

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 3, 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:

- ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN
ELISA VITALE

The transcript constitutes the minutes from
the Public Hearing held on April 3, 2019.

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

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10:11 a.m.

MR. MOY: Thank you, Mr. Chairman. We are in the public hearing session of today's docket. And the first application for hearing is, this is a request for a modification of significance to Application No., oh, let me start over. This is Case Application Number 12799A of the VIP Room.

And this is the Applicant's request for a modification of significance to Condition Number 1 in BZA Order Number 12799 in order to permit the sale and storage of alcohol at the commercial establishment in the M-U-3 Zone. This is at 6201 3rd Street NW, Square 3342, Lot 813.

Two things to this, Mr. Chair, there's a filing of affidavit postings on their Exhibit 50, affidavit of maintenance, where are we here, it's 53. A waiver should be needed for that, because there's a five-day rule for filing for the maintenance affidavit.

And finally there's, in the record, a request for Party Status on their Exhibit 52. That's a preliminary matter as well. This was filed March 31st, 2019.

CHAIRPERSON HILL: Okay, thanks. Could the applicant come to the table?

MS. RAY: Good morning, Your Honor. My name is --

CHAIRPERSON HILL: It's all right. Actually you

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1 need to speak into the microphone. But just have a seat
2 first.

3 MS. RAY: Okay. Well, I won't be able to ---

4 CHAIRPERSON HILL: Okay. Sure, that's okay. First
5 just the Applicant come down to the table first and sit down.
6 You can sit down, and then we'll talk through this.

7 MS. RAY: All right.

8 MR. CAVANAUGH: Okay, could you introduce yourself
9 for the record? You need to push the microphone, the button
10 right there.

11 MS. RAY: Good morning to the Board first of all.

12 CHAIRPERSON HILL: Okay. And what's your name?

13 MS. RAY: My name is Attorney Rosalind R. Ray, R-A-
14 Y. And I am the attorney for the VIP Room.

15 CHAIRPERSON HILL: Okay, great.

16 MS. RAY: And beside me, I'd like to introduce the
17 owner of the VIP Room, Ms. Earline Sampson.

18 CHAIRPERSON HILL: Ma'am, could you push the button
19 on the microphone there.

20 MS. SAMPSON: Hello.

21 CHAIRPERSON HILL: And could you introduce yourself
22 please for the record?

23 MS. SAMPSON: Good morning, my name is Earline
24 Sampson, and I own the VIP Room.

25 CHAIRPERSON HILL: Okay, great. All right. And

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1 just so you all know, like, if you just turn one microphone
2 on at a time, otherwise I get feedback up here.

3 MS. SAMPSON: Okay.

4 MS. RAY: Okay.

5 CHAIRPERSON HILL: Okay. So, Ms. Rosalind, we'll
6 get to you. Because I guess you're going to go ahead and
7 present for the Applicant?

8 MS. RAY: Yes, I would be --- no, I'm not going to
9 present for the Applicant. I would be giving a preliminary
10 statement. And once I've done that, I will present Ms.
11 Sampson to give her statement. And then the general manager
12 will give his, and the three witnesses.

13 CHAIRPERSON HILL: Okay. All right, okay. But
14 anyway, you're running the case, so that's ---

15 MS. RAY: I'm running the show.

16 CHAIRPERSON HILL: Right, you're running the show.
17 Okay, that's fine. I just need to know who the head was
18 here, okay.

19 Then, let's see, there's someone who's requesting
20 Party Status. Is that person here?

21 (No audible response)

22 CHAIRPERSON HILL: Okay, could you come forward
23 please? Could you introduce yourself for the record?

24 MR. STEHLE: My name is James Stehle.

25 CHAIRPERSON HILL: Could you spell it please for

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1 me?

2 MR. STEHLE: S-T-E-H-L-E.

3 CHAIRPERSON HILL: Okay. All right, great, thanks.
4 How many people are here for this case, if you could raise
5 your hand? Okay, all right. Okay, we've got a good bunch.
6 I thought maybe he was just here in town for the Philllys game
7 with the Mets, you know.

8 (Laughter)

9 CHAIRPERSON HILL: All right, so Mr. Stehle?

10 MR. STEHLE: Yes.

11 CHAIRPERSON HILL: Stehle, so if you could turn off
12 your microphone please for a minute. Thank you.

13 So you've requested Party Status. Can you tell us,
14 the Board, how you're uniquely or differently affected than
15 the general public, meeting the standard baseline.

16 MR. STEHLE: The reason I requested Party Status,
17 I think it was by mistake, because I was just trying to post
18 ---

19 CHAIRPERSON HILL: Oh, okay.

20 MR. STEHLE: -- a document. And it said you had to
21 have Party Status. It was kind of confusing.

22 CHAIRPERSON HILL: Okay, that's all right. So ---

23 MR. STEHLE: So I wasn't really requesting Party
24 Status.

25 CHAIRPERSON HILL: Okay. That's all right. Well,

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1 you would have gotten it denied probably, because you're not
2 uniquely affected. But so you're withdrawing your Party
3 Status request then. Is that correct?

4 MR. STEHLE: Yeah.

5 CHAIRPERSON HILL: Okay, all right. So then you're
6 here to testify in some capacity later?

7 MR. STEHLE: Yeah, I am.

8 CHAIRPERSON HILL: Okay. You can go back and sit
9 down there if you wouldn't mind. All right. Okay, so we did
10 that.

11 The filing deadline, so the affidavit of
12 maintenance is late, Mr. Moy, is that correct?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON HILL: Okay. So do you know, so
15 anyway, in terms of the lateness of the affidavit of
16 maintenance, I don't have an issue with that. Does the Board
17 have any issue with waiving the time limit for that?

18 PARTICIPANT: No.

19 CHAIRPERSON HILL: Okay, all right. I see you nod.

20 MEMBER MAY: As long as we know that it was
21 properly posted, right. I mean, if it's just a matter of
22 filing that paperwork to prove it's --

23 MR. MOY: That is correct.

24 MEMBER MAY: -- late --

25 MR. MOY: That's correct, sir.

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1 MEMBER MAY: -- then it's no big deal. Yeah.

2 CHAIRPERSON HILL: All right, okay. So that being
3 the case, Ms. Rosalind, I'm going to go ahead and give you
4 15 minutes on the clock here just so I know where we are.
5 There's 15 minutes up that side or that side. And we'll see
6 where we go, okay, how long it takes. You know, if it takes
7 you longer, that's fine, okay. It's just so I know where we
8 are. And you can begin whenever you like.

9 MS. RAY: Okay. Thank you very much. First of all,
10 for clarity, I think it's important for everyone here to
11 understand exactly what the VIP Room is. As a native
12 Washingtonian, I can tell you that this establishment is
13 there for people to rent. They're individuals that may need
14 to have a baby shower, 4D may need to have a meeting, ANC may
15 need to have a meeting. People have wedding receptions, et
16 cetera.

17 They contact the VIP Room, and in doing so they
18 line up what they think they need to do for a particular
19 evening, and date, and time. Generally, they will tell them
20 their needs, and they will then enter into a contract with
21 the general manager of the VIP Room. And at that point, they
22 will set the date, if it's available, and give their event.

23 Nine times out of ten, the general manager is there
24 to open up the establishment, allow the people to come in and
25 prepare for their event, and they generally stay the entire

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1 time to make sure that the event is run smoothly and without
2 any incidents.

3 As of today, and back as far as 1979, this
4 establishment has never had any incidents. And today we will
5 have individuals who will testify to that, one being a
6 retired police officer from the 4th District.

7 More importantly, I think that communication is a
8 problem when you're dealing with situations like this.
9 Because a lot of people, probably even in this room, are not
10 aware that, in 1979, what was given to the VIP Room, based
11 upon the way things were run during those years, was what was
12 called a variance. So it was a use variance. It was not per
13 se a license.

14 At the time that that variance was given to them,
15 the variance indicated specifically that alcohol could not
16 be sold on the premises. That was not an issue at that time,
17 because the people who were renting that facility did not
18 necessarily need to sell alcohol. They had alcohol probably
19 there in the quantities that they believed were necessary for
20 the individuals who were attending their event, their baby
21 shower, probably no liquor, little children when they get
22 birthday parties, probably no liquor.

23 So times have changed. Now you have grownups that
24 are coming into these facilities just like they would do at
25 Martin's Crosswinds. And they believe that in some

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1 instances, they need to have the ability to have a cash bar.
2 More importantly, some people give small events, and it could
3 be a fundraiser. So they believe they need to sell tickets.
4 So times have changed.

5 I think that, when you look at the totality of the
6 circumstances, the previous events, and then identify the
7 fact that there are over approximately 51 other businesses
8 in the immediate neighborhood who have the identical same
9 license as the VIP Room, and they are given the opportunity
10 to do the things that my clients are asking for today.

11 We would ask that you listen to the owner, who is
12 a senior citizen now and has run this VIP Room with her
13 husband, who has now passed, since 1979 and been in this
14 District for, I can't do the math, but since 1963.

15 So the bottom line is you have decent individuals,
16 senior citizen, who is abiding by the laws of the District
17 of Columbia, running a very well respected VIP Room that
18 doesn't even operate on a daily basis. So a lot of people
19 may not be clear that there are some months there's no
20 activity. Because if no one rents the facility, there would
21 be no need to open it up.

22 But more importantly, Mrs. Sampson has been one
23 that, when the ANC, or the 4th District, or any police
24 officer has come in and said, hey, can we use your facility,
25 we need to have a meeting, or we need to have a quick get-

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1 together, she has allowed that free of charge.

2 These are some of the pluses that a lot of people
3 are not aware of. So I believe that, today, if everyone on
4 the Board and everyone in this audience, has a clear
5 understanding of what is going on, you too will understand
6 that what they're asking for is nothing more than what
7 everyone else is already being provided in that neighborhood.

8 So we would only ask today that we be given an
9 opportunity to express that, because what is puzzling to me
10 as a legal person is the fact that the ANC and others have
11 already approved this, have confirmed that they have
12 investigated this to the fullest extent possible for them,
13 and we're here again.

14 That is a situation that has become burdensome to
15 Mrs. Sampson. And certainly, if any of you all have parents
16 who are senior citizens and in their 80s, that is something
17 that she does not need to be tasked with over and over again.

18 So we will also say to you that if you have any
19 questions, or need to have anything addressed that anyone is
20 speaking about today, they do have an individual that will
21 address that. And she should be here shortly, Raymone Bain,
22 who is their publicist and will be more than happy to address
23 any questions anyone may have with regard to the VIP Room.

24 And we would ask that you listen carefully. And if
25 you have questions, rather than jumping to a quick

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1 conclusion, please ask us. So we would ask now that Mrs.
2 Sampson address the Board.

3 CHAIRPERSON HILL: Okay, just real quick, so Ms.
4 Rosalind, thanks for that opening statement. So what you
5 guys are here for is you're trying to change a condition,
6 right, something that when this was first originally proposed
7 it was a condition, right?

8 And so we're just we're just to kind of figure out
9 whether or not that condition is going to affect the
10 community in a different way, or whether or not, you know,
11 the standards for us to approve that change in condition is
12 being met, right.

13 And so you've already gone through the Office of
14 Planning. The Office of Planning has given a report. We've
15 already gone through the ANC. The ANC has given us their
16 opinion on it. And they also have some things that we'd kind
17 of like to talk through as well with them.

18 I'm just kind of letting you know that, you know,
19 this started out as a modification, right. And then now
20 we're having a full hearing on it. And the reason why is
21 because, you know, we thought that the change, the
22 modification, was significant enough to actually have a
23 hearing, okay. So that's why we're having a hearing.

24 I know that you guys have been through this a
25 couple of times. I know that you're here. But this is the

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1 process. And as a lawyer, you know, you followed where we
2 are. So, you know, I'm here just because I'm here for the
3 process. And so as everybody knows, we're going to listen
4 to everybody, we're going to take the testimony from
5 everyone.

6 I've seen a lot of the information that's in the
7 record. There seems to be, you know, strong opinions in a
8 lot of different ways. So we'll see who comes forward. I
9 just want to let you all know we're going to quietly go
10 through this. We're not going to be excited about it, we're
11 not going to be hostile about it. We're just going to listen
12 to everybody's testimony. And then we're going to have an
13 opportunity to ask for questions and then come to a decision,
14 okay. So we're just going to calmly go through this. I'm
15 just letting you know.

16 MS. RAY: And, Mr. Hill, the one thing I would like
17 to say, and I think that's where the communication, in my
18 opinion, is not clear to people who hear, like, when you said
19 you're looking for a change, I'm not really seeing it like
20 that.

21 CHAIRPERSON HILL: Right, that's okay.

22 MS. RAY: Because, you know, we're saying to you
23 that, from the perspective of a legal perspective, that if
24 a person gets a license that is the identical same license
25 of another business in that area, and they're granted those

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1 rights, that that's not a change.

2 CHAIRPERSON HILL: Right. Ms. --

3 MS. RAY: That's giving them what's equally being
4 given to someone else.

5 CHAIRPERSON HILL: Ms. Rosalind, I hear what your
6 argument is. But you're here because it is a change. And
7 so that's why we just have to do it. I mean, if you didn't
8 have to be here --

9 MS. RAY: Well, no it's not. And that's what I'm
10 saying.

11 CHAIRPERSON HILL: Ms. Rosalind, I don't --

12 MS. RAY: One was a variance and the other is a
13 license. Remember, we were saying earlier that there was a
14 difference.

15 CHAIRPERSON HILL: Oh, I'm sorry. I'm calling you
16 Ms. Rosalind --

17 MS. RAY: That's fine, Ms. Rosalind is fine.

18 CHAIRPERSON HILL: No, it's Ray.

19 (Simultaneous speaking.)

20 MS. RAY: But we're saying that it's really not.
21 Because once you leave one thing --

22 CHAIRPERSON HILL: I understand, Ms. Ray. I'm here
23 with your Applicant. I'm just trying to get through this.
24 There's, like, 40 other people here. So let's get through
25 this part, okay. And we'll see where we get.

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1 Now, I'm just trying to let you know that we're
2 just calmly going to go through this. That's all I'm just
3 trying to let you know. So, Ms. Sampson, would you like to
4 go ahead and give your testimony?

5 MS. SAMPSON: Yes. Good morning again. My name is
6 Earline Sampson, and I own the VIP Room. My husband, who has
7 passed, and I have owned the VIP Room since 1979. We have
8 run our business in the 4th District neighborhood without
9 incident for 40 years. And I have been in the neighborhood
10 since 1963.

11 I'm almost 80 years old. And I'm not pleased that
12 many businesses in our area fit the one to say I believe that
13 the same license that we have. And many of them sell liquor
14 and accept cash at their businesses at the door. We want to
15 be treated the same way as these businesses.

16 We recently were at Town Hall meeting at the 4th
17 District Police Department. And nearly everyone was very
18 encouraging and supported our request for modification which
19 is why we are here today.

20 Families have rented the VIP Room, as well as the
21 policemen and others who want to have wedding showers,
22 receptions, graduation parties, and just plain old fashioned
23 get-togethers. What we are asking for is nothing different
24 from what so many of our neighbors already have.

25 We give back to the community by allowing churches,

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1 community organizations, ANC to hold meetings and small event
2 in the VIP Room free of charge.

3 Again, I am not clear on why I have not the same
4 license as so many others and have restrictions on hours, and
5 they have no restrictions. More importantly, the VIP Room
6 is only open when it is rented.

7 My husband was an honorable man, and our family has
8 continued to follow his tradition of going good and wholesome
9 family businesses with morals above reproach. Our community
10 is important to us. And as a part of the community, we hope
11 we are important to you. Thanks for allowing me to speak
12 today, and please feel free to ask me any questions. Thank
13 you.

14 CHAIRPERSON HILL: Thank you, Ms. Sampson.

15 Ms. Ray, you said there were some other people that
16 you wanted to speak?

17 MS. RAY: Yes. The general manager, I would ask to
18 step forward to give a statement, Mr. Bo Sampson.

19 CHAIRPERSON HILL: Okay.

20 MEMBER MAY: Ms. Sampson, you should probably stay
21 at the table in case anybody has questions for you. But you
22 can all be at the table, please.

23 MR. SAMPSON: Check one, check two. All right.

24 CHAIRPERSON HILL: All right, Mr. Sampson.

25 MR. SAMPSON: Hey, good morning. First I'd like to

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1 say thanks for the opportunity to tell our story. My name
2 is Bo Sampson. I'm the oldest son of Sam Sampson. So I've
3 been working for my father for years. And, you know, my
4 father had a dream to, you know, put together a place where
5 people can have a good time. Matter of fact, he named the
6 place the VIP Room, very important people, that means
7 everybody is important.

8 So the business model of the VIP Room is we
9 celebrate people's milestones in life, your birthday, your
10 anniversary, family reunions. And if you leave this world,
11 we're going to celebrate your life. So that's basically the
12 business model.

13 We rent out the place to customers, but what we do,
14 we have a screening process. It's not who you are, it's what
15 you're going do. So technically, what I do when people call,
16 we ask them to come in, see what they want to do, and we rent
17 it out to them, you know. And some of the customers, they
18 want to drink, you know, you drink at the hockey game, you
19 drink at the baseball game, you drink at all these places.
20 So this is a form of entertainment, even at the family
21 reunion.

22 So basically, for the last -- my father, back in
23 1979, had a variance license where it didn't allow that. It
24 was a public hall. That was the business model back then.
25 Right now, all over DC the business model is bars, lounges,

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1 and restaurants. So we asked the Board, the Alcohol Board,
2 what license would qualify us to be able to serve our
3 customers? And they came back, and they said the Tavern C
4 license.

5 Now, the Tavern C license that we have, before the
6 Tavern C license, I had to get a temp license for four years.
7 The temp license is a one-day license. I would have to put
8 some paperwork in, go downtown, and have a Clean Hands, that
9 means I don't owe the government no money, criminal report,
10 that means I'm not a criminal, no drugs, you know what I'm
11 saying? So I put that in.

12 Then the Board would vote. And then I would come
13 back and pick the license up. So over four years, I did
14 that, you know. And we went by the rules, it was tough. But
15 one thing my family has taught, and my mom, who's the owner
16 of the VIP Room, follow the rules. My father said do it
17 Sampson's way. You know, you've got to be on time, you've
18 got to do it right.

19 So I followed those rules. And the rest of my
20 brothers and sisters, Mike, Garry, Yolanda, we went by a
21 principle of values. We just don't rent out to anybody. We
22 don't do the Go-Gos. I like the Go-Go, but the Go-Go can't
23 come in there because of the people that follow.

24 So I'm just saying, in general, all I'm asking you
25 guys to do, we just want the same rights. We don't want

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1 nothing special, you know. I mean, we're doing it for the
2 community. Matter of fact, the Mayor been in there three
3 times. And I'm going to tell you, the Mayor can really
4 dance. She's a good dancer.

5 (Laughter)

6 MR. SAMPSON: Man, you all don't know. We had the
7 Watch Party, Brandon Todd, we did --- Ms. Bee's going to be
8 100 years old this year. And she's doing her party. And if
9 you all want to come, you all can come too. I'm sure she
10 would like you guys to come to celebrate 100 years.

11 So we've been serving the community, you know, a
12 long time. And the license is not --- the modification is
13 not just for us, it's for our customers, man. Man, I don't
14 even drink, Mr. Hill. I ain't had Pepsi all year.

15 CHAIRPERSON HILL: Okay.

16 MR. SAMPSON: All year, I ain't had a Pepsi.

17 CHAIRPERSON HILL: All right, all right, all right.

18 (Laughter)

19 MR. SAMPSON: All I drink is water. I'm on a fast.

20 CHAIRPERSON HILL: All right, Mr. Sampson.

21 (Simultaneous speaking.)

22 CHAIRPERSON HILL: Okay, all right. You can turn
23 off that microphone if you don't mind, Mr. Sampson.

24 MS. RAY: Well, let me just say real quickly --

25 CHAIRPERSON HILL: Sure.

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1 MS. RAY: -- so you know, our publicist has just
2 arrived. That's Raymone Bain.

3 CHAIRPERSON HILL: Okay.

4 MS. RAY: She would be the person if you need to
5 address anything. And she'll give her information at some
6 point.

7 CHAIRPERSON HILL: Okay. So again, just, you know,
8 Ms. Ray, Ms. Sampson, in terms of being here again, well, I
9 wasn't here when you all got this use variance in the
10 beginning, right. And that was in 1979, right.

11 And so, you know, in 1979, the Board made some
12 conditions. And one of those was the condition that you're
13 trying to get modified. That's the only reason why we're
14 here, right. And that's the only reason why we're here. And
15 so we're just going to go through, as I said, this testimony,
16 and then we'll go ahead and see where we get.

17 Now, would you introduce yourself, please? You
18 need to push the microphone there.

19 MS. BAIN: Yes, good morning. I'm Raymone Bain, and
20 I am the PR person for Mr. Bo Sampson and his mother.

21 CHAIRPERSON HILL: Okay. Ms. Bain, did you get
22 sworn in earlier? You just walked in, right?

23 MS. BAIN: I just walked in.

24 PARTICIPANT: She's not a witness.

25 CHAIRPERSON HILL: She needs to be sworn in. It's

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1 okay. So if you could just go ahead and take the oath here.
2 And if anybody else who missed the oath when they came in for
3 cases later, you can just go ahead and stand and take the
4 oath administered by the Secretary here.

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

8 MS. BAIN: Yes, I do.

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

10 CHAIRPERSON HILL: Okay. So I think we're going to
11 just start to ask some questions now, okay?

12 MS. RAY: No, we have two more witnesses.

13 CHAIRPERSON HILL: Who do you have left?

14 MS. RAY: Well, as a matter fact, three. We have
15 Officer Clyde Cavanaugh who will come up and make a brief
16 statement.

17 CHAIRPERSON HILL: Okay, all right.

18 MS. RAY: And then we have Ms. Diane Ross, who's
19 the owner of Ross Professional Services in that block, and
20 then also Ms. Brenda Parks, the ANC Commissioner.

21 CHAIRPERSON HILL: Okay. So the ANC Commissioner,
22 all right. So, Ms. Ray, you haven't been here before, right?

23 MS. RAY: No.

24 CHAIRPERSON HILL: No. I'm trying to run it, okay,
25 just to let you know. And so let's try to get through this

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1 part. I mean, we have a lot. This was something that should
2 take an hour. But it looks like we're getting up in that
3 area. So you have three more witnesses, is that correct?

