine, sir.

5 CHAIRPERSON HILL: Okay, great. All right. Mr.  
6 Moy, is there anything else left for the board for us today?

7 MR. MOY: No, not for the board and I wish the  
8 board members a happy Valentine's tomorrow.

9 CHAIRPERSON HILL: Oh, thank you. Thank you, Mr.  
10 Moy. You too as well, Mr. Moy. All right, okay, we stand  
11 adjourned.

12 (Whereupon, the above-entitled matter went off the  
13 record at 12:59 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 02-13-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

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