4 MS. RAY: Yes, and they'll be brief.

5 CHAIRPERSON HILL: Okay, that's fine. Officer, if
6 you could state your name, please?

7 MR. CAVANAUGH: Good morning, Mr. Chairman and
8 Board. My name is Clyde Cavanaugh. I live at 6204 3rd
9 Street NW, Washington, D.C. 20011. I've lived at that
10 residence for the past 27 years. I'm also a retired police
11 lieutenant. I served 35 years total service to this
12 community and to the nation.

13 And I mention that because there has been a lot of
14 speculation, a lot of lies that have been spread of
15 activities going on at the VIP Room. They're talking about
16 drugs being sold, people throwing debris in other people's
17 yards, cans, bottles, people urinating in people's yards.
18 If anybody has any cans or bottles, they're not coming from
19 the VIP room. Because they serve their drinks in cups, and
20 you have to drink inside the building, period.

21 And I mentioned this fact that I was a police
22 officer, because had any of those activities been conducted
23 while I was there living across the street, I live directly
24 across the street from the VIP Room, directly, had anybody
25 been doing those activities, I would have made sure that they

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1 would have been locked up. We would have closed the place
2 down. I would have personally raided the place. Even though
3 I know Mr. Sampson, I'd have been the one to put him in
4 handcuffs. But none of that activity has been occurring at
5 that place.

6 The problem is you have neighbors that are against
7 the VIP Room, period. They had a beef with Sam Sampson, the
8 former owner. Had he been alive today, we wouldn't be here
9 today. Because they wouldn't have said a word. But they
10 didn't like him, so now they're trying to harass the family.
11 They want to try to push the family out so they can have this
12 property for themselves.

13 CHAIRPERSON HILL: Okay, Officer, I appreciate,
14 like, just you can't take testimony on what you think other
15 people might be doing. But they're --

16 MR. CAVANAUGH: Well, I know what they're doing,
17 sir. I know what ---

18 CHAIRPERSON HILL: Okay.

19 MR. CAVANAUGH: I don't speculate.

20 CHAIRPERSON HILL: Okay.

21 MR. CAVANAUGH: Being a cop, I cannot speculate.
22 I have to give you facts.

23 CHAIRPERSON HILL: Okay.

24 MR. CAVANAUGH: And I've seen these things.

25 CHAIRPERSON HILL: Okay.

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1 MR. CAVANAUGH: And so what they're saying that's
2 happening in the neighborhood is not happening. And when I
3 testified four years ago for the VIP Room to get their
4 license, that they've been fighting, every few months, you've
5 got to come back and forth, back and forth, the same thing,
6 I made the same statement. It was agreed upon that they
7 would have that license, that we shouldn't even have to be
8 here today.

9 CHAIRPERSON HILL: Okay.

10 MR. CAVANAUGH: And in closing, I want to say that
11 on the marquee in the front of the building, on the 3rd
12 Street side, they have written, that's in flashing lights,
13 we are praying for you today, God bless you. And this is a
14 very religious family, they're very honorable in the
15 neighborhood. There have been no problems in the past 27
16 years that I've lived there, nothing at all.

17 CHAIRPERSON HILL: Okay. All right, thank you,
18 sir.

19 MR. CAVANAUGH: You're welcome.

20 CHAIRPERSON HILL: Ms. Ray, who's next?

21 MS. RAY: Okay, we would like to now have Ms. Diane
22 Ross to speak. She's the owner of Ross Professional
23 Services, LLC.

24 CHAIRPERSON HILL: Okay.

25 MS. ROSS: Hi, thank you for allowing us to come

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1 today and listen to our testimony. I'm going to be brief.

2 CHAIRPERSON HILL: Okay. Ma'am, could you turn off
3 your microphone right there next to you. Sorry, we just get
4 feedback up here. Thank you.

5 MS. ROSS: I'm Diane Ross. I have a three-fold
6 purpose on 3rd Street. I'm a resident, three blocks down the
7 street from the VIP, I've raised three children on 3rd Street
8 three blocks from the VIP and the Rec Center which is a block
9 from VIP, and I run a business of 20 years, but 14 years on
10 3rd Street which is adjacent, across the street from the VIP.

11 One unique thing about my business is I'm there
12 from 11 o'clock in the morning until about 1:00 or 2:00
13 o'clock in the morning. Sometimes I walk home, I walk past
14 the VIP when they have events. I see everything is -- each
15 event I've ever seen is very well mannered, civil. The
16 patrons are respectful, orderly. I never see any activity
17 outside. I see the cars outside, but I see all activity
18 inside.

19 So I just feel like I'm uniquely affected, because
20 we have also attended events at the VIP with Councilmember
21 4, Brandon Todd. We've enjoyed events there. We've enjoyed
22 99 or 96 year-old birthday parties there. And we've also
23 wanted to have business and personal events there, but
24 because of some of the regulatory restrictions, you know,
25 we've had to take some of our venues over to Maryland which

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1 is, you know, because of the close proximity. So we've been
2 generating income for the state of Maryland, because trying
3 to use something in our own neighborhood, there's so much red
4 tape.

5 So, you know, like I said, I've only observed
6 nothing but great, civil, well-mannered, well controlled
7 events there, would love to have events there for our
8 business to help promote more income for the city and for
9 this business.

10 So I am definitely a proponent, from what I've
11 seen, you know, and the experience of the patrons that they
12 have there, you know, we would love to be able to have events
13 there. So we're definitely a proponent of this.

14 CHAIRPERSON HILL: Okay.

15 MS. ROSS: Thank you.

16 CHAIRPERSON HILL: Thank you. Ms. Ray, you said
17 the ANC Commissioner --

18 MS. RAY: Yes.

19 CHAIRPERSON HILL: -- is here?

20 MS. RAY: Our last speaker, and then we would ask
21 that we remain, as you stated, so that we can answer any
22 questions.

23 CHAIRPERSON HILL: Uh-huh.

24 MS. RAY: Okay. Ms. Brenda Parks, Commissioner of
25 ANC.

1 CHAIRPERSON HILL: Hi, Commissioner, how are you
2 doing?

3 MS. PARKS: Good morning --

4 CHAIRPERSON HILL: Good morning.

5 MS. PARKS: -- everyone. I'm just fine. How are
6 you all doing this morning?

7 CHAIRPERSON HILL: Good.

8 MS. PARKS: My name is Brenda Parks, and I'm Chair
9 of ANC 4B. And I've been in the neighborhood since 1979.
10 And my kids went to Paul Junior High School. But because
11 they did not have a program that I wanted my kids to enter,
12 they went to Spingarn.

13 But getting back to the VIP Room, as Mr. Sampson
14 said earlier, the VIP Room stands for very important people.
15 And I attend quite a few functions there at the VIP Room.
16 And one thing that I can say is that Mrs. Sampson, she is
17 right on with the VIP Room. Because everyone is welcome
18 there. And I like what she does, because she does give free
19 events there.

20 And one thing that I can say that I have never
21 seen, being in the city for so long, is that they do not have
22 bottled alcohol. They do serve the alcohol in cups. They
23 don't even have canned beer there. And that was just so
24 surprising many years ago when I went there, and even today
25 when I go.

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1 And I must say that Mr. Sampson here, when I do
2 visit the ViP Room from time to time, on quite a few
3 occasions he stays there. And you don't see that very often
4 where an owner stays with the establishment. And not only
5 that, there's always security at the door.

6 And so when I visit there, I go there to say, let
7 my hair down, okay, ha, ha, ha, ha, ha. I feel safe and
8 secure. Because I think that we don't have anything in that
9 neighborhood as a venue, you know, that we can go to and feel
10 safe. And Mrs. Sampson makes sure that we do feel safe when
11 we visit her establishment.

12 And you don't see that. I'm downtown on a daily
13 basis night and day, because I'm basically all over the city.
14 And sometimes coming up Georgia Avenue, let's say from New
15 Hampshire Avenue up to Massachusetts Avenue, we have those
16 venues that have their businesses out in the street. They
17 have tables in the street, they have, you know, everybody's
18 in the street. Everybody is drinking in the street.

19 But one thing I can say for the VIP Room, they
20 respect the neighborhood. And I can honestly say that, now
21 what these other people was getting, you know, everything
22 where there are cans in my yard, there are bottles in my
23 yard, well, my house is on a corner. And guess what, it's
24 beginning to be spring. Every morning I get up, I'm going
25 to have to pick up liquor bottles and cans.

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1 And I don't have a venue, okay. I don't have one,
2 but they do have one. And those cans and bottles, I can say,
3 honestly say, okay, that it's not coming out of the VIP Room,
4 okay.

5 Now, my back porch, I don't have a fence, because
6 I think the yard should be free. I even have people at night
7 come and sleep on my back porch. Guess what I do? I have
8 to call 911 to get them removed.

9 So people in the neighborhood who're seeing these
10 things that's going on, why are they not calling 911? I have
11 checked. Not one call has gone through 911 with the VIP Room
12 being disturbing. ABRA has been called in. They come to the
13 VIP Room. Even I get up out of my bed if they're having a
14 late night venue. And I will drive around, because I'm an
15 ANC. And I like my neighborhood.

16 I don't see anything going on. ABRA don't find
17 anything going on except music might be a little loud from
18 time to time. And sometimes we get lost in that, you know,
19 when you get out there and call yourself grooving, you know.
20 You're smiling, Mr. Hill, ha, ha, ha. So you know all about
21 that.

22 But the thing is here, is that times have changed
23 from 1979 until now. The only thing, basically, that's not
24 going to change is the Constitution of the United States.
25 Yeah, we need to re-write rules sometimes.

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1 After 50 years, even a house has to be re-renovated
2 from time to time. Because if we don't never put a roof on
3 the house, guess what? It's going to fall in, right. So
4 sometimes bills need to be rewritten, sometimes documents
5 need to be written. And right now, this 1979 document, we're
6 here for modification. And I pray that modification be done
7 today. Thank you.

8 CHAIRPERSON HILL: Thank you, Commissioner. Wow,
9 that was pretty good, Commissioner. I've got to tell you,
10 I don't the constitution to get brought into things before
11 or anything like, you know, I mean, that's way over my head.

12 MS. PARKS: I'm sorry, but --

13 CHAIRPERSON HILL: Oh, no, no. That was well said
14 I thought. Okay, so let's see. I'm actually going to turn
15 to the Office of Planning first. And then we're going to
16 take questions from the Board for the Applicant.

17 MR. MORDFIN: Good morning. I'm Stephen Mordfin.
18 And the Office of Planning supports this modification,
19 primarily because the sale of alcohol as used is permitted
20 as a matter of right within this District, not for the
21 specific use. The specific use is not permitted by the
22 Zoning regulations at all. So that is why they have a use
23 variance.

24 But because you can have a bar which has the sale
25 of alcohol, the Office of Planning found that this

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1 modification to remove the condition to the use variance was
2 acceptable to the Office of Planning.

3 CHAIRPERSON HILL: Okay, Mr. Mordfin, can you go
4 into a little bit of your analysis a little bit more?

5 MR. MORDFIN: Okay. Right now, the Applicant has
6 a use variance that permits the use of the public hall, which
7 is not otherwise permitted by the zoning regulations. And
8 it was approved with, I believe, four conditions of approval.
9 One of those conditions was that no alcohol be sold on the
10 premises. The Applicant is allowed to serve alcohol on the
11 premises but cannot sell it.

12 So there is a difference between the two, but also
13 because it's zoned M-U-3 and within that zone you can have
14 a bar which is a use that permits the sale of alcohol. The
15 Office of Planning supported the Applicant's request to have
16 that one condition that no alcohol be sold on the premises
17 be removed, because we didn't find that there was that much
18 difference between the two. And also because they could
19 already serve alcohol.

20 I know there's a difference between serving alcohol
21 and selling alcohol, but we found that, because bars were
22 permitted as a matter of right, we did go ahead and recommend
23 approval of this request.

24 CHAIRPERSON HILL: Okay, Mr. Mordfin, thanks. Does
25 the Board have any questions for the Office of Planning?

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1 MEMBER WHITE: Just one question. Did you find
2 that there were any adverse impacts associated with this
3 particular business being able to sell alcohol versus serving
4 alcohol? I haven't been able to identify anything specific.
5 Maybe we'll get some information later. But I wanted to hear
6 your analysis with respect to that.

7 MR. MORDFIN: We were not aware of any adverse
8 impacts. You mean related to this specific business?

9 MEMBER WHITE: Related to this specific business
10 selling alcohol?

11 MR. MORDFIN: We were not aware of any adverse
12 impacts from that. And we were also balancing it against
13 uses that are already permitted within the zone as a matter
14 of right.

15 MEMBER WHITE: And they still have to, you know,
16 get sign-off from ABRA as well?

17 MR. MORDFIN: Yeah. That's a separate process.

18 MEMBER WHITE: Yes.

19 MR. MORDFIN: And whether or not it's approved,
20 even if it's approved by this Board, that doesn't, you know,
21 we know that that doesn't mean ABRA will approve it. It has
22 to meet their requirements also. They are two separate
23 processes.

24 MEMBER WHITE: Right. Thank you.

25 CHAIRPERSON HILL: Anyone else for the Office of

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1 Planning?

2 (No audible response)

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

5 MS. RAY: No, sir.

6 CHAIRPERSON HILL: Okay. So does the Board have
7 any questions now for the Applicant? Please, Mr. May?

8 MEMBER MAY: Just a couple of things. Ms. Ray, you
9 mentioned that there were, I think you said 51 businesses in
10 the area doing the same thing. Did I hear that right?

11 MS. RAY: What I said was, it's been represented to
12 me that approximately 51 businesses have the identical same
13 license and have the ability to be able to sell alcohol or
14 sell tickets at the door. And that is the reason why we
15 believe they should be granted the same opportunity.

16 MEMBER MAY: Okay. So if you could clarify for me,
17 I mean, where are there 51 businesses, certainly not in the
18 immediate neighborhood? You're talking about within the city
19 proper?

20 MS. RAY: I will let Mr. Sampson give you that.

21 MEMBER MAY: Yeah, please.

22 MS. RAY: Because he has the ---

23 MEMBER MAY: I'm curious about that.

24 MR. SAMPSON: I got a list of statistics. Every
25 Tavern C license in 2011, there was 50 businesses that were

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1 allowed to do what we're trying to do. And also I would add,
2 when we did have the temp license for four years, we were
3 able, if we wanted to, to be able to do what we're trying to
4 do now.

5 MEMBER MAY: Okay. It's a different, I'm asking
6 you a question.

7 MR. SAMPSON: Yeah, well, I'm just making --

8 MEMBER MAY: And I appreciate that.

9 MR. SAMPSON: Yes, sir.

10 MEMBER MAY: But if you can just let me --

11 MR. SAMPSON: Yes, sir. Go ahead.

12 MEMBER MAY: -- ask my questions and move along.

13 But you're saying that there are 51 Tavern C licenses ---

14 MR. SAMPSON: Yes.

15 MEMBER MAY: -- in the immediate vicinity?

16 MR. SAMPSON: Yes, sir. 2011, in the area code, I
17 mean, up the street, down the street.

18 MEMBER MAY: In the area code?

19 MR. SAMPSON: Yes, sir, in the area code.

20 MEMBER MAY: Okay, that's what I ---

21 MR. SAMPSON: 2011.

22 MEMBER MAY: Okay, so I'm curious. How is it that
23 you were able to get a Tavern C license in the first place
24 when there's a zoning --- the zoning order prohibited you
25 selling alcohol.

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1 MR. SAMPSON: Well, let me say this. We went to
2 the Board, and we asked the Board.

3 MEMBER MAY: What Board?

4 MR. SAMPSON: The Alcohol Board.

5 MEMBER MAY: Okay.

6 MR. SAMPSON: So what you've got to understand, the
7 business model we got, there's more bars and restaurants than
8 public halls. That, in 1979, was what my father had. So the
9 Board told us that we qualify for this license. So they
10 approved it. A couple of years ago, we went through the same
11 process we're going through now. And they said they approved
12 it 100 percent.

13 MEMBER MAY: I mean the puzzling thing is that
14 that's actually contrary to the order under which you're
15 operating the public hall.

16 MR. SAMPSON: Yes, sir.

17 MEMBER MAY: So I'm wondering how that, and I'm not
18 expecting ABRA --

19 MR. SAMPSON: Yes, sir.

20 MEMBER MAY: -- to enforce zoning regulations. But
21 it seems like you were not, in operating, in compliance with
22 the zoning ---

23 MR. SAMPSON: Oh, we were operating in compliance,
24 because ---

25 MEMBER MAY: So how was that?

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1 MR. SAMPSON: -- let me tell you, they would have
2 shut us down.

3 MEMBER MAY: Who is ---

4 MR. SAMPSON: The Alcohol Board --- wait, hold up,
5 let me explain. We went to the Alcohol Board --

6 MEMBER MAY: And I'm not questioning --

7 MR. SAMPSON: -- and we asked them ---

8 (Simultaneous speaking.)

9 MEMBER MAY: I'm not questioning anything about the
10 Alcohol Board.

11 (Simultaneous speaking.)

12 MR. SAMPSON: Yes, sir. But you're saying we're
13 going against ---

14 MEMBER MAY: The zoning, the BZA order.

15 MR. SAMPSON: We didn't go against no zoning,
16 because the Alcohol Board approved what we had. And we had
17 the license. And we had the license, we had the paperwork,
18 we had ---

19 MEMBER MAY: Okay, so it's two areas of different
20 jurisdiction.

21 MR. SAMPSON: Right. Well ---

22 MEMBER MAY: That's all I'm pointing out.

23 MR. SAMPSON: Well, like I said, up the street,
24 down the street, everybody's got the same license.

25 (Simultaneous speaking.)

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1 MEMBER MAY: And then whatever everybody else is
2 doing, that don't have --

3 MR. SAMPSON: But the zoning Board is --- what
4 we're here right now, Mr. May, is dated, what happened back
5 in 1979.

6 MEMBER MAY: Correct.

7 MR. SAMPSON: The business model ---

8 MEMBER MAY: That's what you're trying to change.

9 MR. SAMPSON: Wait, hold up. The business model
10 that we have does not allow us to grow the business like the
11 other businesses around us. And all we want is the same
12 rules. We went through the procedures --

13 MEMBER MAY: Okay, hold on, hold on, I'm not asking
14 you to re-argue the case.

15 (Simultaneous speaking.)

16 MEMBER MAY: We already heard that. I was just
17 seeking clarity.

18 MS. RAY: Okay, for clarity, let me say this to
19 you, Mr. May.

20 CHAIRPERSON HILL: Wait, hold on.

21 (Simultaneous speaking.)

22 CHAIRPERSON HILL: Just give me one second. The
23 question that the Commissioner had was just about the 51
24 licenses. And I think the answer's been answered.

25 MEMBER MAY: That one's been answered. I mean, I'm

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1 curious as to how it was that -- because when, I mean, the
2 Board of Zoning Adjustment applied a condition to the
3 operation. And somehow that condition got forgotten along
4 the way. And it was probably -- it was not on ABRA to
5 enforce that condition. That wasn't their responsibility.
6 It was more, I don't know, the zoning administrator or
7 something like that.

8 Because our order is pretty clear that there
9 shouldn't be any sales of alcohol on the premises. That's
10 what you're trying to change today. But apparently, you've
11 already been operating in a different manner.

12 MS. RAY: No, no, no.

13 MEMBER MAY: So you're not selling --

14 MS. RAY: I think you're changing the law. That's
15 not what the law says.

16 MEMBER MAY: No, I'm not changing the law.

17 MS. RAY: Let me explain it from a legal
18 perspective. First of all, the variance was a variance use.
19 They followed everything in that which said that they did not
20 have a right to sell alcohol. They did not sell alcohol.

21 When it came upon them, when a person came in and
22 wanted to rent that facility and said to them we need to be
23 able to have the ability to sell alcohol, they sought
24 instruction from the Alcohol Board, and that's what he just
25 said.

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1 So they didn't try to do anything to go around the
2 variance. They tried to do the right thing by going to the
3 government agency that basically gave them the instruction
4 you need to apply for a temporary one-day license for that
5 client who was coming in to rent the facility. That's what
6 they did.

7 Now, the other thing that's very important here,
8 and this is where I think everybody gets twisted, you cannot
9 have something from 1979 and tell a person you can't go in
10 to try to get it modified.

11 MEMBER MAY: No one's trying to tell you that. You
12 can certainly do that.

13 MS. RAY: No, no, no, no, let me finish. Because
14 basically what you're saying is you've got to keep going back
15 to this variance. What they're trying to do is move forward
16 to get the proper licensing and be in compliance with the law
17 so that they don't have a Mr. May coming after them and
18 saying to them this is not proper.

19 They are trying to do the right thing. And they
20 followed all the guidelines that they have been given from
21 the various government agencies. You can't ask for any more
22 than that.

23 And more importantly, I go back to what I said in
24 my opening statement. These people have a license that is
25 identical to many other businesses who are not under the

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1 restriction that you all are giving them a hard time about.

2 MEMBER MAY: If I might interrupt, please, so I can
3 explain what I am asking. I am not asking you to argue the
4 case again. You don't need to repeat what you said before.
5 And I am not going after this business. I am asking
6 questions about the order under which you are currently
7 operating. You are currently operating under a BZA order
8 that dates back to 1979. I have not asked you a question.

9 MR. SAMPSON: Okay.

10 MEMBER MAY: So what I'm trying to understand is
11 how it was, how it came about that you came to sell alcohol
12 ---

13 MR. SAMPSON: We didn't sell no alcohol. You keep
14 saying that.

15 MEMBER MAY: Well, I thought you said you had a
16 different ---

17 MR. SAMPSON: She didn't say that.

18 MEMBER MAY: Well, let me ask you this.

19 MR. SAMPSON: I said we have not sold anything yet.
20 We come in here ---

21 MEMBER MAY: Okay.

22 MR. SAMPSON: -- to go by the rules.

23 MEMBER MAY: So then I misunderstood.

24 MR. SAMPSON: There's no sale, we have not done
25 that yet.

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1 MEMBER MAY: So you told me you had a Tavern C
2 license. I assumed that ---

3 MS. RAY: To have a license doesn't mean you were
4 selling alcohol.

5 MEMBER MAY: So you haven't been selling any
6 alcohol?

7 MR. SAMPSON: No, it's in the rulebook.

8 (Simultaneous speaking.)

9 MR. SAMPSON: It is in the rulebook, don't sell.
10 And we ain't selling.

11 MEMBER MAY: That's all I was trying to clarify.

12 (Off the record comments)

13 MS. SAMPSON: When we went to get the alcohol
14 license, they said that they didn't have any other way we
15 could get it. We had to get that Tavern license. And I said
16 we don't want no Tavern license. He said this is the only
17 way you'll be able to get a license.

18 MEMBER MAY: So it's my misunderstanding. I
19 misinterpreted your having a Class C Tavern license as
20 meaning that you were, in fact, selling alcohol. And you're
21 telling me that you have not ---

22 MR. SAMPSON: Let me tell you --

23 MEMBER MAY: -- been selling ---

24 MR. SAMPSON: -- we ain't sold any alcohol.

25 (Simultaneous speaking.)

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1 MEMBER MAY: Can I finish speaking, please? You're
2 telling me now that you have not been selling alcohol at all
3 except when you do, like, the day license thing?

4 MS. SAMPSON: No.

5 MS. RAY: Wait, wait, wait, wait, wait, hold it.
6 First of all, let me say this to you. This is where
7 communication is a problem.

8 MEMBER MAY: That's why I'm asking the questions.

9 MS. RAY: First of all, they have renters. So when
10 you keep saying you are selling alcohol, that's not really
11 a true statement. When a person comes in ---

12 MEMBER MAY: I'm asking, I'm not saying.

13 (Simultaneous speaking.)

14 MS. RAY: Well, let me finish. I let you talk.
15 Let me finish.

16 MEMBER MAY: I know.

17 MS. RAY: Now, what I'm saying to you is, when a
18 person rents a facility at the VIP Room, they say what they
19 need. If in fact they wanted to sell alcohol, because they
20 might be doing a fundraiser or something along that line,
21 they then come to the owner, Mrs. Sampson.

22 The general manager then has to do, by law, what he
23 needs to do which was to contact the licensing bureaus who
24 give the licenses to be able to do that. What he has shown
25 you is, he has done this several times for the last four

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1 years to stay in compliance by getting a temporary license
2 so that their customer can be accommodated based up what they
3 need for that particular event.

4 But at no time have they been selling alcohol. But
5 more importantly, they're not even open every day. This is
6 a place that may be closed like they were in March for the
7 entire month.

8 MEMBER MAY: I understand that. And that's, again,
9 not what I'm ---

10 MS. RAY: So maybe it's a miscommunication.

11 MEMBER MAY: Mr. Sampson, all I'm trying to
12 clarify is that you have not actually been selling alcohol,
13 because there are plenty of other things that I saw in the
14 record or in testimony that suggested that maybe you were.

15 MR. SAMPSON: And they were lies. They're liars
16 who did that. McDonald's is getting ready to sell alcohol.
17 Did you know that?

18 MEMBER MAY: I'm sorry, say that again?

19 MR. SAMPSON: I'm just saying, we have not been
20 selling. Regardless of what you heard --

21 MEMBER MAY: Okay, that's fine.

22 (Simultaneous speaking.)

23 MEMBER MAY: It's not allegations, it's my own
24 conclusion based on the information that was presented.
25 That's all.

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1 CHAIRPERSON HILL: Let me just get a question here.
2 So, all right, we're going to ask a question, we're going to
3 answer a question. We're going to ask a question, we're
4 going to get an answer to the question.

5 Do you have another question?

6 MEMBER MAY: No. I mean, I finally got to that.

7 CHAIRPERSON HILL: Okay, that's great. Okay.

8 MEMBER MAY: Let me, if I might?

9 CHAIRPERSON HILL: I'm sorry. I just asked you if
10 you had a question?

11 MEMBER MAY: I can speak, right? So, no, I just
12 need to clarify. All I was trying to find out was the state
13 of alcohol sales there. It was not clear to me from the
14 testimony. And there were things that implied it. It wasn't
15 because somebody said, hey, they're selling alcohol, contrary
16 to the BZA order. It was what I concluded based on the
17 information that I was hearing.

18 Clearly, I was mistaken, that you were not actually
19 selling it, you were facilitating other people bringing it
20 in and drinking alcohol. That's what it boiled down to. And
21 that's correct. Can you say yes on the record?

22 MS. RAY: As their representative, I can say to you
23 they do not sell alcohol --

24 MEMBER MAY: Okay, that's fine.

25 MS. RAY: -- have not sold it, they are trying to

1 seek the proper licenses to be able to do that.

2 MEMBER MAY: All I was looking for was a yes.

3 (Off the record comments)

4 MEMBER MAY: Okay, thanks.

5 MS. RAY: But I think you needed more than a yes in
6 this case. Because we did this on 4D ---

7 MR. SAMPSON: I told you I ain't had a Pepsi all --

8 -

9 CHAIRPERSON HILL: Okay, all right. Okay, so to
10 clear this up --

11 MEMBER MAY: Thank you very much. I'm sorry to
12 make it so painful. It was my own confusion. I was trying
13 to clarify.

14 CHAIRPERSON HILL: Okay, so we got that. And
15 Commissioner May, I did not mean to cut you off. I'm just
16 starting to lose control a little bit. So ---

17 (Laughter)

18 CHAIRPERSON HILL: And I haven't had a Pepsi
19 either, okay. All right. Let's see, okay, so does anybody
20 have any questions?

21 MEMBER JOHN: One question for Mr. Sampson. So on
22 that block of 3rd Street ---

23 MR. SAMPSON: Yes, ma'am?

24 MEMBER JOHN: -- way up to Takoma Park --

25 MR. SAMPSON: Yes, ma'am?

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1 MEMBER JOHN: Are there any places that sell
2 alcohol?

3 MR. SAMPSON: Yes.

4 MEMBER JOHN: What are those places?

5 MR. SAMPSON: I mean, you have Takoma Station out
6 there, you have some other businesses that are in Takoma
7 Park. They have sidewalk bars over there by the post office
8 that are in the streets. They're selling right up the street
9 right next to the post office. All the restaurants up there
10 are selling, happy hour, 3:00 to 7:00, on the sidewalk, you
11 know. So it's right there. You can go right by the post
12 office. It's at least five or six businesses right there
13 that are selling.

14 MEMBER JOHN: Is that on the Piney Branch side or
15 the 3rd or 4th Street, I think?

16 MR. SAMPSON: It's by the post office in Tacoma
17 Park.

18 MEMBER JOHN: Okay.

19 MR. SAMPSON: Yes, ma'am.

20 MEMBER JOHN: Thank you.

21 MS. RAY: It's at the corner of Eastern Avenue by
22 my law office.

23 MEMBER JOHN: Okay. All right, thank you.

24 CHAIRPERSON HILL: Okay, anybody else?

25 MS. ROSS: And there's also a tavern called the

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1 Library on 3rd Street, two blocks up the street on 3rd Street
2 right across Missouri Avenue, that is an actual bar.

3 CHAIRPERSON HILL: Okay, all right. So just by
4 hands, is there anybody here wishing to speak in support?
5 If you'd just raise your hand?

6 Okay, and is there anybody that wishes to speak in
7 opposition, if you could raise your hand? Okay, all right.
8 So we're going to hear testimony, all right. And everybody
9 gets their opinion. And so we're going to do that next,
10 okay. So if you all would just mind stepping back from the
11 table here, those wishing to speak in support, if you could
12 please come forward?

13 CHAIRPERSON HILL: Okay. Welcome, everybody. If
14 you could please --- I'm going to go through, and if you
15 introduce yourselves first for the record, if you can start
16 over here, sir, and we'll go by next to you.

17 MR. TERRY: Name is Denson Terry. I'm the
18 president and CEO of Woodmore House Assisted Living.

19 MS. TERRY: My name is Gwen Terry. I am the chief
20 executive officer of Woodmore House Assisted Living as well
21 as friend and church member to the Sampsons.

22 MS. TYSON: Sheila Tyson.

23 CHAIRPERSON HILL: You need to push the button, I'm
24 sorry, to turn on the microphone.

25 MS. TYSON: Sheila Tyson. I'm a resident of Manor

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1 Park since 1956.

2 CHAIRPERSON HILL: Could you spell your last name?

3 I'm sorry, I didn't hear it.

4 MS. TYSON: Tyson, T-Y-S-O-N.

5 CHAIRPERSON HILL: Okay, thanks, Ms. Tyson.

6 Sir?

7 MR. WHITAKER: My name is Robert Whitaker.

8 CHAIRPERSON HILL: You need to push the button.

9 MR. WHITAKER: Oh, I'm Robert Whitaker. I'm a
10 licensed minister in the area. And I've been living there
11 more than 40 years and very, very close friends with the
12 Sampsons.

13 CHAIRPERSON HILL: All right, thank you, Mr.
14 Whitkins, Whitaker, sorry, Whitaker.

15 MR. WHITAKER: Same as the street I live on.

16 MS. GUSBY-GRECHEM: Good morning to the Board. My
17 name is Adria L. Gusby-Grechem. I live around the corner
18 from the VIP Room, and I'm also an employee.

19 CHAIRPERSON HILL: Okay, great. So just so that you
20 all know, you can only keep one microphone at a time.
21 Otherwise, I get feedback up here.

22 Mr. Sampson, so as a member of the public,
23 everybody gets three minutes to speak. So the clock up there
24 in the top corner, it gives you the time that you have for
25 testimony. And so if you could just go ahead and give your

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1 testimony whenever you like.

2 MR. TERRY: Okay. Thank you, Board. I've been
3 knowing the Sampsons for over 20 years. They are a very
4 religious family. They're probably one of the best families
5 I've ever known. They are very serious in how they conduct
6 their businesses and run their business. And any business
7 is going to be as good as how well you run it.

8 And in terms of getting this license, this liquor
9 license, this thing really comes down to disparate treatment.
10 You want to make sure that whatever goes on is consistent,
11 and they're getting the same treatment as everyone else.

12 And the only thing that I think is really critical
13 here is that they be treated fairly. They're not asking for
14 anything special. They're just asking for what everyone else
15 is doing. And that's a part of their livelihood.

16 So to me, it just comes down to disparate
17 treatment. And the way you run your business is who the
18 individual is. And these folks right here are some of the
19 best people I know in the city. And all the community things
20 that they're doing, the give-backs, it's undeniable. Thank
21 you very much.

22 CHAIRPERSON HILL: Thank you, Ms. Terry?

23 MS. TERRY: I am in full support of the Sampson
24 family, the VIP Room, and for entrepreneurs and small
25 businesses in the District of Columbia. I grew up in the

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1 neighborhood of the VIP Room. My family still owns that
2 home, 1235 Underwood Street NW in Washington, D.C.

3 I've known the entire Sampson family for over 40
4 years. The Sampson and the Robinson family, that's my maiden
5 name, Robinson, attended the same place of worship, Takoma
6 Park Baptist Church, where the Sampsons were, among other
7 things, deacon, preacher, teacher, and Sunday School
8 administrator.

9 The Sampson family has owned and operated the VIP
10 Room in the 4th District since 1979. The Sampsons moved into
11 the area in 1963, and Ms. Sampson still resides there. Mr.
12 Abner Sam Sampson was a trail blazer and visionary, diligent
13 in giving back to the community he lived where most of the
14 Sampsons still reside in the community. The public interest
15 and their interest is the same, safe, thriving, livable
16 communities to enjoy.

17 The VIP Room went through a major renovation about
18 five years ago. It's a beautiful structure for the
19 neighborhood. I have attended many birthdays, anniversaries,
20 reunions, and the like without incident. Additionally, I am
21 a customer. I had my mother's repast at the VIP Room in
22 January of 2018.

23 The rumors of drugs are totally and absolutely
24 untrue, unproven, and unfounded. As a small business, small
25 businesses are very necessary, should be supported and

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1 encouraged. Small businesses provide goods and services,
2 keep competition and pricing fair, and lends to excellence
3 in goods and services. The District should be encouraging
4 commerce to remain in the city, not to go out to other
5 locales.

6 To deny the approval of the aforementioned zoning
7 and modification is unwarranted and unfair. I would simply
8 ask why.

9 Thank you for this opportunity. It is with pride
10 and pleasure that I support the VIP Room and ask the Board
11 to approve their request. Again, thank you.

12 CHAIRPERSON HILL: Okay, thank you. Next?

13 MS. TYSON: Hi. As I've stated before, I've been
14 in the neighborhood since 1956. I was there when the IBEX
15 Club was there, and the club on Kennedy Street. I can't even
16 think of the now.

17 But anyway, are you familiar with the Chateau on
18 Benning Road. We like to hand dance, and we want to hand
19 dance in Northwest. But we can't, because they can't sell
20 liquor like they do at the Chateau on Benning Road, okay.
21 We don't want to -- we want to stay in the city. We don't
22 want to go out into Maryland. And that's what's happening.

23 Every time you ride down 3rd Street, it's a very
24 clean block, very clean. All the businesses there take care
25 of each other. The people who are in opposition to them

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1 come to the community meeting. It's very few of them. And
2 they're lying when they say there're selling drugs. This is
3 a very decent, Christian family. Very few owners in the
4 neighborhood actually commit community service as they have.
5 So I ask you to remove that barrier and allow them to fulfill
6 their goal and mission. Thank you.

7 CHAIRPERSON HILL: Thank you. Sir? You need to
8 press the button.

9 MR. WHITAKER: Yeah, I guess I second all of the
10 statements made prior to my making my statement. I've known
11 the Sampsons for quite some time. And I've used their
12 facility since I moved there and raised my family in that
13 community. And I chose that community because it was a very
14 decent place, very convenient. And the people there had the
15 same sort of views and aspirations as myself.

16 And all of my daughters had their 13-year birthday
17 parties there at the venue. And I've attended numerous
18 things there at the venue. And there's never been anything
19 off-color going on near, or around, or in that venue.

20 And I want to make a comment about something that's
21 on the record that I find just amazing, how someone could
22 make an allegation, as serious as some of the people that
23 have been testifying, here about drugs and all these things
24 being sold at that operation without any substantial proof,
25 without anything that would justify making such a libelous

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1 statement about an upstanding operation such as the VIP Room.
2 That is beyond amazing. And it keeps being mentioned as if
3 it's a fact.

4 And secondly, I want to say that this is about the
5 third time for me. And I'm not involved in the ownership or
6 operation of the VIP Room. I'm just somebody benefitting
7 from the services that they offer. We can keep bringing --
8 this things has more lives than Jesus Christ. It's been
9 dead, and been raised again, it's been dead, and been raised
10 again, it's been dead.

11 We've done satisfied this less than a month ago.
12 And here we're back here again talking about the same thing
13 as if nothing has happened. That is too amazing. That is
14 just as amazing as this libelous and slanderous talk about
15 this operation.

16 Somebody has contact with somebody that keeps
17 killing the record of what has been happening. And that's
18 who we need to be looking at and trying to identify. Who
19 keeps bringing this thing back to life and bringing is back
20 from the dead. That's what I have to say. Thank you.

21 CHAIRPERSON HILL: Okay, thank you, Mister. I just
22 want to let everybody know, there is nothing here that's ---
23 we're just trying to get through this modification. And I
24 think Jesus only came back once. And so, you know ---

25 MR. WHITAKER: This is much more than Jesus.

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1 CHAIRPERSON HILL: All right. So it's only once,
2 it's only once. Reincarnation's a whole other thing. Miss,
3 if you could please go ahead and turn on the microphone.

4 MS. GUSBY-GRECHEM: My family moved up there in
5 February of 1976. And Mr. Sampson, he was doing vacuum
6 cleaners back then. That's how long the Sampson family has
7 been up on 3rd Street doing different businesses.

8 I have never had any problems with the family. My
9 daughter used to help out every now and then when she was
10 younger. He would ask her, well, can you come in here and
11 set up the tables and so forth. That's the way it looked way
12 back then.

13 Mr. Sampson loved the color red, so everything was
14 red from top to bottom. It was red. She would break it
15 down. She set it up, come back home, and when the function
16 was over, she would go in there and help him break it down.
17 My nephew has gone down there. He shoveled snow. He's
18 broken down events that he had there.

19 And now I work there off and on, because I used to
20 work at the Jamaican restaurant across the street. In
21 between, when Mr. Sampson wasn't able, I'm going back and
22 forth, in between when Mr. Sampson wasn't able, his health
23 had gotten to the point that he wasn't able to run it
24 anymore, he stopped for a little while. And unfortunately,
25 he laid his head to rest afterwards.

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1 The Sampson family went in there and they did a
2 beautiful renovation. They sound-proofed it, they put more
3 bathrooms, they put a ramp in there which I unfortunately now
4 need, because I've had knee surgery. They've got it --- it's
5 gorgeous. You ought to come visit sometimes so you can see
6 for yourself. It is wonderful.

7 When I got better with my knee surgery, because I
8 used to serve food sometimes, because they came up with
9 events themselves, the Sampson family. They had hand dancing
10 events. And they had events where it's called drop the mic
11 where they would have local artists come in show their talent
12 so they can get themselves out there into the public.

13 I was serving food. Unfortunately, I can't serve
14 food anymore that well. My balance is not good due to my
15 surgery. Now, they found another position for me in there.
16 And I do that, which is coat checking. So they're always
17 trying to see how they can help the people of the
18 neighborhood. There is never any problems.

19 This alcohol, I am in there. So I see the people
20 that's having the function bringing in the alcohol
21 themselves. And when they finish, they take the alcohol back
22 out themselves. And that's how the alcohol gets in and out
23 and no other way at all whatsoever.

24 It stays clean, it stays peaceful. They have
25 security. They don't have any cans, bottles, all of this

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1 stuff. One time they said something about all these cans and
2 bottles. That particular time, that function was a police
3 officer having the function.

4 (Laughter)

5 Leave the Sampson family alone and let them have
6 this. And let's enjoy. We can all do that together.

7 (Applause)

8 CHAIRPERSON HILL: Okay. All right, wait a minute.
9 There was somebody just, okay, give me one second, give me
10 one second.

11 Sir, you're here to testify in support?

12 (Off the record comments)

13 CHAIRPERSON HILL: In support, okay. So you can
14 come on forward. And you haven't been sworn in yet. That
15 much I can assume, because you just got here, right? So Mr.
16 Moy, if you could swear in the Witness here. Anybody else
17 who missed the swearing in, please go ahead and take the oath
18 here.

19 You don't have to go that far. It's a powerful
20 swearing in. You can be all the way in back of the room.

21 (Laughter.)

22 MR. MOY: Sir, do you solemnly swear or affirm that
23 the testimony you're about to present in this proceeding is
24 the truth, the whole truth, and nothing but the truth?

25 MR. GURLEY: Yes.

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1 MR. MOY: Thank you, sir.

2 CHAIRPERSON HILL: All right, sir, if you just go
3 ahead and take a seat here. If you could introduce yourself.

4 MR. GURLEY: Well, good morning. My name is Calvin
5 Gurley.

6 CHAIRPERSON HILL: Could you spell your last name
7 for me, sir?

8 MR. GURLEY: G-U-R-L-E-Y.

9 CHAIRPERSON HILL: Okay, great. So, Mr. Gurley, at
10 this point you're here for public testimony. So you're going
11 to go ahead and have three minutes to give your testimony.
12 The clocks are up there on the ceiling and right in front of
13 you there. And you can begin whenever you like.

14 MR. GURLEY: Okay. There's one thing I'd like to
15 give or, let's say, offer to the Board here. And all the
16 other testimonies have been great as far as good will and,
17 you know, testimony of their experiences and relationships.

18 But the one important part of this whole process is
19 that the Sampson's and the VIP has the support of elected
20 officials. That's something that they have that the
21 opposition does not have. And that support comes from those
22 elected leaders being the ANC Commissioners. And I was
23 hoping that those elected officials would influence you to
24 also do the same.

25 I was at the last meeting when the ANC

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1 Commissioners at the 4th D police station voted. And all of
2 them voted in favor of the VIP being licensed to sell liquor.
3 So I'm asking you again, if elected officials have already
4 sanctioned, they're 50 percent through now with elected
5 officials. And I don't know how hard it is, but hopefully
6 you would do the same. Thank you.

7 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
8 Gurley.

9 All right, does the Board have any questions for
10 the witnesses?

11 (No audible response)

12 CHAIRPERSON HILL: Okay. All right, well, you all
13 can go ahead and step back. Thank you so much.

14 Okay, is there anyone here wishing to speak in
15 opposition? Will you please come forward, sir. You need to
16 sit with one with the light on right there, if you like.

17 MR. STEHLE: Okay.

18 CHAIRPERSON HILL: All right, well, you're a brave
19 man. And so we're going to listen to you as well. So you
20 have three minutes to present your testimony.

21 MR. STEHLE: All right.

22 CHAIRPERSON HILL: And you can begin whenever you
23 like. And everybody, we're going to be very respectful,
24 okay. All right, thank you very much. Sir, go ahead.

25 MR. STEHLE: Okay. My name is James Stehle, and my

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1 wife and I have lived catty-corner from the VIP for 31 years.
2 And I am one of 12 residents who live within one block of the
3 VIP who have written letters to the Board explaining our
4 concerns about this request for modification.

5 Essentially I feel, and I think most of them feel,
6 that the 1979 agreement and the ABRA license which recognized
7 that agreement recognized the needs of these immediate
8 neighbors. And with the permissions and restrictions that
9 we currently tolerate, that are currently in place, we
10 already tolerate a certain level of noise, especially in the
11 late night when there's music, and the late departures.

12 And the litter that we see, we don't really think
13 comes from the VIP, but it probably comes from personal stuff
14 that people might leave on their way, whenever they're, you
15 know, hanging out in the car or whatever. We don't know
16 about that part.

17 But the main point we have is that this level of
18 intensity we are tolerating. And we are not opposed to the
19 business doing what they're doing right now. But we don't
20 want to see an increase in intensity of that noise, the late
21 departures, and also the parking the neighborhood is affected
22 by, those that the 1979 and ABRA both really specifically
23 addressed.

24 And I will say one thing is that I don't recognize
25 the characterization of the hearing that I've seen in the

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1 letters. I personally am very hurt by it. And I think the
2 neighbors are as well. We are not opposed to the current
3 operation, we just want to have it with the kind of control
4 that it has right now. And if you have any questions ---

5 CHAIRPERSON HILL: Okay, Mr. Stehle. Does the
6 Board have any questions?

7 MEMBER MAY: So you say you're one of 12 who wrote
8 letters from nearby. It's kind of hard to tell exactly where
9 everybody lives when we see those letters.

10 MR. STEHLE: Yeah, I can just show you, and share
11 with you the map I was trying to close.

12 MEMBER MAY: Oh, okay.

13 MR. STEHLE: The 12 folks are within the one block.
14 So, I mean ---

15 MEMBER MAY: Okay, so now ---

16 MR. STEHLE: If you look at the ---

17 CHAIRPERSON HILL: Now that you've shown that to
18 us, I think you have to give it to the Secretary.

19 MR. STEHLE: Could you look at the ---

20 CHAIRPERSON HILL: Sir, you have to speak in the
21 microphone, so if you just wait a minute.

22 MEMBER MAY: So my question is have all the folks
23 who are concerned about the operation, have they been ---
24 about the business, have they been going to the ANC meetings,
25 and the ABRA meetings, and so on to testify?

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1 MR. STEHLE: Not lately. This has been a five-year
2 process for the neighborhood. Because a lot of people came
3 out in 2014 when they were asking the ANC to approve their
4 license request. And then there was a hearing for that where
5 they were not allowed to get the license, because it was
6 determined that that map that was originally posted did not
7 identify a school that was within 400 feet.

8 Then, that school disappeared. And they applied
9 for a license again in 2017. A lot of people came out, these
10 same people, came to that. And at that one, one of the
11 things that frustrated us was the there is a rule that says
12 that you can't have a liquor license within 400 foot of a
13 recreation department activity. And we were very surprised
14 to find out that all they had to do was get the director of
15 Parks and Recreation to say that he didn't care about that.
16 So that did not apply anymore. So they got their license.

17 And we were really surprised that a year later they
18 were coming and saying that the conditions that they got
19 under ABRA, they want another thing removed from that. And
20 I was pretty surprised that 12 people actually wrote detailed
21 letters explaining their concerns. But I don't think they
22 have it in them anymore to come to another meeting like this.

23 CHAIRPERSON HILL: Okay.

24 MEMBER MAY: Thank you. I think that's all I have.

25 CHAIRPERSON HILL: Okay, all right.

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1 Mr. Stehle, you've been there for 31 years?

2 MR. STEHLE: I have.

3 CHAIRPERSON HILL: Wow, okay. All right.

4 MR. STEHLE: It's a nice neighborhood, I mean, I
5 wouldn't be anywhere else.

6 CHAIRPERSON HILL: That's right, that's right.

7 MR. STEHLE: Even when --

8 (Simultaneous speaking.)

9 CHAIRPERSON HILL: I mean, again, you know, it's a
10 democracy, and it's good that you came down and had an
11 opportunity to speak. And we thank you very much for coming
12 down. Okay, thank you so much.

13 All right, can the Applicant come back forward
14 again, and also the ANC if you wouldn't mind? I just had one
15 question, and the Board can ask any other questions they had.
16 And it's for the ANC Commissioner.

17 So, Commissioner, you guys voted. And then it
18 seems as though, did you give a condition that the approval
19 was that it's not to be nightclub or a tavern?

20 MS. PARKS: No, we voted on that he --- we all
21 agreed that it could be a tavern, because we've done some
22 research also and saw that there was other businesses that
23 had a Tavern license. And we said, well, we sit down and we
24 talked with Mr. Sampson and them and asked, you know, why
25 they wanted to change it. And they said because, you know,

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1 they wanted to do what everyone else was doing.

2 And I'm just coming in, basically, on the tail end
3 of all of this. But however, he wanted a Tavern license so
4 that he would not have to come down here, he explained it.
5 For four years, they was coming down here getting a temporary
6 license. And it was, like, that's, you know, lots of money
7 being ---

8 CHAIRPERSON HILL: Okay. I mean, Commissioner, the
9 only reason why I'm asking, so in the resolution that you
10 guys gave us, it says the Commission is relying on the
11 Applicant's assurance that they will not operate as a bar or
12 tavern. And Commission's support is conditioned on the VIP
13 Room not operating as bar/tavern/nightclub.

14 And the only why I'm asking that is that I don't
15 necessarily think that's something that we would be able to
16 issue as a condition, meaning that that would be something
17 that the Applicant would then go to ABRA. And then that's
18 that whole process.

19 MS. PARKS: I understand.

20 CHAIRPERSON HILL: So I just want to be clear on
21 that one.

22 MS. PARKS: Yes.

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

25 (No audible response)

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1 CHAIRPERSON HILL: Okay. Does the Applicant, would
2 you like to provide a closing statement of any kind?

3 MS. RAY: No question.

4 CHAIRPERSON HILL: No, would you have --- oh.

5 MS. RAY: No question, yes.

6 CHAIRPERSON HILL: All right.

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: I'm going to give you three
9 minutes, okay.

10 MS. RAY: That's fine.

11 CHAIRPERSON HILL: Okay. I'm going to put the
12 clock up there on the right there ---

13 MS. RAY: Okay.

14 CHAIRPERSON HILL: -- and just clear it a couple of
15 times. Mr. Moy, if you give me three minutes there. And
16 then you can begin whenever you like.

17 MS. RAY: Okay, first of all, we take issue with
18 the statement that was just made by Mr. Stehle. Because,
19 number one, I've never seen a situation as a form of ---

20 CHAIRPERSON HILL: Ms., Ms. --

21 MS. RAY: Wait, wait ---

22 CHAIRPERSON HILL: No, no, no. I just want to let
23 you know something. If you start talking about what somebody
24 just said again, then I've got to bring them back up here to
25 talk about what they said, okay. Just go ahead and give your

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1 conclusion for the case. I'm just letting you know what's
2 going to happen.

3 MS. RAY: Sir, I think it's important that I make
4 that statement and that we not be stalemated as to what we
5 can say. And I'm going to tell you why. Because I want to
6 show the audience that when he said this before he said it
7 was nine people. Today he comes up and says it's 12 people.

8 CHAIRPERSON HILL: Ms. Ray, Ms. Ray, if you want to
9 do this, we can take a break ---

10 MS. RAY: But, I mean, I think it's important.

11 CHAIRPERSON HILL: -- that's okay, that's all
12 right, that's fine.

13 (Simultaneous speaking.)

14 MS. RAY: No, no, and I'm not going to do ---

15 CHAIRPERSON HILL: Ms. Ray, that's okay. I'm just
16 letting you know I'm just going to take a break. Because I
17 got to go the bathroom.

18 MS. RAY: Oh, okay.

19 CHAIRPERSON HILL: And then we're going to do this
20 again.

21 MS. RAY: Well, then I'll just do the closing
22 statement, okay.

23 (Simultaneous speaking.)

24 MS. RAY: All right, fine. All right, I'll do the
25 closing statement.

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1 CHAIRPERSON HILL: I don't want you to think that
2 you have a problem, because I have to take a break.

3 MS. RAY: No, no, no.

4 CHAIRPERSON HILL: Are you okay?

5 MS. RAY: I'll just do the closing statement.

6 CHAIRPERSON HILL: Okay, all right.

7 MS. RAY: Okay. The closing statement is just like
8 the initial statement.

9 CHAIRPERSON HILL: Okay, I'm giving you three
10 minutes there.

11 MS. RAY: Okay.

12 CHAIRPERSON HILL: All right, go ahead.

13 MS. RAY: The closing statement is that they should
14 be granted the modification to their license based upon the
15 testimony that we've heard today from all of the upstanding
16 individuals in that neighborhood, and particularly since most
17 of those individuals have been in that neighborhood well over
18 20 years.

19 And when you cumulatively look at what they have
20 said, everything they said speaks volumes about what has been
21 happening to the VIP Room. Number one, it appears as though
22 there have been things that have been done to them that other
23 people in that same neighborhood, which is a business
24 neighborhood, number one, that neighborhood does not have
25 children in that area right there where the businesses are

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1 being operated.

2 The businesses that are being operated in Takoma
3 Park, most of those are around a church. And they're around
4 restaurants, pizza movers, and other places around in that
5 area. So the bottom line is there is no reason that they
6 should not be granted the modification.

7 Because as we said before, they're not open every
8 day, they are only accommodating the people that are asking
9 them to rent that facility, for the most part. And then the
10 few events that they are giving, they are giving them, and
11 the people are not paying a dime to use the facility. And
12 I think they may have had a few hand dancing, I think, events
13 at the facility. So the bottom line is there's no legal
14 reason why they should not be granted the license.

15 CHAIRPERSON HILL: Okay, all right. Thank you.
16 All right, let's see. So I'm going to go ahead and close the
17 hearing. And then ---

18 MS. RAY: But he wants to use my other 1.30
19 minutes.

20 CHAIRPERSON HILL: Oh, I'm sorry. Okay, sure, go
21 ahead Mr. Sampson.

22 MR. SAMPSON: I just want to say thanks for the
23 opportunity to come and speak in front of you guys. And if
24 you've got time, come visit. The phone number's 202-545-
25 1755. Big, fat, short, and tall, we love you all. Thank

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1 you.

2 MS. RAY: And then hold it. The publicist will
3 make ---
4 to reach somebody ---- to give her information.

5 MS. BAIN: Good morning, again. I'm sorry, I have
6 sinuses here. So I'm a little hoarse. But if you need to
7 reach out to any one of us, I can give you the information
8 as to how you can reach us directly. I'm not sure as to if
9 any of you ---

10 CHAIRPERSON HILL: We can find you.

11 MS. BAIN: All right.

12 CHAIRPERSON HILL: Yeah.

13 (Off the record comments)

14 CHAIRPERSON HILL: Okay.

15 MS. BAIN: All right.

16 CHAIRPERSON HILL: All right.

17 MS. BAIN: Thank you.

18 CHAIRPERSON HILL: Thank you. All right, so I'm
19 going to go ahead and close the hearing. I do need to take
20 a break. But first I want to find out if the Board wants to
21 deliberate today or whether we're going to --- okay, I'm
22 going to take a break. And then we'll find out what we're
23 going to do when we get back, okay. Thank you all.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:28 a.m. and resumed at 11:40 a.m.)

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1 CHAIRPERSON HILL: All right, Mr. Moy, you can call
2 us back whenever you like.

3 MR. MOY: Thank you, Mr. Chairman. The time is
4 about 11:40, and the hearing's back in session.

5 CHAIRPERSON HILL: Okay, great. Thank you. All
6 right, so is the Board ready to deliberate?

7 (No audible response)

8 CHAIRPERSON HILL: Okay, so I can go ahead and
9 start a little bit. First of all, to let everybody know,
10 this is now a deliberation, so we don't take testimony, we
11 don't talk to anybody, we don't ask any questions.

12 So after hearing all of the testimony, as well as
13 the reports that were submitted by the Office of Planning,
14 as well as that that was submitted by the ANC, I would be in
15 agreement that I think that the Applicant has met the
16 criteria for us to grant the modification of significance.

17 I didn't have any particular issues with the
18 testimony that was provided. I think that, yeah, I mean, I
19 understand what the neighborhood, some of the opposition that
20 we've heard from also the neighbors in the neighborhood, but
21 I think that this is not something that will cause any
22 additional harm to the neighborhood. And so I will be
23 voting in support of the application. Next, please.

24 MEMBER WHITE: Yes. Thanks, Mr. Chair. For this
25 particular application, I'd be in support as well. You know,

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1 I asked questions about what the potential adverse impacts
2 are, because that's part of the criteria that you have to
3 look at.

4 But given, you know, the history of the business,
5 given the testimony that we've heard, given the testimony
6 from the ANC, given the testimony from the Office of
7 Planning, I am comfortable that we should grant this
8 particular application to remove the sale of alcohol
9 prohibition as requested.

10 And I have not found any adverse impacts that have
11 been compelling, in my mind, associated with this particular
12 property. It appears that they've been a good neighbor, and
13 I can understand the rationale for wanting to have the
14 ability to sell alcohol.

15 But with the feedback that we've gotten from the
16 police, and the neighbors, and the community, I would be in
17 support. Obviously, you'd still have to meet the
18 requirements of ABRA. But for purposes of this particular
19 phase of that process, I would be in support.

20 VICE CHAIRPERSON HART: I was not going to add a
21 whole lot to what's been said already. I would have been,
22 I am in support of the application. I think that the
23 Applicant has provided us information as to the operation of
24 the facility, and the current operation of the facility, and
25 what her intention is for future operation. And I would be

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1 in support of making that -- or changing that modification,
2 sorry, making the modification to allow the Applicant to sell
3 alcohol.

4 COMMISSIONER MILLER: Mr. Chairman, I appreciate
5 having the testimony today that we are considering. This is
6 a modification of significance. I do think there was reason
7 to be concerned about whether the lifting the prohibition
8 could have an adverse effect, but I have not seen compelling
9 evidence that that is going to happen.

10 And I think that the, you know, the additional
11 layers of approval that are necessary from ABRA also will
12 continue to be a potential protection if, in fact, any issues
13 do arise, that the neighbors will be able to pursue their
14 concerns in that manner. So I am okay with lifting this
15 prohibition. But, as I said, I appreciate everybody coming
16 and testifying in favor and in opposition as well.

17 MS. JOHN: Mr. Chairman, I support the application.
18 I don't have a lot to add. And I don't think there was any
19 compelling testimony that there are significant impacts on
20 the community beyond what's already happening from being able
21 to serve alcohol on the premises. So I would, you know, as
22 I said, support the application.

23 CHAIRPERSON HILL: Okay, thank you. And I'm going
24 to make note also that Office of Planning was also talking
25 about them going through the ABRA requirements to condition.

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1 I don't think we need to list that as a condition. Because
2 they have to go through those requirements anyway in order
3 to do that.

4 And so, let's see, yeah. So I'm going to go ahead
5 and make a motion to approve Application Number 12799A as
6 captioned and read by the Secretary and ask for a second.

7 MEMBER WHITE: Second.

8 CHAIRPERSON HILL: Motion made and seconded. All
9 those in favor say aye?

10 (Chorus of ayes.)

11 CHAIRPERSON HILL: All those opposed?

12 (No audible response.)

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

14 MR. SAMPSON: I'd like to say thank you. Thanks
15 for all your --

16 MR. MOY: Mr. Chairman, staff would record the vote
17 as five to zero to zero on the motion of Chairman Hill to
18 grant the request for a modification of significance, second
19 to the motion, Ms. White, also in support, Ms. John, Vice-
20 Chair Hart, and Mr. Peter May. Motion carries, sir.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you
22 all very much.

23 (Chorus of thank you.)

24 CHAIRPERSON HILL: Oh, thank you, thank you. Well,
25 I thought I was culturally aware, and now I'm, like, there's

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1 hand dancing I've got to learn about.

2 (Off the record comments)

3 CHAIRPERSON HILL: I'm going to let you all clear
4 out, okay. And then we've got --- we have a whole full day
5 after you guys. So you all take care.

6 CHAIRPERSON HILL: Okay, all right. So everyone
7 who's still here, congratulations. I hope you enjoyed all
8 that. And we are going to continue moving forward. Just to
9 let you know we will take lunch at some point. That went a
10 little longer than I had anticipated. And if you get stuck
11 after lunch, just too bad for you.

12 So with that, I'm actually not on the next case.
13 And so Mr. May, if you can call it.

14 MR. MOY: Mr. Moy.

15 CHAIRPERSON HILL: Moy.

16 MR. MOY: That was close by one letter. All right,
17 so continuing on, if we can have parties to the table to
18 Application Number 19957 of Spectrum Management. And let's
19 see. This is a request for a special exception under Sub-
20 title G, Section 708.1 and 1201 for the rear yard
21 requirement, Sub-title G, Section 7-0513. This would
22 construct a second story addition on an existing one-story
23 commercial use building, M-U-25 zone, at 1225 through 1227
24 Pennsylvania Avenue SE, Square 1019S, Lots 38 and, rather
25 Lots 37 and 38.

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1 VICE CHAIRPERSON HART: Thank you, Mr. Moy. Good
2 morning. If you could introduce yourselves?

3 MR. GAINED: Joe GAINED, with the law firm of
4 Holland and Knight, here on behalf of the Applicant.

5 MR. FRIDAY: Moe Friday from Citadel Architects.

6 VICE CHAIRPERSON HART: FRIDAY, can you spell that,
7 please?

8 MR. FRIDAY: F-R-I-D-Y.

9 VICE CHAIRPERSON HART: Thank you. So, Mr. GAINED,
10 I assume that you'll be giving the presentation --

11 MR. GAINED: That's correct.

12 VICE CHAIRPERSON HART: -- as long as it may be.
13 How much time do you think you'd need?

14 MR. GAINED: We're going to be as brief as
15 possible.

16 VICE CHAIRPERSON HART: Okay. So, Mr. Moy, if you
17 could put, like, ten minutes on, and we'll see where we go
18 from there.

19 And you may, excuse me, provide your presentation
20 and we'll see if we have any questions.

21 MR. GAINED: Thank you, Vice Chairman. Good
22 morning, Vice Chairman Hart, members of the Board. My name
23 is Joe GAINED. I'm with the law firm of Holland and Knight.
24 I am joined today by Moe FRIDAY of Citadel Architects, the
25 project architect.

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1 The Applicant is here today requesting special
2 exception approval from the rear yard requirements of Sub-
3 title G, Section 705.3, in order to construct a rear yard
4 addition at 1225 through 1227 Pennsylvania Avenue SE which
5 is zoned M-U-25.

6 The property is currently improved with a one-story
7 commercial building that is a contributing building to the
8 Capitol Hill Historic Building. The Historic Preservation
9 Review Board has granted concept approval for the second-
10 story addition.

11 As you're aware, the existing building is currently
12 non-conforming with respect to rear yard, and the second-
13 story addition will continue that non-conforming condition.

14 The Applicant is proposing to fill in the only
15 window that is currently existing on the rear of the property
16 such that there are going to be no views into any of the
17 surrounding or adjacent properties. I believe that the
18 record is full and lays out how the Applicant meets the test
19 for special exception approval.

20 We're pleased to have the support from ANC 6B,
21 Office of Planning, the owners of the adjacent properties,
22 and the District Department of Transportation. And with
23 that, we are happy to take any questions that you may have.

24 VICE CHAIRPERSON HART: Actually, if you could,
25 just talk a little bit about the property boundaries.

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1 Because I think that the --- like, just where the property
2 itself is and, you know, where the relief is that you're
3 requesting.

4 MR. GAINED: The relief is for the rear yard, you
5 can see it's at the top of the screen here. The building is
6 currently built out, the first story of the building is
7 currently built out all the way to the rear yard. So the
8 second story addition is going to go right on top of that.

9 VICE CHAIRPERSON HART: Okay. Do the other Board
10 members have any questions for the Applicant?

11 (No audible response)

12 VICE CHAIRPERSON HART: And so, Mr. GAINED, what
13 you're also saying is that this is the property line, well,
14 that wasn't a really good ---

15 MR. GAINED: That is correct.

16 VICE CHAIRPERSON HART: But that's the property
17 line on the back, so if you're building on top of that,
18 you're going to actually build to the property line. So you
19 would not have the ability to have a rear yard.

20 MR. GAINED: That is correct.

21 VICE CHAIRPERSON HART: There isn't one currently
22 there either?

23 MR. GAINED: Correct.

24 VICE CHAIRPERSON HART: Okay. No questions for the
25 Applicant. I'll move to the Office of Planning.

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1 MS. VITALE: Good morning, Vice Chair and Members
2 of the Board, Elisa Vitale with the Office of Planning.
3 We'll rest on the record in support of the requested special
4 exception relief for rear yard.

5 I'm happy to answer any questions. Thank you.

6 VICE CHAIRPERSON HART: Are there any questions for
7 the Office of Planning? I don't hear a whole lot of
8 questions. And does the Applicant have any questions for the
9 Office of Planning?

10 MR. GAON: No questions.

11 VICE CHAIRPERSON HART: And I should have asked, is
12 the ANC here? I didn't see any hands up but I wanted to make
13 sure if they had any questions they'd be able to ask as well.
14 Yes, Ms. White?

15 MEMBER WHITE: Can you tell me a little bit about
16 the feedback that you've gotten from the adjacent owner,
17 whether or not they're in support or have any concerns with
18 the application?

19 MR. GAON: The Applicant actually owns the property
20 to the east along Pennsylvania Avenue and the property in the
21 rear. And the adjacent property owner to the west on
22 Pennsylvania Avenue has submitted a letter in support. So
23 that's 1223 Pennsylvania Avenue.

24 MEMBER WHITE: Thank you.

25 VICE CHAIRPERSON HART: Thank you. Okay, so since

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1 we have no other questions, I've asked if the ANC is here.
2 Is anyone here wishing to speak in support of the
3 application? Anyone here wishing to speak in opposition?

4 Seeing no hands, are there any final questions for
5 the Applicant? Okay, Mr. Gaon, do you have any final
6 statement you'd like to make?

7 MR. GAON: Nothing further.

8 VICE CHAIRPERSON HART: So, is the Board ready to
9 deliberate? I know we're moving through this pretty quickly.
10 It took us a while to get to this point but if the Board is
11 ready to deliberate I would close the record. And I can
12 start the deliberation.

13 In reviewing the record and the presentation that
14 the Applicant made today, as well as reading through the
15 record and listening to the Office of Planning -- I know they
16 didn't say much but they did in their report demonstrate that
17 the Applicant has met the criteria for relief from rear yard
18 requirements.

19 And the questions that I had were really around
20 because of the existing condition, the property really is
21 just being built out to -- the building is being built out
22 to the property line. It is currently already built in the
23 property line on the first level but they're doing it on the
24 second level.

25 And I did not have a particular issue with this

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1 case. again, I felt they had met the criteria for allowing
2 this. I would be in support of the application and didn't
3 know if any Board Members had any other comments or any other
4 --

5 MEMBER WHITE: Yes, Mr. Vice Chair, my only comment
6 is that I concur with your comments but also that I just want
7 to also note that we did get a report from the ANC, as you
8 stated, and that the vote was 9-0.

9 So they were fully in support. I think they met
10 the criteria for the rear yard relief that they're seeking
11 for the special exception. So I would be in support.

12 MEMBER JOHN: Mr. Vice Chair, I also support the
13 application. It is fairly straightforward. There is
14 currently no existing rear yard as the first floor is built
15 to the lot line and the Applicant is seeking to add to build
16 out the second floor.

17 OP's analysis is also fairly straightforward and as
18 my colleague said, the ANC also supports. So, I am happy to
19 support the application.

20 VICE CHAIRPERSON HART: Yes, I would also note that
21 -- and I was looking for the number for it -- there was a
22 note from the Architect of the Capitol and I'm trying to see
23 where that is now. I saw it earlier.

24 MEMBER WHITE: That's not on this case.

25 VICE CHAIRPERSON HART: Okay, I'm sorry, I was

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1 looking at I guess the wrong case file. I see that now,
2 thanks. I would make a motion to approve application number
3 19957 of Spectrum Management as read and captioned by the
4 Secretary.

5 Do I have a second?

6 MEMBER JOHN: Second.

7 VICE CHAIRPERSON HART: Having heard a second, all
8 those in favor say aye?

9 (Chorus of aye.)

10 Any opposed? The motion carries. Mr. Moy?

11 MR. MOY: Staff would record the vote as 4-0-1.
12 This is on the motion of Vice Chair Hart to approve the
13 application for the relief being requested. Seconding the
14 motion, Ms. John.

15 Also in support, Ms. White and Mr. Rob Miller. No
16 other Members participated, the motion carries.

17 VICE CHAIRPERSON HART: Thank you, Mr. Moy, very
18 much.

19 MR. MOY: If we can have parties to the table to
20 Case Application Number 19969 of 515 Jefferson Street
21 Northwest LLC?

22 This is an application for special exception under
23 the residential conversion requirements, Subtitle U, Section
24 320.2 to convert the existing semi-detached principal
25 dwelling unit to a three-unit apartment house, RF1 zone.

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1 This is at 515 Jefferson Street Northwest, Square 3208, Lot
2 812.

3 Mr. Chairman, there's a couple preliminary matters
4 here. First, there is a party status request which I believe
5 is in support under Exhibit 30 and the Applicant has filed
6 for a motion to postpone this Hearing under Exhibit 33.

7 CHAIRPERSON HILL: Okay, is the party status person
8 here? Well, since the party status person is not here, I
9 forget the regulation or if OAG wanted to cite it, then the
10 party status person has not shown so we're withdrawing his
11 party status or denying his party status.

12 MS. LOVICK: It's deemed withdrawn.

13 CHAIRPERSON HILL: Deemed withdrawn. I'm going to
14 learn that, deemed withdrawn. Okay, so that's the case.
15 Okay, then after that, could you please introduce yourself
16 for the record?

17 MS. SAMPSON: Elizabeth Stuart. I'm the project
18 designer and also here on behalf of the owner.

19 CHAIRPERSON HILL: Okay, Ms. Stuart, so you're
20 looking for a postponement so could you explain why you need
21 the postponement?

22 MS. SAMPSON: Sure, we attended the ANC Meeting on
23 the 20th of March and they asked that we return to their
24 meeting on April 17th to continue presenting to them.

25 CHAIRPERSON HILL: Okay, so then you're going to go

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1 back to the ANC when?

2 MS. SAMPSON: We'll return to the ANC on April
3 17th.

4 CHAIRPERSON HILL: Okay, so Mr. Moy, what does it
5 look like that's a good date after that for us?

6 MR. MOY: Okay, the day of April 17th is when the
7 Applicant is meeting the ANC. That's actually a Hearing date
8 but obviously that's not going to work for us. So, Mr.
9 Chairman, I would suggest -- we have two appeals on the 24th
10 of April and then May 1st, we have eight cases on May 1st but
11 we can slide this in as well.

12 So I would say May 1st at the earliest. May 1st,
13 Mr. Chairman?

14 CHAIRPERSON HILL: Okay, we'll put you onto May
15 1st.

16 MS. SAMPSON: Yes, that would be fine.

17 CHAIRPERSON HILL: Thank you.

18 MR. MOY: all right, can we have parties to the
19 table to Case Application Number 19970 of Jason Berto, B-E-R-
20 T-O.

21 This is a request for special exception to the use
22 requirements of Subtitle U, Section 802.1B to construct a
23 small, indoor live performance/dance venue in a PDR2 zone.
24 This is at 628 W Street Northeast, Square 131, Lot 146.

25 CHAIRPERSON HILL: Okay, great, thank you, Mr. Moy.

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1 Could you please introduce yourselves for the record?

2 MR. BERTO: Hi, Jason Berto.

3 MR. VERGUM: Henry Vergum.

4 CHAIRPERSON HILL: Okay, great, who's going to be
5 presenting to us?

6 MR. VERGUM: Can we do a combination? He'll do the
7 opening statement and I'll answer the questions.

8 CHAIRPERSON HILL: Sure. Okay, so Mr. Berto, if
9 you're going to go ahead and start, I didn't have any
10 particular questions for you in terms of addressing this.

11 It seemed somewhat straightforward to me, however,
12 if you could go ahead and walk us through what you're trying
13 to do as well as how you believe you meet the standard for
14 us to grant the application?

15 I'm going to go ahead and put 15 minutes on the
16 clock, Mr. Moy, if you don't mind, and then you can begin
17 whenever you'd like.

18 MR. BERTO: Sure, so our plan is to convert an old
19 industrial shipping and storage warehouse at 628 W Street
20 into a community art event space. We have no major
21 construction or structural changes we're proposing.

22 We've met with the Eckington Civic Association,
23 where we received a unanimous vote of approval, and they also
24 passed out their initiatives for 2019 and their policy MC
25 2.83 states that they wish to explore the creation of a

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1 creative arts district along the Metropolitan Branch Trail,
2 which is our exact location.

3 We met with the ANC Board where we received another
4 unanimous vote of approval as well as a letter of
5 recommendation that should have been submitted to you all.

6 CHAIRPERSON HILL: It was.

7 MR. VERGUM: Along with that, we just feel that the
8 space right now is kind of a desolate area and what they're
9 trying to do is bring people back to this warehouse space.

10 So along with adding some value and security to the
11 area by having it populated again, we also, like Jason was
12 saying, want to be able to have a meeting area for artists
13 as well as sculptures, music, all types of different small
14 grassroots artists in the area that have a space to be able
15 to use.

16 So, we believe that we meet the criteria for the
17 special exception and that it's adding a benefit to the area,
18 as well as, after doing the ANC Meetings, that the
19 community's behind it. Thanks.

20 CHAIRPERSON HILL: Okay, great, thank you. Does
21 the Board have any questions for the Applicant?

22 MEMBER WHITE: Yes, so I'm looking at Exhibit --
23 this is the OP report actually. So, there's a map that's
24 attached to it, this is the PDR2 zone. So there are no other
25 residential properties in that immediate area?

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1 MR. BERTO: No, ma'am, it's at the end of an alley
2 behind the U-Haul directly underneath of the Rhode Island
3 Avenue metro along the bike trail.

4 MEMBER WHITE: And then no other live performance
5 venues within the 1000 feet?

6 MR. BERTO: No.

7 MEMBER WHITE: Okay. Do you have an actual
8 photograph in the record of what the area looks like?

9 MR. BERTO: I have a photograph of the space that
10 was submitted with the application.

11 MEMBER WHITE: Exhibit 1?

12 MR. BERTO: 11.

13 VICE CHAIRPERSON HART: And what are your hours
14 going to be?

15 MR. BERTO: So we will be kind of similar to the
16 VIP Room in the case that people will kind of rent out the
17 space so we won't necessarily be open seven days a week.

18 People will rent us out for, say, a pop-up art show
19 or a stand-up comedy event or other sorts.

20 VICE CHAIRPERSON HART: But when you do that it
21 would be about what time?

22 MR. BERTO: If we were operating on the weekend,
23 we'd probably operate until 1:00 a.m. or 2:00 a.m. Our goal
24 is to eventually go through the process with ABRA for a
25 potential liquor license.

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1 VICE CHAIRPERSON HART: Thank you.

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

4 MS. FOTHERGILL: Good afternoon, I'm Anne
5 Fothergill with the Office of Planning and we recommend
6 approval of the special exception request.

7 We find that it meets the specific conditions for
8 the use under Subtitle U, Section 8021B and I'm happy to take
9 any questions and rest on the record in support of the
10 application.

11 CHAIRPERSON HILL: Thank you, does the Board have
12 any questions for the Office of Planning?

13 MEMBER WHITE: So, again, I just want to make sure
14 that the property doesn't abut any residential zone or
15 residential property.

16 MS. FOTHERGILL: So, yes, the criteria for this use
17 as a special exception permitted use, the criteria 2 is that
18 it cannot abut a residential use or residential zone and, to
19 answer your other question, it also is not within 1000 feet
20 of another live performance space.

21 CHAIRPERSON HILL: Okay, is there anyone here
22 wishing to speak in support? Is there anyone here wishing
23 to speak in opposition? Mr. Berto, is there anything else
24 you'd like to add at the end?

25 MR. BERTO: No, sir.

1 CHAIRPERSON HILL: Okay, I'm going to close the
2 Hearing. Is the Board ready to deliberate? Okay, I can
3 start. As I mentioned before, I thought it was relatively
4 straightforward and as Board Member White just mentioned, in
5 clarifying exactly what is around the facility, I didn't have
6 any questions or concerns.

7 Or I didn't have any concerns or issues so I'll be
8 voting in favor. Would anyone like to add anything?

9 VICE CHAIRPERSON HART: Only that this is in an
10 area that's not a residential area. It's very close to
11 actually underneath the Rhode Island Metro Station and it's
12 I think in an area that you wouldn't have the impacts on the
13 neighbors that you would if it were a residential area. So
14 I'd be in support of it as well.

15 CHAIRPERSON HILL: Okay, I'll also mention that the
16 analysis the Office of Planning has provided I believe is
17 accurate and thank you for that. And then as well, the ANC
18 5E was in support.

19 So I'll go ahead and make a motion to approve
20 Application Number 19970 as captioned and read by the
21 Secretary and ask for a second.

22 VICE CHAIRPERSON HART: Second.

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

25 (Chorus of aye.)

1 All those opposed? The motion passes, Mr. Moy.

2 MR. MOY: Staff would record the vote as 5-0-0.
3 This is on the motion of Chairman Hill to approve the
4 application for the relief being requested.

5 Seconding the motion, Vice Chair Hart. Also in
6 support Ms. John, Ms. White, and Mr. Rob Miller. The motion
7 carries, sir.

8 CHAIRPERSON HILL: Okay, thank you. Thank you
9 gentlemen. Okay, Mr. Moy, whenever you'd like you can call
10 our next one.

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

12 So that would be Appeal Number 19961 of ANC 1C.
13 This is an appeal from the decision made on November 2, 2018
14 by the Zoning Administrator, Department of Consumer and
15 Regulatory Affairs, to issue building permit number B1806082
16 to construct a new three-story building in the RF1 zone.

17 This is at 2910 18th Street Northwest, Square 2587,
18 Lot 495. Mr. Chairman and the Board, there is a request for
19 intervener status, which is under Exhibit 24.

20 CHAIRPERSON HILL: Okay, great, thank you, Mr. Moy.
21 So, if you could please introduce yourselves for the record
22 from my right to left?

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

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1 MR. LEGRANT: Good afternoon, Matt LeGrant, Zoning
2 Administrator at DCRA.

3 MS. FERSTER: Andrea Ferster, I'm Counsel for Wendy
4 and Guillermo Rueda, who are requesting party in opposition
5 status.

6 MR. GUTHRIE: Ted Guthrie with the ANC 1C.

7 MR. RUEDA: Guillermo Rueda, resident, architect.

8 MS. RUEDA: Wendy Rueda, I reside at 2912.

9 MR. SULLIVAN: Marty Sullivan with Sullivan and
10 Barros on behalf of the property owner.

11 CHAIRPERSON HILL: Okay, great, thank you. Well,
12 Ms. Rueda, welcome, we've met your husband before so I'm glad
13 we can see you and make it a family affair today.

14 So, let's see, okay, there is a request for
15 intervener status first and I believe Ms. Ferster you're
16 going to argue -- or could you please explain, you're
17 representing the intervener, is that correct?

18 MS. FERSTER: Yes, that's correct.

19 CHAIRPERSON HILL: Okay, could you kind of share
20 for the Board why you think Mr. Rueda should be given
21 intervener status?

22 And as we were kind of reading, and this is the
23 particular thing I'm trying to understand, I didn't see the
24 things that you were bringing up were any different than the
25 things that the ANC were bringing up, so maybe if you could

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1 kind of talk to both of those issues? Thank you.

2 MS. FERSTER: Sure, I'm representing both Mr. and
3 Mrs. Rueda, both are seeking party status and the basis for
4 their status in terms of being adversely affected and
5 aggrieved in a manner different from the general public is
6 that they are immediately adjacent property owners.

7 And the specific adverse effect, which has been
8 described in their statement, in particular involves their
9 solar array.

10 They received a permit at substantial expense to
11 install a solar array on their adjacent property based on the
12 height of the building that had previously occupied the
13 adjacent property, which would have resulted in it being
14 protected from any additions under the zoning regulations.

15 And because of the Zoning Administrator's decision,
16 which effectively exempt this higher property, higher
17 building from those protections for adjacent solar arrays,
18 their investment in solar panels will be adversely affected
19 in terms of the income that's being generated.

20 And part of their case will be to demonstrate the
21 significant impact on their ability for their solar array to
22 generate energy, electricity.

23 CHAIRPERSON HILL: Okay, so the solar array is
24 what's differentiating them from the ANC to a certain extent,
25 correct?

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1 MS. FERSTER: That's the specific differentiation,
2 yes.

3 CHAIRPERSON HILL: And so, Mr. Commissioner, do you
4 have any thoughts on this party being added as an intervener?

5 MR. GUTHRIE: We would support it.

6 CHAIRPERSON HILL: Okay, Mr. Sullivan, do you have
7 any thoughts?

8 MR. SULLIVAN: Yes, just that I don't think there
9 is a vehicle by which they can apply for party status. It
10 is intervener status and they aren't really asking for
11 intervener status, they're asking for party status, which
12 there is no party status for appeals.

13 So if they were asking for intervener status, they
14 must clearly demonstrate that their interest will not be
15 adequately represented by the automatic parties, meaning the
16 ANC and the Appellant.

17 So I think they have to demonstrate why the ANC
18 won't adequately represent their interests when, in fact, Mr.
19 Rueda is part of the Appellant team already because he was
20 going to be an expert witness for the ANC.

21 CHAIRPERSON HILL: I understand. Correct me if I'm
22 wrong, I thought they were asking for intervener status. If
23 I said party status, I misspoke. I thought they were
24 applying for intervener status.

25 MR. SULLIVAN: I'm not saying you did. They

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1 haven't specifically said that. They're calling it party
2 status.

3 MS. LOVICK: They did request intervener status, I
4 just think that Counsel just misspoke and accidentally said
5 party status.

6 CHAIRPERSON HILL: Okay, so Ms. Ferster, you meant
7 intervener status, correct?

8 MS. FERSTER: That's correct.

9 CHAIRPERSON HILL: So that's that. First, let's
10 talk about this with the Board. Actually, before I do that,
11 Ms. Ferster, I saw in your request for intervener status you
12 were going to share the time with the ANC, or at least it
13 seemed that you were indicating that.

14 And it was basically an hour that you would be
15 sharing so I'm kind of looking to the ANC, if you're aware
16 that had been brought forward and if you're comfortable with
17 that request?

18 MR. GUTHRIE: Yes and yes.

19 CHAIRPERSON HILL: Okay, all right, thank you. So,
20 that being the case, what does the Board think about the
21 intervener status request?

22 VICE CHAIRPERSON HART: I would just look at it as
23 this is an adjacent neighbor that has a solar array on their
24 roof and they may be impacted more than -- well, they may be
25 impacted by this and I think that would be somewhat different

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1 than the ANC.

2 The ANC has more of a I don't want to say broad but
3 they have I think a different viewpoint. This one is very
4 specific and I would be in support of granting their
5 intervener status.

6 CHAIRPERSON HILL: Anyone else?

7 COMMISSIONER MILLER: I concur.

8 MEMBER WHITE: I think I do now. At first I wasn't
9 there but when they started spelling out the specific
10 arguments, I can see how the intervener's issues are somewhat
11 different than what the Appellant raised. So I would be in
12 support.

13 CHAIRPERSON HILL: Okay, so if we do grant
14 intervener status, which it seems like -- Ms. John, do you
15 have anything?

16 MEMBER JOHN: I think I'm sort of there. I don't
17 believe that the interest is so unique because the issue is
18 the building height, which the ANC has raised based on the
19 improper calculation of the BHMP.

20 So if the ANC were to prevail, then the issue of
21 the solar in my view would go away. But I'm outvoted anyway
22 so I am willing to go along.

23 CHAIRPERSON HILL: That's fine, your opinion is
24 well-founded. So I mean my thought just to that I guess is
25 that I do think that the intervener might be more

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1 specifically affected than the ANC I suppose, and since
2 they're sharing time, I don't think it's going to necessarily
3 be a burden to the Board.

4 So, we would go ahead and grant the intervener
5 status and then we would end up postponing, however, because
6 we want to see the preliminary argument from the intervener
7 so that the Applicant, the building owner, and DRA would have
8 an opportunity to know what the intervener plans to argue.

9 Before we move forward a little bit, there was a
10 couple of other things. First of all, Mr. Rueda, you're
11 going to testify as an expert for the -- you're currently
12 listed as testifying as an expert for the ANC.

13 And my question to you I suppose, and this is
14 actually just kind of for the Board, is how do you think
15 you're going to be able to be an impartial expert for the ANC
16 if you're an intervener?

17 MR. RUEDA: I would prefer to carry my own part of
18 the --

19 CHAIRPERSON HILL: As an intervener. Okay, so
20 you're not going to be an expert witness for the ANC. So
21 then there was a Laura Richards and a Bjork Falk. Is that
22 correct?

23 MS. FERSTER: Yes, that's correct. Those are our
24 two expert witnesses.

25 CHAIRPERSON HILL: Okay, does the Board have any

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1 questions about those particular issues, on them being
2 admitted as expert witnesses?

3 COMMISSIONER MILLER: The only question I have is
4 what is the expertise that each is bringing to the table?

5 MS. FERSTER: So Laura Richards, we're asking that
6 should be accepted as an expert in zoning, which she has been
7 already accepted before the Zoning Commission. And I believe
8 this Board is an expert in zoning.

9 And Mr. Bjork Falk, he installed the solar array
10 and he can testify as to the impact of the building
11 additional height on in terms of impeding the capacity of the
12 solar array to generate additional electricity.

13 And he will testify that, in fact, the new building
14 will impede it more than 35 percent, which is the standard
15 under the zoning regulations that would require a special
16 exception.

17 CHAIRPERSON HILL: Okay, so the zoning expert, you
18 said Laura Richards is already in our book? Because it just
19 says it's not, that's why I'm just confused.

20 MS. FERSTER: I know she's in it by the Zoning
21 Commission.

22 CHAIRPERSON HILL: Okay, well, I don't have any
23 issue with -- first of all, does the property owner or DCRA
24 have any issues with those people being admitted as experts?

25 MR. SULLIVAN: Thank you, Mr. Chair. With Ms.

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1 Richards, only if she is not previously certified with the
2 Zoning Commission as they stated.

3 Because I'm not sure her experience reaches the
4 level of expert witness, which they have to provide written
5 evidence to the Board including but not limited to
6 educational attainment, licensing, accreditation, and
7 examples of relevant or comparable work and employment.

8 But if the Zoning Commission has found in the past
9 that she is, then we're okay with that. If not, then I think
10 --

11 CHAIRPERSON HILL: Okay, that's fine. So what
12 about the next one?

13 (Simultaneous Speaking.)

14 MR. SULLIVAN: And the next one, impact is not
15 going to be a relevant issue in the appeal because the appeal
16 is whether or not the building can be built as a matter of
17 right. Impact was never an issue before the Zoning
18 Administrator.

19 CHAIRPERSON HILL: Okay, so you're opposed to Ms.
20 Falk -- is it Ms.?

21 MR. SULLIVAN: Mr.

22 CHAIRPERSON HILL: Mr. Falk being added as an
23 expert witness.

24 MR. SULLIVAN: I think any of that testimony is
25 going to be irrelevant because --

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1 CHAIRPERSON HILL: We're not at testimony yet.

2 MR. SULLIVAN: But I mean if we lose the appeal,
3 then the impact becomes an issue for the Zoning
4 Administrator. He has not evaluated impact yet because what
5 he's saying is I don't need to evaluate --

6 CHAIRPERSON HILL: All right, Mr. Sullivan, so you
7 put an objection to them being cleared as expert --

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON HILL: Okay, does DCRA have any
10 comments on either one?

11 MS. SORENSEN: No.

12 CHAIRPERSON HILL: I guess we don't have to rule on
13 this right now, I suppose. So we could hold those issues in
14 abeyance I suppose, unless you all have -- the only reason
15 why I'm thinking a little bit is just that we haven't even
16 gotten to the arguments of the appeal.

17 But again, if Mr. Falk is going to be offered up as
18 an expert in solar systems, I want to take a little bit more
19 of a look in terms of him giving his testimony in that
20 regard.

21 In terms of Ms. Richards, again, if the Zoning
22 Commission has already ruled her as an expert, you are the
23 higher, more smarter body than we are --

24 COMMISSIONER MILLER: We have admitted her as an
25 expert in previous cases.

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1 CHAIRPERSON HILL: Okay, so then I would just go
2 ahead and allow Ms. Richards to be an expert and then just
3 wait to take a look at the solar person until we hear the
4 Hearing. What do you all think?

5 VICE CHAIRPERSON HART: The only question I have is
6 if Ms. Ferster is looking to have someone to provide that
7 testimony, if we don't decide it now then she won't know
8 whether or not that person should be -- if they need to find
9 somebody else.

10 So I just think we would need to decide on both of
11 them today. I think Ms. Richards we can. I looked through
12 the resume for...

13 CHAIRPERSON HILL: Mr. Falk?

14 VICE CHAIRPERSON HART: Thank you, Mr. Falk. I
15 couldn't think of his last name. And I didn't have a
16 particular issue with it but that's kind of where I am.

17 CHAIRPERSON HILL: I'm fine with taking a look here
18 at his resume and figuring it out right now. But does
19 anybody have any thoughts? It's in Exhibit 36.

20 The testimony is that this is the person who put
21 the solar system on the roof and that they should be able to
22 tell us whether or not they think that it would be affected.

23 MS. LOVICK: Excuse me, I just want to point out
24 the issue is not whether or not the person is qualified as
25 an expert but whether or not you think that testimony would

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1 be relevant. So I think you should figure that out first
2 before you determine whether or not you think that they
3 qualify.

4 And if you're not ready to determine that, you
5 could hold that in abeyance but I just want to caution you
6 about whether or not you think the testimony is relevant to
7 the appeal.

8 CHAIRPERSON HILL: I appreciate that.

9 I don't think I'm going to be able to figure out
10 whether or not it's relevant to the appeal at this point but
11 I would also agree with Vice Chair Hart that it puts the
12 intervener at a disadvantage not to know what we think of
13 their witnesses prior to them putting together their
14 testimony, which is what we're going to review prior to the
15 Hearing.

16 So I don't have an issue with them being admitted
17 as an expert into the record and then we'll just go ahead and
18 see the preliminary testimony, I mean the filings that come
19 before us from the intervener, and then we can kind of see
20 what we think about that at the Hearing.

21 Okay? So is that fine with everybody? Okay, so
22 we're going to go ahead and do that, and then now we have to
23 set a date for when we're going to come back here to do this.
24 So, I'm going to start with -- I mean Mr. Miller, when are
25 you here next?

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1 COMMISSIONER MILLER: I have no idea, but I'll be
2 here whenever you need to do it.

3 CHAIRPERSON HILL: Okay. You're retired Mr.
4 Miller, is that right?

5 COMMISSIONER MILLER: This takes up a lot of time.

6 CHAIRPERSON HILL: Oh, you have no idea. I agree,
7 amen. Get the church back in here again to that. So we
8 don't know, Mr. Moy, when Mr. Miller is back.

9 MR. MOY: Back at my desk, if we want to take a
10 moment I can --

11 CHAIRPERSON HILL: Sure, go take a moment.

12 COMMISSIONER MILLER: I'm back. I just found it,
13 the email, May 1st.

14 MS. FERSTER: Mr. Chairman, while we're waiting for
15 Mr. Moy to come back, I just wanted to let you know that I
16 will be out of the country from May 1st to May 12th.

17 CHAIRPERSON HILL: Okay, thanks. We'll figure this
18 out in a second. Oh, actually, Mr. Moy, I just found out.
19 So May 1st is when Commissioner Miller is back. The
20 intervener said that doesn't work for them and so I'm just
21 trying to figure this out.

22 Does the property owner or DCRA have any thoughts
23 about when we can do this again?

24 MS. SORENSEN: DCRA is available May 15th as well
25 as the 22nd.

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1 MR. SULLIVAN: Available any time before or after
2 May 1st.

3 CHAIRPERSON HILL: Gold star, Mr. Sullivan, gold
4 star. Mr. Moy, you want to do the 15th of May? What's going
5 on there?

6 MR. MOY: The 15th of May, we're looking at -- oh,
7 that's good, we have seven applications. This would be the
8 only appeal for the day.

9 CHAIRPERSON HILL: Okay, and then Mr. Miller, would
10 you mind coming back?

11 COMMISSIONER MILLER: I have no problem.

12 CHAIRPERSON HILL: Okay, so if you do come back
13 then we'll try to do it first. We'll try to do it first.

14 You guys are getting lucky because Mr. Miller's
15 going to come back for you. Because usually we put appeals
16 at the end of the day so that we can all be properly rested
17 for it.

18 Let's see, okay, great. Oh, yes, there's a couple
19 things. So I had some questions for the building owner and
20 DCRA and the intervener, and everybody can just know how
21 we're kind of thinking about some stuff. There's a notice
22 to correct, is that correct?

23 MS. SORENSEN: That's a matter pending before the
24 Office of Administrative Hearings.

25 CHAIRPERSON HILL: Okay.

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1 VICE CHAIRPERSON HART: What we're looking for is
2 if you could have whatever are the errors that are being
3 discussed in that? It's just helpful for us to understand
4 where that is. Right now we just don't have much information
5 beyond that.

6 MS. SORENSEN: So would the Board like DCRA to
7 submit a copy of the notice to correct those issues to the
8 property owner?

9 VICE CHAIRPERSON HART: That'll be fine.

10 MS. SORENSEN: Okay.

11 MS. LOVICK: Excuse me, the notice to correct is in
12 the record.

13 MS. SORENSEN: I believe Mr. Rueda provided that as
14 part of his filing.

15 MR. RUEDA: I did include it.

16 VICE CHAIRPERSON HART: Okay, so while the Chairman
17 is looking over something, I think that what I was looking
18 for was really around -- in that building permit, I think we
19 were really looking at what the particular errors were that
20 were the corrections.

21 And so pointing that out would be helpful for us to
22 us what was changed or what those errors were.

23 MS. SORENSEN: What I could do is provide you with
24 the plan reviewer's comments and that should outline the
25 information most recently requested of the property owner.

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1 VICE CHAIRPERSON HART: With regards to whether or
2 not DCRA believes that the Zoning Case 17-18 governs the
3 building permit, yes, if ZC 17-18 governs the building
4 permit.

5 And if Mr. Gurthrie, is it? If you disagree with
6 the DCRA's position on that, then kind of why, can you do
7 that? And I think that would also go for the intervener as
8 well.

9 Because really, what we're trying to figure out is
10 what do you guys think is the actual grade level, and so what
11 are you basing that on? What are all three of you basing
12 that on? Or four.

13 Because it's helpful for us to understand because
14 it seemed like there's a lot of information that is focused
15 on where the BMPH -- BMP? BH? I knew I'd get it wrong. But
16 where that building height measure point is, how about that?

17 And then because of where you're thinking that is,
18 then that would make it either six inches shorter or taller
19 and then kind of deal with the cellar versus basement issue.

20 And if we could understand how DCRA determines a
21 finished floor, a first floor, because I think when you
22 determine the finished floor, that's how you determine what's
23 basement, where that finished floor is.

24 MS. SORENSEN: We start from grade to the bottom of
25 the first floor.

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1 VICE CHAIRPERSON HART: We just want to make sure
2 of how that's determined because it's --

3 (Simultaneous Speaking.)

4 MS. SORENSEN: It's explained in our --

5 VICE CHAIRPERSON HART: Yes.

6 And really, if there is any flexibility in
7 understanding whether that first floor is in new
8 construction, is it at a particular location or is there some
9 way of saying, well, we kind of say it's within two inches
10 or whatever, it's helpful for us to understand what that is
11 as well.

12 Excuse me, I'm trying to get over allergies myself.
13 And the last question really has to do around what is a
14 zoning raise? Because that was raised a couple of times and
15 I just need to understand what DCRA thinks about that and
16 then how does the intervener, ANC, and the owner kind of
17 think about all of that as well?

18 I'm just trying to understand where all of these --
19 because there's a lot of terminology here and it's not clear
20 to me what that actually means. And it's helpful for us to
21 get a good understanding of that from each of you so that we
22 get through this as quickly or as efficiently as we can.

23 And what that means regarding everything, party
24 walls -- how is it that you see this? It seemed like there
25 was a collapse that occurred during this and so it's helpful

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1 for us to understand what DCRA felt was -- how they viewed
2 that and then how that impacted any of the decisions that
3 were made subsequent to that.

4 I think I'll leave it there because I think it's a
5 lot of questions, but the specificity in this case I think
6 would be very helpful for us as we move forward with
7 understanding the various aspects of this.

8 MEMBER WHITE: Mr. Vice Chair, I just had a point
9 of clarification. Are we also asking for any revised
10 renderings or drawings?

11 VICE CHAIRPERSON HART: I know there's a lot of
12 drawings in there right now and, Mr. Rueda, I know you've
13 provided quite a few drawings just showing what was submitted
14 and then what you see as actually what was built upon and how
15 you perceive those errors as being carried through the permit
16 being provided or being issued.

17 If any of you think that drawings could help with
18 some of this, that would be helpful as well. And I've looked
19 through just about all of the record but I can't say that
20 I've gotten all of the drawings. So I think the drawings
21 that you provided Mr. Rueda are very helpful.

22 So I don't know if, DCRA, you have a similar
23 thinking? I'm trying to not to make it so that there are so
24 many different layers on these drawings so that it makes it
25 hard to read them.

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1 But kind of what you perceive it to be the
2 measuring point and then from there, what is the finished
3 first floor, what's the actual height of the building, how
4 you determine the height of the building?

5 Because I know when you have a sloped roof, you
6 don't necessarily go to the top of the roof, there's somewhat
7 of a calculation to figure that out. Okay, so I'm going to
8 stop talking now.

9 CHAIRPERSON HILL: Okay, great. So, if everybody
10 understands all that, let's see, is there anything else? Mr.
11 Sullivan, what's there now? I just forget.

12 MR. SULLIVAN: There's nothing there now. The
13 front and back, rear facade are almost entirely collapsed.

14 CHAIRPERSON HILL: I just thought there was support
15 beams or something?

16 MR. SULLIVAN: Oh, yes, there's support beams up,
17 yes.

18 MS. RUEDA: There's an entire front wall. I'm not
19 allowed to talk.

20 CHAIRPERSON HILL: That's fine, you can talk. I
21 don't know what's happened yet.

22 MR. SULLIVAN: We just need to know when.

23 CHAIRPERSON HILL: What? When to get stuff? I
24 mean we're going to put this out now until the 15th of May
25 so I guess, Mr. Moy, if you want to talk about submissions

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1 and having everyone have the opportunity to take a look at
2 those submissions.

3 MR. MOY: Yes, Mr. Chairman. So, without getting
4 into whether or not the Board needs any responses since this
5 is a Hearing, I was going to suggest that all the parties
6 make their filings due Friday, May 3rd.

7 That gives sufficient time for all the parties to
8 see what's been filed. And then the Board and the parties
9 can address any concerns at the date of the Hearing on the
10 15th of May.

11 CHAIRPERSON HILL: Okay, great. Do any of you guys
12 have any questions or comments? Mr. Sullivan?

13 MR. SULLIVAN: I didn't know. I thought originally
14 you were intending that there would be a filing and a
15 response from the property owner and I'm not entirely sure
16 of the procedure.

17 CHAIRPERSON HILL: I got a little lost myself I
18 suppose. So, we were postponing so that we could hear from
19 the intervener. When would the intervener want to submit
20 their preliminaries?

21 MS. FERSTER: Well, we would have to submit it
22 before May 1st.

23 MR. MOY: Working backwards, assuming there's going
24 to be a response period, Mr. Chairman, I suggest then that
25 the responses be due Friday, May 3rd.

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1 So that means for everyone else to make their
2 preliminary statements filed in April, let's give it a week,
3 April 26th, Friday the 26th.

4 MS. FERSTER: We could file our preliminary
5 statement by that date, that's fine.

6 CHAIRPERSON HILL: All right, does everybody know
7 what we're doing? Okay, then we'll see you guys on May 15th.
8 Thank you. Okay, just to let everybody know, we're going to
9 do one more case and then we're going to take a break for
10 lunch.

11 So you guys are all done, you're leaving.

12 MR. MOY: Mr. Chairman? Just a second.

13 CHAIRPERSON HILL: All right, Mr. Moy, you think
14 you have a preliminary matter we can kind of address then?

15 MR. MOY: Yes, something I just learned not too
16 long ago. This goes to Case Application Number 19960 of MCF
17 Montana LLC. Okay, let's leave it at that.

18 Apparently, the attorney representing the property
19 owner is filing a motion to postpone so I thought the Board
20 should hear that as a preliminary matter at this point.

21 CHAIRPERSON HILL: Okay, do you need to call that
22 or you just called that and we can have the Applicant come
23 to the table?

24 MR. MOY: Okay, let me just do it in a full way.

25 So this is Application Number 19960 of MCF Montana

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1 LLC, captioned for special exceptions under the zone boundary
2 line requirements of Subtitle A, Section 207.2 under the new
3 residential development requirements of Subtitle U, Section
4 421.1, Subtitle C, 714.3 for the surface parking screening
5 requirements of Subtitle C, Section 714.2 to permit the
6 construction of a new 106 to 108-unit apartment house in the
7 MU4 RA1 zone at premises 1400 Montana Avenue Northeast,
8 Square 4023, Lot 1.

9 So I would suggest to call parties to the table.

10 CHAIRPERSON HILL: Okay, can the parties please
11 come to the table? Hold on.

12 MR. MOY: I believe it was the ANC that's
13 requesting the postponement, Mr. Chair.

14 CHAIRPERSON HILL: Right, okay. That's okay, let's
15 just let everybody come sit down and we'll figure this out.
16 Okay, let's go ahead and introduce ourselves for the record?

17 MS. WILLIAMS: Hi, how are you doing? I'm
18 Commissioner ANC Kirsten Williams, 5C06.

19 CHAIRPERSON HILL: Williams?

20 MS. WILLIAMS: Yes.

21 CHAIRPERSON HILL: Okay.

22 MR. THERESA: My name is Aristotle Theresa and I'm
23 the attorney for Boots on the Ground Community Coalition and
24 we've placed a motion for party status and also we're
25 requesting postponement.

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1 CHAIRPERSON HILL: Okay, I think the ANC was also
2 requesting postponement is what I'm trying to understand.
3 But in any case, the next person, please?

4 MS. MOLDENHAUER: Meredith Moldenhauer from the law
5 firm of Cozen O'Connor here on behalf of the Applicant.

6 MR. VARGA: Stephen Varga, Director of Planning
7 Services, Cozen O'Connor, for the Applicant.

8 CHAIRPERSON HILL: Okay, so before we get to this,
9 there was a party status request in opposition and that's
10 Boots on the Ground Community Coalition.

11 So you haven't been given party status yet and so
12 what I understand is -- wow, you guys got to the table real
13 quick -- is that the ANC 5C has requested a postponement, is
14 that correct? Okay, because you are a party and so you can
15 request postponement.

16 All right, first of all, let's do this in terms of
17 the party status request in opposition.

18 Mr. Theresa?

19 MR. THERESA: Yes.

20 CHAIRPERSON HILL: How are you uniquely qualified
21 to be a person given party status? If you can kind of walk
22 through that?

23 And since you've mentioned that you're an attorney,
24 I'm sure you've looked at the standard as to why you should
25 be granted party status and you can kind of walk me through

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1 that as well.

2 MR. THERESA: Right, so I'm not personally uniquely
3 impacted but my clients are. Most of my clients who are
4 members of Boots on the Ground Community Coalition live
5 within a block of the site, the proposed site.

6 Two of our Members live within a half block of the
7 site and they are uniquely impacted by the project because
8 it will change the character of their neighborhood.

9 This is a building that's primarily market rate
10 with only a small amount of IZ units and the units that are
11 available there are much more expensive, the affordable ones
12 are much more expensive than the surrounding --

13 CHAIRPERSON HILL: Mr. Theresa, I'm just trying to
14 get to the party status first before we talk about anything.

15 So the Board shall grant party status under Y
16 404.13 only if the person requesting party status has clearly
17 demonstrated that the person's interest would likely be more
18 significantly, distinctively or uniquely affected in
19 character or kind by the proposed zoning action than those
20 of other persons in the general public.

21 And what your argument seems to be is that --

22 MR. THERESA: I didn't finish my argument, sir.

23 CHAIRPERSON HILL: Okay, well, one portion of your
24 argument seems to be that a few of the people in your group
25 are within a half block of this proposed property?

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1 MR. THERESA: Correct, yes.

2 CHAIRPERSON HILL: So go ahead and finish your
3 argument.

4 MR. THERESA: Thank you. And so they're also
5 concerned about traffic, parking, and also concerns with the
6 traffic flow and the foot traffic because there is a nearby
7 school.

8 Several of our members have grandchildren that go
9 to the school and have to go back and forth and that's kind
10 of a weird intersection over there the way the building is
11 situated.

12 And so they're concerned about traffic flow and
13 pedestrian foot traffic, traffic flow with the cars and also
14 pedestrians.

15 CHAIRPERSON HILL: And again, I'm not trying to
16 interrupt you, I understand what you're saying, I'm trying
17 to figure out how you're more uniquely affected. And again,
18 it's those members that are within a half a block, they're
19 uniquely affected because of the traffic flow is what you're
20 arguing?

21 MR. THERESA: Yes, the traffic flow, also the
22 impact on the character of the neighborhood, the view sheds.
23 There's an open space there and it's going to be gated, and
24 this is something that impacts them more because they're
25 closer to the site.

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1 CHAIRPERSON HILL: When you say closer, again,
2 you're talking about two people, correct?

3 MR. THERESA: Two people within our group that I
4 know of.

5 CHAIRPERSON HILL: How many people are in your
6 group?

7 MR. THERESA: There were about 20 people here but
8 it's kind of thinned out as the day has gone on.

9 CHAIRPERSON HILL: So there are about 20 people in
10 your organization?

11 MR. THERESA: Yes.

12 CHAIRPERSON HILL: Boots on the --

13 MR. THERESA: Boots on the Ground Community
14 Coalition.

15 CHAIRPERSON HILL: All right, so there's that.
16 We'll come back to you in one second. Commissioner, why do
17 you guys need the postponement?

18 MS. WILLIAMS: Because I had two Single Member
19 District Meetings, a failure to appear because I had
20 rescheduled another SMD Meeting and I let them know that so
21 they could be put on the agenda for 5C Board.

22 They said it didn't fit their schedule and so 5C
23 Board as a whole voted that they won't be on the agenda for
24 March.

25 CHAIRPERSON HILL: For March 23rd?

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1 MS. WILLIAMS: Mm-hmm.

2 CHAIRPERSON HILL: So now they're on the March 23rd
3 agenda?

4 MS. WILLIAMS: No.

5 MS. LOVICK: Excuse me, I believe that there was
6 submissions in the record to indicate there was an SMD
7 Meeting on March 23rd and it's unclear whether or not the
8 Applicant was able to attend that meeting or not.

9 That's a prerequisite to a full ANC Meeting.

10 CHAIRPERSON HILL: I got you. So, Commissioner,
11 they haven't presented at the ANC Meeting yet?

12 MS. WILLIAMS: No.

13 CHAIRPERSON HILL: So now I'll turn to the
14 Applicant. And Mr. Moy, this was -- okay, so the Applicant,
15 do you have any comments about either the party status
16 request or the postponement, please?

17 MS. MOLDENHAUER: Yes, I can address first the
18 party status. We have identified an opposition to it that is
19 in the record. I would just bring up an image on the screen.
20 We'll pass out copies of it.

21 This is an image showing the three members, they
22 are not a group of 20 but the filing that is in the record
23 indicates that there are only 3 members of Boots on the
24 Ground. There's no other documentation in the record that
25 shows any other parties.

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1 These are the addresses that were provided in that
2 filing. All of the members are beyond 200 feet from the
3 property.

4 You can see the closest one is 457 feet so the
5 ability for them to potentially prove that they are uniquely
6 impacted beyond the general public, there are many cases
7 where this Board has actually, I'm quoting Commissioner
8 Miller from another case, often used the 200-foot rule as a
9 measurement in evaluating the uniqueness.

10 You have to prove that you are somehow uniquely
11 impacted. In that regard I'll show you an image of the
12 closest property owner and actually from Google Earth --
13 sorry, where is that image? A Google Earth image of their
14 inability to even -- here it is -- see this is a property.

15 This is the property address where the closest
16 member of this organization lives and you can't even see the
17 property. The property is very, very, very far down the
18 street. I'm sure if I were to potentially voir dire one of
19 the three members, I can't see the property from here nor can
20 I then imagine that this would be in any way impacted as a
21 unique factor.

22 Because you have to show that it is uniquely
23 impacting in regard to the relief being requested.

24 And we are also asking for very, very limited
25 aspects of relief and so I do not believe that they can

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1 satisfy the specific standard to prove -- if the Board would
2 grant me, I would like to then ask some additional directed
3 questions not to their attorney but to the individual three
4 members who are claiming that they are uniquely impacted.

5 Because I believe I would have the ability to ask
6 them certain questions to have the Board then properly
7 evaluate whether or not they can prove they are uniquely
8 impacted by this relief.

9 CHAIRPERSON HILL: Okay, and then as far as the
10 postponement goes?

11 MS. MOLDENHAUER: I can get to that. I've got here
12 copies for the other two individuals. I'll provide copies
13 to the Board.

14 This is communications that date back to January
15 25th, where we have emailed the ANC Commissioners asking them
16 to be placed on their agenda first in February, no response,
17 saying that we first might have to have a community meeting.

18 Then a second line of communication asking to be
19 placed on their March agenda. Again, no opportunity for us
20 to present. We physically attended their March Meeting
21 telling them that we were able to present if they would allow
22 us to. They did not put us on their agenda.

23 We then held a community meeting and had about 20
24 people from the community attend. We have individuals here
25 from that community meeting that would like to speak on this

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1 case and have the case go forward and be able to be heard by
2 this Board, members from the community.

3 And even most recently, we actually even attended
4 their SMD Meeting following by, if you go to the very, very,
5 very last page in this package, we submitted an email on
6 March 25th saying we attended your SMD Meeting, we'd like to
7 know when the next SMD Meeting is, can you please confirm
8 that we're going to be on your next agenda?

9 I have not received a response for this. As an
10 attorney, I come before this Board, I respect the ANC, I
11 respect the process, but when we are not even being placed
12 on the agenda after requesting this since January 25th, I
13 believe the Board -- the ANC, there's three ANC Commissioners
14 here.

15 There's a group of individuals in opposition here,
16 there's a group of individuals in support here. We believe
17 that the Board should move forward, allow this case to be
18 heard today. If the ANC would put us on their agenda, they
19 could obviously then hear the case and we could leave the
20 record open.

21 But to not allow this case to go forward, we
22 believe that we have shown an extreme attempt to try and be
23 on their agenda, even in their response of filing they
24 indicated that they could maybe put us on in May.

25 CHAIRPERSON HILL: Okay.

1 MS. MOLDENHAUER: I think we object to that and we
2 would ask the Board to continue to hear us.

3 CHAIRPERSON HILL: Just give me a minute.

4 MS. MOLDENHAUER: The documents are in
5 chronological order so the most recent email that I have --

6 CHAIRPERSON HILL: Commissioner, don't worry,
7 you'll have a chance. Just let me get a little caught up
8 here, thanks. Let's see, so first, could people raise their
9 hands if they're wishing to speak in this case?

10 Just raise your hands if you're wishing to speak on
11 this case in one way or the other? Okay, all right, so let's
12 see, Commissioner, you had some comment that you wanted to
13 make?

14 MS. WILLIAMS: Yes, also I have received phone
15 calls as well so adding onto that, there are certain phone
16 calls that we had talked over and the communication between
17 the Mid-City and I was unclear on if they were going to
18 present.

19 Because out of all the groups, they had simply said
20 all something different to me. Also because some wanted me
21 to come to their meeting that they were wanting to present
22 as well. They have their own meeting and they didn't want
23 to come to my meeting.

24 CHAIRPERSON HILL: Okay.

25 MS. WILLIAMS: So that is factual about them trying

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1 to -- what do I want to say? -- say different things to me.

2 CHAIRPERSON HILL: They're currently on the agenda
3 for when again? Are they on the agenda at all?

4 MS. WILLIAMS: I told them I will further reach
5 back to them because back in February they had called me and
6 I told them February is a full thing, back in February when
7 they had made a call.

8 There's no call on this email but when I responded
9 to their call I told them that February has already been
10 booked.

11 CHAIRPERSON HILL: Okay, so let's do this --

12 MS. WILLIAMS: Also, there are other people in
13 Boots on the Ground that live on Evert Street and others that
14 live on Montana Avenue going straight up. Thank you.

15 CHAIRPERSON HILL: Okay, well, Commissioner, first
16 of all, the ANC is an automatic party so you would be able
17 to call witnesses all on your own as well, whatever you
18 wanted to do.

19 If your community Members weren't granted party
20 status because they weren't uniquely affected, different from
21 just the normal community, then you would be able to use them
22 as witnesses and they'd be able to come and testify.

23 And they'd also be able to testify on their own as
24 either members of opposition or support, as well as since
25 they are a group, they actually get a little bit more time

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1 than they normally would. But you could also have them as
2 part of your testimony.

3 So, I'm just trying to figure out a couple of
4 things here. So, first of all, what does the Board think
5 about the argument that was made concerning party status
6 under Y 404.13?

7 MR. THERESA: May I provide a rebuttal on party
8 status?

9 CHAIRPERSON HILL: Mr. Theresa?

10 MR. THERESA: Yes.

11 CHAIRPERSON HILL: Sure, you can go ahead and tell
12 me --

13 MR. THERESA: Thank you.

14 So, the way that our members are uniquely impacted
15 is this is an apartment building where these people live and
16 it's adjacent to one that's being built. Even though it's
17 more than 200 feet away, it isn't a prerequisite for party
18 status just being uniquely impacted.

19 Now, if their everyday foot commute is from one
20 location, which is a school which is nearby there, to their
21 property and this building is going to affect it, then they
22 would like the ability to cross-examine DDOT to ask questions
23 about any traffic report that's put on the study to ensure
24 the safety of pedestrians in the area from building this.

25 And so they would be uniquely impacted because this

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1 is something that affects their daily lives, as opposed to
2 just a member of the general public.

3 VICE CHAIRPERSON HART: I need to follow up a
4 couple of questions. One, Mr. Theresa, are you saying that
5 there are folks that are walking along Saratoga that are
6 walking by this?

7 Or are they walking along Montana and they're
8 walking up to -- I'm just trying to figure out what's the
9 point they're starting at? Well, I kind of know where
10 they're starting.

11 Well, I should ask, the Applicant has provided a
12 map that has some points on it and they showed it a little
13 earlier. You probably have a copy of it down there as well.
14 So is that where these members reside?

15 MR. THERESA: Well, their normal commute would be
16 along Saratoga and Montana Avenue. And so currently it's an
17 open green space that people kind of cut across but when it's
18 a building it's going to be gated off and it's going to
19 change the way that people interact with that intersection.

20 VICE CHAIRPERSON HART: Okay, I understand that but
21 open spaces change all the time. This is not --

22 MR. THERESA: Understood.

23 VICE CHAIRPERSON HART: This is not a public park
24 so walking through that is not a right that they have. They
25 can do it but they do it --

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1 MR. THERESA: I'm not claiming it is. What I'm
2 saying is that they're uniquely impacted by the change in the
3 site because of how it affects their foot commute.

4 And so I'm not saying that they have a right to
5 keep doing it and whatever rights they have could come out
6 after party status and we determine how they are affected or
7 are not affected by it.

8 That seems like a question of fact, not a question
9 of whether or not they're uniquely impacted.

10 VICE CHAIRPERSON HART: Well, uniquely impacted is
11 something that we have to use as part of our understanding
12 and determination of whether or not we think that this party
13 status should be granted. So, I understand and I appreciate
14 it. Thank you.

15 MR. THERESA: Thanks.

16 CHAIRPERSON HILL: Okay, sure, please go ahead.

17 MEMBER JOHN: A question for Mr. Theresa. So,
18 beyond these three members at Brentwood Road and Saratoga
19 Avenue, are there any members of your group that live closer
20 to the site?

21 MR. THERESA: So, yes, again, this is something
22 that hasn't gone before the ANC and so the extent of
23 community involvement has been people who are just interested
24 neighbors kind of coming together and opposing this project
25 because it hasn't formally gone before the neighborhood.

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1 And so there are a lot of questions that are
2 unanswered as to where exactly people live. But the people
3 that I've been in touch with live in those locations and
4 we're hearing that there are people who live closer.

5 MS. MOLDENHAUER: Can I just object? All we have
6 on the record are three names and there should be no ability
7 to reference anybody else unless there's written
8 documentation or proof that they are part of a group.

9 At: Subtitle --

10 CHAIRPERSON HILL: Hello, hello, hello. Just let
11 me try to get through this, okay? Just let me try to get
12 through this. So first of all, I'd like to just point out
13 something. Whoever was on Case 19933 or anybody past that,
14 we're going to lunch after this so there you go for that.

15 Let's see, so the discussion was still -- right, I
16 put it on the board. So for party status, we've heard the --
17 Mr. Theresa, if you could turn off your microphone there for
18 me? Thank you. We've heard discussion and testimony. What
19 does the Board think?

20 MEMBER WHITE: Regarding the party status, I'm
21 still not completely convinced of how your members would be
22 uniquely impacted without having party status for this case.

23 I mean, I see that the Applicant submitted some
24 information about maybe the location of some of the other
25 members but why do you need party status for this particular

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1 case?

2 What is so unique that impacts your members in a
3 negative way to meet the standards for the party status
4 request?

5 MR. THERESA: Well, again, some of our members do
6 live closer than what they've provided and the fact that
7 that's not all straightened out is a direct function of not
8 meeting with the ANC.

9 But then second, the issue of unique impacts,
10 again, these people live on a site that's directly adjacent
11 and so I would say that their uniqueness comes from the fact
12 that they are daily interacting with this intersection in a
13 way that people who do not live in the neighborhood do not.

14 So it's not just the general public, these people
15 are always interacting with this intersection. And so the
16 safety of it and the adequacy of any studies that are going
17 to go on the record like the one that's been put on the
18 record by DDOT should be capable of being interrogated by
19 members of Boots on the Ground Community Coalition.

20 CHAIRPERSON HILL: Okay, so Mr. Theresa, just to be
21 certain, you used the word adjacent. There aren't any
22 members that are adjacent to the property.

23 MR. THERESA: Well, again -- excuse me.

24 CHAIRPERSON HILL: Mr. Theresa? We're going to
25 have to figure this out first.

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1 And just to let you know, Mr. Theresa, even if you
2 don't get party status, you'll still have an opportunity to
3 speak, your group will still have an opportunity to speak,
4 and you can also then work with the ANC and then you can ask
5 questions with the ANC through the ANC. The ANC just has to
6 be here.

7 The ANC is a party, the ANC will get to question
8 the Applicant, the ANC, and so you can tell the ANC what
9 questions and they can answer. I'm not saying you're going
10 to get it or not, I'm just trying to work through the first
11 part first, which is the party status issue.

12 And I'm just letting you know that if you didn't
13 get it, there's still an avenue for you to testify and give
14 your input for your group. And the group to begin with,
15 again, gets more time, it's not a lot more time, you get five
16 minutes versus three minutes, but as a group that's what is
17 in the regulations.

18 And then as far as working with the ANC, if the ANC
19 is amenable to it, they would be able to ask questions
20 through the ANC, okay? So, that's number one.

21 So, back to this. I've heard from Ms. White.
22 Commissioner Miller, do you have any thoughts on party
23 status?

24 COMMISSIONER MILLER: Thank you, Mr. Chairman. I
25 agree with your comments that the party status requester can

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1 work -- it would be better if they worked with the ANC and
2 be part of that presentation or do their own testimony.

3 So I would not be in support of the party status
4 request and when we get to the discussion about the
5 postponement, I have a question for the Commissioner, for the
6 ANC Commissioner.

7 CHAIRPERSON HILL: Okay. Vice Chairman Hart?

8 VICE CHAIRPERSON HART: After listening to this,
9 and I appreciate the testimony that everyone has given, I
10 don't think that I would be in support of the party status
11 only because I don't think that there is -- or at least we
12 haven't had the information that would support if we had been
13 talking about this kind of unique impacts that this
14 particular group has.

15 I understand that the movement or walking through
16 here is maybe somewhat of an issue but we're talking about
17 a truncated block here. And so I'm not really sure what that
18 change might be in that this is a private property that could
19 put a fence up at any point.

20 So I just don't see this as being something that I
21 could necessarily support, only because I just don't think
22 there is sufficient information for us to be able to approve
23 the party status request.

24 CHAIRPERSON HILL: Okay, Ms. John? Mr. Theresa,
25 I'm sorry, can you turn off your microphone? I'm getting

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1 feedback. Thank you.

2 MEMBER JOHN: So, I don't think we have enough
3 information to determine the party status because I'm
4 hearing different things. I'm hearing that there are people
5 who arguably live closer to the site and that that is a
6 possibility of a establishing party status.

7 We also don't know anything about the organization
8 of Boots on the Ground. I don't know if there's anything in
9 the record.

10 But I do agree with you, Mr. Chairman, that even if
11 we don't grant party status because of this lack of
12 information, the organization could work with the ANC in a
13 collaborative way to present the concerns of those members
14 who live closer to the site.

15 CHAIRPERSON HILL: Okay, all right, so then it
16 seems like we are currently leaning towards denying the party
17 status because we don't think it meets the criteria for a
18 4.13. I also think that what is in the record now, I'm not
19 satisfied that they meet the burden for 404.13, Y 404.13.

20 I do think, as I mentioned before, that the people
21 that are here should have an ability to speak, should have
22 the time to speak, and then also the organization that is
23 requesting party status can also work with the ANC in order
24 to give their testimony.

25 So, then we're going to go ahead and deny --

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1 MR. THERESA: May I add one more thing?

2 CHAIRPERSON HILL: Sure, go ahead.

3 MR. THERESA: I believe that our clients have been
4 prejudiced by the fact that there was not an ANC Meeting.
5 We had to file for party status 14 days before the Hearing
6 and we literally found out about this project no more than
7 three or four days before then.

8 We didn't really have time to get organized, to
9 figure out where everyone lived. I spoke to the three main
10 people. They told me where their addresses were and that's
11 what we went with.

12 But the fact that there is this lack of
13 information, again, it's a direct function of not doing
14 outreach within the community through the ANC. Thank you.

15 MS. MOLDENHAUER: I object to that on the record.

16 CHAIRPERSON HILL: Ma'am, you don't have to put up
17 your hand. everybody will get a chance to -- you'll hear how
18 this goes through. We'll just keep talking about this up
19 here right now. Ms. John was kind of open to hearing more.

20 I didn't think that what is in the record now, and
21 I don't have any problem with it, I don't think that it meets
22 the standard for us to grant the party status. And so I
23 think that there are people here that need to speak and so
24 I'm trying to figure out how they're going to be heard.

25 And then also the postponement request that has

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1 come forward with the ANC, the Applicant has not presented
2 in front of the ANC although there's been a lot of attempts
3 to do so in the record, at least what we've been given so
4 far.

5 And so I guess we could possibly -- well, so I'm
6 waffling back and forth on this. So, you're a no, right?
7 And you're a no, Mr. Miller, Commissioner Miller, to the
8 party status?

9 COMMISSIONER MILLER: To the party status, yes.
10 Instinctively it's not within 200 feet.

11 CHAIRPERSON HILL: And Ms. White?

12 MEMBER WHITE: I was looking for facts to kind of
13 support it, but again, and I'm very sensitive to the fact
14 that you're trying to pull this case together without having
15 a lot of notice about the project, I don't think just given
16 the facts that we have before us right now that the standard
17 has been met.

18 But my main thing now is to -- and you'll get to
19 this -- is to have some assurances that the ANC can get this
20 on their schedule sooner rather than later.

21 CHAIRPERSON HILL: All right, so I'm going to make
22 a motion that we deny the party status request that has been
23 put before us and ask for a second? Motion made and
24 seconded. All those in favor say aye?

25 (Chorus of aye.)

1 All those opposed? Okay, so the motion passed, Mr.
2 Moy.

3 So unfortunately, you haven't been granted party
4 status but there will be a time for testimony for you as an
5 organization and then also it seems as though you're in
6 coordination with the ANC and so your questions and cross-
7 examination questions can hopefully be answered through the
8 ANC.

9 So thank you very much, Mr. Theresa.

10 So now we're to the postponement. Mr. Theresa, you
11 can sit right there, you can sit on the other side there of
12 the ANC if you like, whatever you want to do. You guys are
13 not a team over there.

14 So, there's the postponement and so I am in favor
15 of granting the postponement because the ANC you haven't
16 presented to yet, but I'm kind of conflicted as to there are
17 people here that I don't want to have to come back again.
18 And now I'm just kind of talking to the Board Members because
19 I'm also kind of processing this up here, which is that I
20 don't know how we would do this.

21 You could give your testimony, we could then hear
22 whatever cross-examination questions you might have at this
23 point with the application. We could then hear some kind of
24 a presentation from you Commissioner.

25 The reason why I'm just not clear as to how to work

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1 forward is that I don't think you've had enough time
2 necessarily to prepare, right?

3 And so what I think we're going to probably do is
4 possibly hear the testimony of people that are here today and
5 I'm going to take a break again before we do this just to
6 figure this out, or maybe not.

7 I don't know what's going to happen. I'm kind of
8 talking about this, I guess, with you guys on the Board. We
9 could hear the testimony of the Applicant, we could have some
10 kind of cross from the ANC, the ANC could give a
11 presentation, the Applicant could then do cross.

12 We can take public testimony in support and
13 opposition, and then we could have a supplemental Hearing for
14 after the ANC has seen or presented to the Applicant, and
15 then we could come back and then hear if the ANC has anything
16 further to add to their testimony.

17 What does the Board think?

18 MEMBER JOHN: So, Mr. Chairman, I think the ANC
19 would be at a disadvantage if they were forced to go forward
20 today.

21 They did request a continuance and even if there is
22 conflicting information or not so clear information about
23 what went on, I think the ANC should commit to a time to hear
24 this application when the members of the community could
25 provide their input.

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1 And so I would not support moving forward today
2 without having the presentation before the full ANC.

3 CHAIRPERSON HILL: Okay, so that's one vote. And
4 the only reason -- well, I shouldn't say the only reason --
5 one of the main reasons I'm trying to figure this out is so
6 that people don't have to come back again.

7 So, Mr. Hart?

8 VICE CHAIRPERSON HART: I understand that and I
9 think it's going to be -- I would also want to have this
10 delayed to whatever date we choose or a date that's available
11 that's after the ANC Meeting.

12 Because we did not approve the party status request
13 and the ANC has not provided us -- and this case has not been
14 before the ANC, I would think that we would need to have the
15 ANC Meeting and understand what those concerns are because
16 I think some of those concerns will come out in the ANC
17 Meeting.

18 And since we have not had that I think it's going
19 to be very difficult to -- we're going to have to have this
20 at another Meeting anyway and it just seems like it would
21 make sense to postpone this so that we could get that
22 information from the ANC.

23 The ANC could have an opportunity to be able to
24 talk to Boots on the Ground group and then be able to present
25 whatever case they had. Because the request is out there,

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1 I think we need to do that right. I understand that people
2 for here but the request was out there already, so it was out
3 there before they came here.

4 So it just seems as though we should wait, whatever
5 that timeframe is, and I don't know, Ms. Williams, if you
6 have a particular date that this could get -- because it has
7 to go through the planning meeting and then go to the full
8 ANC.

9 MS. WILLIAMS: Yes.

10 VICE CHAIRPERSON HART: So I don't know what those
11 dates are for the Applicant, so that they can get in -- and
12 I don't know when your Meetings are in April but if they
13 could do that in April then we could hear this in the
14 beginning part of May.

15 MS. WILLIAMS: Well, they can still have a Single
16 Member District with me, Single Member District Meeting with
17 me, but as far as an overall 5C Board Meeting, I would have
18 to discuss that with the rest because we all have to present
19 other cases.

20 So, I could get back to them, like I told them when
21 they came to 5C Board Meeting, we will get back to them to
22 let them know they could still be on SMD agenda for my Single
23 Member District.

24 But as far as the Board 5C, they will have to wait
25 and see and we all have to show who's going to be on the

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1 agenda as a whole.

2 VICE CHAIRPERSON HART: Is there a way to be able
3 to ask because they had already tried to get on the agenda
4 previously?

5 MS. WILLIAMS: Yes, and I have communicated that to
6 them. So as far as them saying I haven't, I have.

7 VICE CHAIRPERSON HART: I'm not getting to that,
8 I'm actually getting for you to talk to the Board to have
9 them understand that, one, we're waiting for that and that
10 while we would be able to grant -- I mean, I'd be in support
11 of granting a delay now.

12 I'm not in support of granting a delay until you
13 guys decide that you want to do that. I think that there's
14 got to be some kind of end time to that, and so the next time
15 that we would see this it would be once the ANC have already
16 heard that.

17 So, I would encourage you to have the conversations
18 that you need to have with the rest of the ANC to encourage
19 them to actually have the case on the agenda.

20 CHAIRPERSON HILL: Commissioner, when is your next
21 Meeting?

22 MS. WILLIAMS: Our next Meeting should be April
23 20th.

24 MS. MOLDENHAUER: It's April 11th I believe, based
25 on their public agenda. It's every Wednesday, the third

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1 Wednesday of every month, so it would be April 17th, sorry.
2 The full ANC would be April 17th.

3 And they don't have any public notification of when
4 they have a general SMD Meeting.

5 VICE CHAIRPERSON HART: Okay, so I actually asked
6 that of the ANC Member so if you could provide that, what's
7 the date?

8 CHAIRPERSON HILL: Sir, you can come forward and
9 just introduce yourself and then we can figure out -- we're
10 just trying to find a date to get people back on here.

11 And you can see where this is going but I'm just
12 trying to get us through this because people are here and it
13 doesn't look like they're going to get to be heard today.
14 What's your name, sir?

15 MR. MONTAGUE: Jeremiah Montague Jr. I'm
16 Commissioner for ANC 5C07.

17 CHAIRPERSON HILL: Okay, so you're another
18 Commissioner for this ANC?

19 MR. MONTAGUE: Yes.

20 CHAIRPERSON HILL: Okay, great so we've got two of
21 you.

22 MS. MOLDENHAUER: There's three actually here.

23 CHAIRPERSON HILL: Okay, so can you guys get them
24 on the agenda for -- when's your next Meeting?

25 MR. MONTAGUE: Our next Meeting is April 17th.

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1 CHAIRPERSON HILL: Can you get them on the agenda
2 for April 17th?

3 MR. MONTAGUE: It is a possibility --

4 CHAIRPERSON HILL: That seems doable. I've got to
5 tell you, we're doing a lot of stuff here.

6 MR. MONTAGUE: No, we'll do it in the community to
7 hold -- we'll put it on there.

8 CHAIRPERSON HILL: Okay, so April 17th these people
9 will be heard? Okay, all right. So, then that being the
10 case, I think that we're going to go ahead. I do agree with
11 what Ms. John said and I was just trying to do this so that
12 we could take public testimony now.

13 But I think that it is better if the ANC has an
14 opportunity to work with their community as well as the
15 organization that was here representing, looking to have
16 party status so they could have an opportunity to kind of
17 hear the testimony from the Applicant.

18 You're going to now be on the agenda for the 17th
19 of April and then we'll try to get you back here. I can see
20 that, and I don't need to get into the details of it, but
21 some communication started back in January it looks like to
22 try to kind of get forward on this.

23 So, we'll at least get you on the agenda so we're
24 not going to postpone this anymore is all I'm trying to tell
25 you. We're going to go ahead and do this. So, you can go

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1 ahead -- so that means that if we're on the 17th and Mr.
2 Miller, when are you back again?

3 COMMISSIONER MILLER: May 1st.

4 CHAIRPERSON HILL: So Mr. Moy, can we get back here
5 on May 1st?

6 MR. MOY: Yes, sir. May 1st would be good.

7 MR. THERESA: May I ask -- I'm sorry.

8 CHAIRPERSON HILL: That's okay, hold on one second.
9 Mr. Moy, could you turn off your microphone? The feedback
10 is real people, I just want to let you know. Okay, Mr.
11 Theresa?

12 MR. THERESA: May I ask that we get calendared
13 first? We have several disabled people in our group and
14 elderly people. It's very uncomfortable for them to sit in
15 this room for hours at a time and we'd like some reasonable
16 accommodations.

17 CHAIRPERSON HILL: I appreciate the request. I
18 just have to let you know a lot of people ask for a lot of
19 different things but definitely, we'll try to do that. And
20 to be quite honest, you all bumped up all the way to the top
21 of the line right now.

22 You were at the end of the day. Because Mr. Moy
23 said this was going to be an easy little thing and then
24 everyone was going to go to lunch, and so I'm going to have
25 a conversation with Mr. Moy after this.

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1 So Mr. Moy, if we get back here -- hold on one
2 second, Ms. Moldenhauer -- if we get back here -- okay, Ms.
3 Moldenhauer, you had something you wanted to say?

4 MS. MOLDENHAUER: I was just wanting to make sure
5 the Board was aware that there are about four members who
6 attended the community meeting who are here that were wishing
7 to speak.

8 I know that you obviously know that there are
9 members in the community that are present but I just wanted
10 to make sure the Board was aware of that. That way, they
11 don't have to come back at a later Meeting.

12 CHAIRPERSON HILL: You can go ahead and put their
13 testimony into the record I suppose if you like. I don't see
14 how we can hear their testimony, like I don't know how I can
15 do that in terms of -- you'd have to give your presentation.

16 I forget the reason why they wouldn't -- how can we
17 hear the testimony? We can't hear the testimony. So they'd
18 have to come back or you can go ahead and put it in the
19 record or they have to come back.

20 But it's on the record now that you had four people
21 here that aren't going to be heard in support.

22 MS. MOLDENHAUER: Or that will hopefully have to
23 come back. I just wanted to make sure the Board was aware
24 of that.

25 CHAIRPERSON HILL: Sure, well, apparently, you're

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1 going to go first now so at least we'll try to do that for
2 you, even for those four people. So Mr. Moy, you are going
3 to tell me when people can give stuff and we're going to come
4 back here by the 1st?

5 MR. MOY: I didn't hear any additional supplemental
6 information the Board has for us. That passed over me. So
7 I would just move forward to reschedule this to May 1st.

8 Was there something else the Board --

9 CHAIRPERSON HILL: We want to hear from the ANC.

10 MR. MOY: Oh, the ANC.

11 CHAIRPERSON HILL: So the ANC's doing their Meeting
12 on the 17th.

13 MR. MOY: Well, if the ANC's going to have their
14 Meeting on the 17th, if you could submit your letter of
15 resolution into the record by that Friday, which would be
16 April 19th?

17 CHAIRPERSON HILL: Okay, thank you all for coming
18 down. We'll see you on May 1st. You all can get organized
19 and we'll see you on May 1st.

20 This is such an interesting day I'm having today.
21 I'm just letting you know I'm trying to work through this as
22 best I can and the ANC people have just asked to go first.

23 We start at 9:30 a.m., we have decisions, and as
24 best I can say, after the decisions we'll hear you guys --
25 I don't think anybody's advocated for that first slot but

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1 we'll try to get you on that first slot.

2 COMMISSIONER MILLER: The appeal actually did. So
3 just let the people know on the appeal that they're not going
4 to go first if we're going to bump this.

5 CHAIRPERSON HILL: Oh, the appeal went first,
6 right.

7 (Simultaneous Speaking.)

8 Thank you. So just to let the audience know,
9 please pay attention, there is an appeal that already is
10 going before this. So we'll put you on after.

11 Appeals take a long time but as soon as we can get
12 through the appeal, that's the best I can do because we've
13 already told them that they can have the first slot. And
14 we'll just see if I can switch that around, I'll do my best
15 but that's what I think we're going to do at this point.

16 You all are welcome. So Ms. Moldenhauer?

17 MS. MOLDENHAUER: Oh, I just want to make sure I
18 understand. So, just to kind of repeat so I know --

19 CHAIRPERSON HILL: Where did the ANC Commissioner
20 go? Did I lose her? Okay, ma'am, can you please sit down
21 still?

22 MS. MOLDENHAUER: So, I'm just trying to confirm
23 that I understand.

24 CHAIRPERSON HILL: Commissioner Williams, thank
25 you, sit down.

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1 MS. MOLDENHAUER: The record is open for the ANC to
2 file until April 19th but the record is open in general. The
3 record is not closed for anything else and there's no other
4 supplemental documentation that is being requested by the
5 Board at this time?

6 CHAIRPERSON HILL: Yes.

7 MS. MOLDENHAUER: Okay, thank you.

8 CHAIRPERSON HILL: Okay, great. Then we'll see you
9 guys on May 1st. Thank you. We're going to take lunch.

10 (Whereupon, the above-entitled matter went off the
11 record at 1:26 p.m. and resumed at 2:29 p.m.)

12 CHAIRPERSON HILL: All right, Mr. Moy, whenever you
13 like.

14 MR. MOY: Thank you, Mr. Chairman. The time is at
15 or about 2:29 p.m. The Board is back in recess from its
16 luncheon recess. If we can have parties to the table to Case
17 Application No. 19933 of Sarah Beth and Josh Kuyers as
18 amended for special exception under Subtitle E, Section 5201
19 from the rear yard requirement, Subtitle E, Section 506.1 and
20 pursuant to Subtitle X, Chapter 10 for area variances from
21 the lot occupancy requirements, Subtitle E, Section 504.1,
22 and from a nonconforming structure requirements, Subtitle C,
23 Section 202.2, to construct a one story rear addition to an
24 existing attached principal dwelling unit, RF-3 Zone. This
25 is at 156 Duddington Place, SE, Square 736, Lot 68.

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1 CHAIRMAN HILL: Okay, great. Thank you. Good
2 afternoon. Can you please introduce yourselves for the
3 record?

4 MS. KUYERS: Yes. I'm Sarah Beth Kuyers, the owner
5 of 156 Duddington.

6 MR. KUYERS: And my name is Joshua Kuyers, also
7 owner of 156 Duddington Place.

8 CHAIRMAN HILL: Okay, great. Thank you. Okay, so
9 who is going to be presenting to us? Okay, Ms. Kuyers.

10 So if you could go ahead and tell us a little bit
11 about what you're trying to do and how you believe you meet
12 the standard of relief for us to grant the application.

13 I'm going to put 15 minutes on the clock, Mr. Moy,
14 if you wouldn't mind, and the clock is there at the ceiling
15 as you probably heard by now a couple of times and you can
16 begin whenever you like.

17 MS. KUYERS: Thank you. So yes, so we currently
18 live at 156 Duddington. It's our primary residence. We've
19 lived there for the past two years. And so it is a two-story
20 row house in Capitol Hill. It was built in the late 1890s,
21 early 1900s, and it's about 1298 square feet. So it is on
22 the smaller side, so we utilize pretty much every inch of the
23 space. And we're hoping, we love our neighborhood. We love
24 our street. We're really hoping to stay there as long as
25 possible and hopefully raise our family there. And so we are

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1 just trying to expand our kitchen to make it more functional
2 and make overall our house more functional for us to stay
3 there in the long term. And to do that, we are proposing to
4 do a small addition in the rear of our house just enclosing
5 our existing dog leg on the first floor only, or the first
6 story only.

7 So our dog leg and the proposed addition would be
8 about 4 feet wide and 15 feet deep, so the whole thing is
9 just about 58 square feet. And like I said, it is just a
10 one-story addition. We tried to think of a design that makes
11 as little, minimal impact as possible on our neighbors and
12 the characteristics of our neighborhood and so we are keeping
13 it at one story and it will be -- our house is currently
14 built at grade and it's actually a little bit lower than the
15 rear alley, so it will be barely visible over the existing
16 fence that currently separates our property from the alley.

17 And so we're here today because our house since it
18 is very old, it is already nonconforming with the lot
19 occupancy requirements and the rear yard requirements in the
20 zoning regulations. And specifically, our house already
21 occupies 72.9 percent of our property because our property
22 is very small. It's only about 14 feet wide and 60 feet
23 deep, giving us a total square footage of 891 square feet.
24 So that's why we are already over 70 percent. And with our
25 proposed addition, we would be increasing that lot occupancy

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1 to 79.5 percent.

2 In addition to that, currently, our rear yard is
3 only 12.4 feet and I believe the zoning regulations require
4 20 feet technically. And so why we are not modifying, we
5 would not be decreasing the size of our rear yard at all, we
6 are extending that line. So we are utilizing the same, the
7 current rear line of our house for the addition, so the
8 addition itself would also not comply technically with the
9 rear yard requirements in the zoning regulations.

10 So for these reasons, we are asking for a variance
11 from the lot occupancy requirements since we are and would
12 be over 70 percent, as well as a variance from the regulation
13 regarding expansion of existing nonconformities for the
14 reasons that I just set forth. And then a special exception
15 for the rear yard requirements.

16 And so for the variance, in particular -- or before
17 I start on that, we did present to our ANC and we received
18 unanimous support from them. We also received a
19 recommendation for approval from the Office of Planning and
20 so with that for our variance, in particular, I will start
21 with that, we feel that we meet the burden of proof.
22 Specifically, our property is, as I mentioned before,
23 exceptionally small in which creates a lot of problems when
24 trying to apply certain zoning regulations.

25 The zoning regulations technically require lots to

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1 be 1800 square feet and ours is less than half of that. If
2 we had an 1800 square foot lot, our house, as it currently
3 stands would only take up 36 percent of it. And so our house
4 is not big. We don't want a huge house. We're not trying
5 to do a huge addition. Again, we're just adding -- would
6 want to add on 58 square feet and that alone is, you know,
7 is causing a lot of problems when the zoning regulations are
8 strictly applied.

9 Our neighbors also, just for example, the neighbor
10 directly across the alley from us, so directly north of us,
11 their lot is about 1300 square feet and a house of our size
12 on a lot that size would occupy less than 50 percent. And
13 with our addition, it would only increase their lot occupancy
14 to 54 percent. So it would still be well within what the
15 zoning regulations require. So our property, in particular,
16 due to its shallowness and narrowness just makes it
17 incredibly difficult to apply certain zoning regulations,
18 particularly the lot occupancy.

19 Second, our proposed addition would not cause any
20 substantial detriment to the public good. We talked about
21 this, of course, at our ANC meeting, its impact on the
22 neighbors and they felt, they agreed with us, that they felt
23 there was no substantial detriment to the public at large or
24 to our immediate neighbors, but just quickly, we are not
25 going to impose it all into the alley. This is purely just

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1 a rear addition, so there's no issues with the front street,
2 so there would be no impact on traffic. We'll continue to
3 use the house as a single family home, so there won't be any
4 increase in noise or other disturbances and then the project
5 as a single story will not negatively impact on any of our
6 immediate neighbors or any others in the area.

7 And then finally, our proposed addition would not
8 substantially impair and is harmonious with the intent and
9 purposes of the zoning regulations. We will continue to use
10 the home as a single-family home and you know, it doesn't
11 impair any health or safety or other concerns of the area.

12 And then finally, regarding we're also applying for
13 a special exception from the rear yard requirements. We
14 understand that the Office of Planning has said that that
15 might not be required. We were concerned that since our
16 house -- well, first of all, since they're requiring us to
17 get a variance from the lot occupancy requirements, our house
18 doesn't already comply, won't comply with the proposed
19 addition.

20 We thought similarly here we were just nervous that
21 our house currently doesn't comply with the rear yard
22 requirements. Our addition won't comply. And so we were
23 just concerned that it would be rejected later or it could
24 cause problems later if we didn't get a special exception
25 from the rear yard requirements. But of course, we defer to

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1 the Office of Planning if they want to provide more
2 information. But regarding the special exception burden of
3 proof, you know, as I mentioned before, the addition does not
4 negatively affect our neighbors. It won't cause any traffic
5 problems, block light, create noise, impair privacy.

6 Our properties are currently separated by a fence
7 and we will just be putting in a windowless wall basically
8 where the fence is, so we will not be looking into the
9 neighbor's property. We will -- it will not cause any more
10 issues on their enjoyment of their property than currently
11 is. And then again, as I said before, it is harmonious with
12 the purpose and intent of the zoning regulations.

13 CHAIRMAN HILL: Okay, great. Thank you. Does the
14 Board have any questions for the applicant?

15 VICE CHAIRPERSON HART: Yes, I do. I appreciate
16 your stepping through this. This has been very helpful. And
17 I understand that you were noting that the property that is
18 to the north has a larger -- is a larger scale, larger area
19 than your property. And you were saying because you have
20 such a small lot size that that would make it an exceptional
21 condition for you all. But the question I have was around
22 the rest of the buildings along Duddington Place because
23 they're kind of actually on either side, they look to be very
24 similar in size and so I didn't know if you were also looking
25 at how this is different than those other lots as well and

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1 if you could speak to that.

2 MS. KUYERS: Yes. The other lots on Duddington are
3 similarly sized to ours. I think the whole -- like
4 Duddington Place itself was developed what we've heard, it
5 was developed all by the same developer around the same time,
6 so our houses are rather similar. But immediately adjacent
7 to like even on 2nd -- the house immediate north of us, that
8 would be E Street, like the houses just east of us, I guess,
9 on 2nd Street, even they are larger than ours. They are
10 closer to I think like 1,000 or 1,100 feet, square feet,
11 which also would have less problems, you know, if they had
12 a similarly sized house and were proposing something similar
13 to us. But yes, the houses on Duddington are all -- the
14 properties are all similarly sized.

15 VICE CHAIRPERSON HART: Okay. Thank you. If you
16 could also speak a little bit about the Capitol Hill
17 Restoration Society because I think you all went to them.

18 MS. KUYERS: Yes, we did.

19 VICE CHAIRPERSON HART: And so if you just talk a
20 little bit about that process and how that -- some of the
21 limitations on building could affect your -- what you would
22 be able to do on your site.

23 MS. KUYERS: Yes, so we did present to the Capitol
24 Hill Restoration Society. They -- all that we heard, they
25 did not express anything to us during the meeting. I'm not

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1 sure if you've ever been to the meetings, but they actually
2 don't publicly deliberate like you all do here. So we did
3 not have the benefit of hearing their opinion on it.
4 Afterward, they just sent us an email saying that they voted
5 to take no position on it and that they weren't going to send
6 you a letter either way. That's all we heard and that's all
7 I think we have the right to hear.

8 So we have been in talks with the Historic
9 Preservation Office here, and they have advised us that we
10 do not require a concept review by the Board. I don't know
11 if that's relevant here, but that they are -- will be issuing
12 -- would be issuing a staff level decision regarding the
13 historic preservation concerns with the property.

14 VICE CHAIRPERSON HART: Did they raise any issues
15 with the height, with possibly going up as opposed to going
16 back?

17 MS. KUYERS: No. Honestly, they haven't. I think
18 that we gave them photos showing how the way that our
19 property is set up. It is hard because -- so our rear line
20 fence is about 7 foot 10. We recently re-measured it, but our
21 house is actually much lower, so when you view it from the
22 alley, even though the addition itself would technically be
23 a couple feet higher than that because our house is set down
24 lower, you really -- like, of course, you might be able to
25 see the top of it -- like just the very top of it, but I

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1 don't think -- it wouldn't be obvious at all from the alley.
2 I think only if you were kind of like peering over the fence,
3 that you might be able to see it.

4 VICE CHAIRPERSON HART: Thank you very much.

5 CHAIRMAN HILL: Okay, does anyone else have any
6 questions for the applicant?

7 COMMISSIONER MILLER: Yes, just quickly. Thank you
8 for your presentation. It was very comprehensive. This
9 seems to be a very modest addition and I think you do meet
10 the criteria for the variance. Did you have any conversation
11 regarding the special exception, we'll hear from OP as to why
12 they don't think it's needed, but did you have any
13 conversation with the Zoning Administrator whose office, I
14 guess, will be signing off on some permit, as to whether they
15 thought it would be necessary, a special exception or you
16 didn't have any conversation with them?

17 MS. KUYERS: We did not, sorry.

18 COMMISSIONER MILLER: I'll ask OP if they had any
19 conversations with Zoning Administrator when we get to Mr.
20 Cochran. Okay. Thank you.

21 CHAIRMAN HILL: Okay, great.

22 VICE CHAIRPERSON HART: One last piece. I think
23 this is the one with the Architect of the Capitol, they
24 actually submitted something as well?

25 MS. KUYERS: Yes.

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1 VICE CHAIRPERSON HART: Could you just talk about
2 that?

3 MS. KUYERS: Yes, I think -- so since we are in the
4 R-3 Zone and very close to the Capitol itself, that they
5 received notice of this case and wrote a report saying that
6 they had no concerns regarding safety or other issues of our
7 proposed addition.

8 VICE CHAIRPERSON HART: Thank you.

9 CHAIRMAN HILL: Ms. Kuyers, are you an attorney?

10 MS. KUYERS: I am.

11 CHAIRMAN HILL: Okay. Turning to the Office of
12 Planning.

13 MR. COCHRAN: Thank you, Mr. Chair, and if we had
14 an opening, we might be willing to hire Ms. Kuyers after that
15 presentation.

16 The applicant has supplied the information that we
17 asked them to, so that just sort of reaffirmed that we're
18 recommending that you approve this.

19 With respect to the special exception, yes, I did
20 talk to the Office of the Zoning Administrator. Didn't talk
21 to the ZA himself, but someone highly placed and I was
22 assured that there's no need for a special exception. It's
23 not expanding an existing nonconformity or -- there's just
24 no need.

25 But just as it might be a little odd and

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1 unnecessary to wear belts and suspenders, there's no harm in
2 it. I don't know whether you want to set a precedent of
3 giving relief that doesn't seem to be necessary, but if you
4 give that relief, I don't think it's going to hurt one way
5 or another.

6 CHAIRMAN HILL: So the Office of Planning would be
7 in support of that relief as well?

8 MR. COCHRAN: We would be agnostic on that because
9 we don't think it's needed.

10 CHAIRMAN HILL: Okay. Okay. Good word. Anybody
11 have any questions for the Office of Planning?

12 VICE CHAIRPERSON HART: If you could, Mr. Cochran,
13 the question I had for the applicant around the variance
14 issue, and the reason I brought it up was really because I
15 wanted to make sure that while I understood that the street
16 to the north they had larger and street to the east and west
17 they had larger, but actually along Duddington Place, there
18 are literally -- these are all kind of marching in the same
19 size. And when we get to the variance test, it becomes so
20 would all of these get variances?

21 How does the Office of Planning see that?

22 MR. COCHRAN: We look at the regulation which says
23 unique or exceptional. And you actually can modify the word
24 exceptional. It can be the only exception.

25 These houses along the southern part of the alley

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1 of the north side of Duddington Place would probably all be
2 considered exceptional within the context of the current
3 zoning regulations. They're not unique. Each one of them
4 is not unique because there's several others like that. But
5 they are exceptional.

6 VICE CHAIRPERSON HART: I appreciate that. That's
7 actually -- and I did not have -- it wasn't that I had a
8 particular issue with a particular -- this project. It was
9 more understanding how Office of Planning and the applicant
10 saw what was happening along Duddington Place and maybe this
11 really needs new zoning for this particular portion of the
12 street because they are -- they would all kind of require
13 some variance relief to be able to do any sort of
14 construction on top of it, you know, any expansion of the
15 buildings themselves. It seems as though there would be some
16 issue trying to build higher, so they would really have the
17 only option of going back. And so if they only had that
18 option, then that may cause some issues since most of them
19 seem like they are going to be above the zoning lot
20 requirements.

21 MR. COCHRAN: Well, if they went up, if the
22 applicant's house went up, it would require more relief
23 because then it would be expanding in existing nonconformity
24 upward.

25 VICE CHAIRPERSON HART: Thank you.

1 CHAIRMAN HILL: Anyone else? Does the applicant
2 have any questions for the Office of Planning?

3 MS. KUYERS: No, thank you.

4 CHAIRMAN HILL: Okay. Is there anyone here who
5 wishes to speak in support?

6 Is there anyone here who wishes to speak in
7 opposition?

8 Okay. Do you have anything you'd like to add at
9 the end?

10 MS. KUYERS: No.

11 CHAIRMAN HILL: Okay. I'm going to go ahead and
12 close the hearing. Is the Board ready to deliberate?

13 Okay, I actually since this is a self-certified
14 application and we don't have to -- I'm comfortable, I'm fine
15 with the special exception leaving it the way it is with the
16 rear yard.

17 I do think that I would agree with the Office of
18 Planning in terms of their analysis concerning the variance
19 and I would agree with their analysis. I also can see that
20 the -- I'm glad to see that we have the support of the ANC
21 and the Architect of the Capitol. DDOT also is in support
22 with that, any conditions. And so I'm going to be voting in
23 favor. I agree, as I said, with the analysis of the Office
24 of Planning.

25 Does anyone have anything they'd like to add?

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1 VICE CHAIRPERSON HART: Just that, Mr. Chairman, I
2 mean I would agree with you as well. I do not feel that this
3 was or find that this was a large development by any means.
4 This is modest. And my questions were really around getting
5 a little clarity about the variance aspect of it. And I
6 think Mr. Cochran provided some information, as well as Ms.
7 Kuyers, regarding how they could meet the variance test, the
8 prongs.

9 I would be in support of the application as well.
10 I understand that they do have a very small lot that is less
11 than 900 square feet which is actually less than half of what
12 the regulations would require which is 1800 square feet. And
13 because of that, that makes it -- any building on to that
14 would then become a variance because it would take them above
15 that 60 percent and then 70 percent I think for special
16 exception, that realm.

17 I would be in support of it. I just wanted to get
18 a little clarity around some of the other aspects of it and
19 I think I got those. That's it.

20 MEMBER WHITE: Mr. Chair, I would support the
21 application as well. It was a full record and to quote some
22 of the language in Mr. Cochran's report, these are
23 exceptionally small lots and that the practical difficulty
24 here that the applicants face here is renovating a kitchen
25 in order to meet contemporary expectations. I like the way

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1 you put that Mr. Cochran.

2 So I think they've met the variance test and I
3 would be in support.

4 CHAIRMAN HILL: Okay. All right, now I'm going to
5 go ahead and make a motion to approve Application No. 19933
6 as captioned and ready by the Secretary and ask for a second.

7 VICE CHAIRPERSON HART: Second.

8 CHAIRMAN HILL: Motion made and seconded. All
9 those in favor say aye.

10 (Chorus of ayes.)

11 CHAIRMAN HILL: All those opposed?

12 (No response.)

13 CHAIRMAN HILL: Motion passes. Mr. Moy?

14 MR. MOY: Staff would record the vote as 5-0-0.
15 This is on the motion of Chairman Hill to approve the
16 application for the relief requested. Seconding the motion,
17 Vice Chair Hart. Also in support of motion Ms. John. Ms.
18 White, and Mr. Robert Miller. Motion carries, sir.

19 CHAIRMAN HILL: Okay, thank you, Mr. Moy. Thank
20 you very much.

21 (Pause.)

22 MR. MOY: All right, if we can have parties to the
23 table to Case Application No. 19958 of NP 47 LLP. This is
24 a caption advertised for special exception under Subtitle E,
25 Section 206.2 and 5203.3 from the rooftop architectural

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1 elements provisions of Subtitle E, Section 206.1, and
2 pursuant to Subtitle X, Chapter 10, for area variances from
3 the lot occupancy requirements of Subtitle E, Section 304 and
4 nonconforming structure requirements of Subtitle C, Section
5 202, and a use variance under Subtitle U Section 301 to
6 reduce the number of existing residential units, reestablish
7 the commercial use of the first floor, and remove an existing
8 rear deck in an existing mixed-use building in the RF-01
9 Zone at 2021 4th Street, NW, Square 3082, Lot 26.

10 CHAIRMAN HILL: Okay, great. Thank you, Mr. Moy.
11 Could you please introduce yourselves for the record?

12 MR. SULLIVAN: Good afternoon, Mr. Chairman, and
13 members of the Board. My name is Marty Sullivan with
14 Sullivan and Barros on behalf of the applicant.

15 MS. WILSON: Alex Wilson from Sullivan and Barros
16 on behalf of the applicant.

17 MS. NELSON: Jane Nelson with Nelson Architects.

18 MS. PHILIPS: Amy Philips with RSD Capital, an
19 affiliate of the owner.

20 CHAIRMAN HILL: Okay, great. Mr. Sullivan, are you
21 presenting?

22 MR. SULLIVAN: Yes.

23 CHAIRMAN HILL: So first there's the waiver of the
24 21-day filing requirement. Could you explain why you're
25 late?

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1 MR. SULLIVAN: Yes. We were working with the
2 Office of Planning and trying to accommodate their comments
3 to us and so that delayed our filing.

4 CHAIRMAN HILL: Okay. So the pre-hearing statement
5 was accepted into the record and it was 7 days short of the
6 21 day. I mean I didn't think it was going to prejudice any
7 party because it was still filed two weeks before the
8 hearing, so I would be in favor of approving the waiver.

9 Does anyone else have an issue with that? So
10 seeing no opposition to that, we'll go ahead and waive that
11 filing requirement, Mr. Moy.

12 After that, Mr. Sullivan, I suppose if you could go
13 ahead and walk us through your presentation as to what --

14 MS. LOVICK: Excuse me, I just wanted to point out
15 there's also a second waiver request for the posting
16 requirements at Exhibit 38. So if you could just address
17 that as well, please?

18 CHAIRMAN HILL: Thank you, no, I didn't see that.
19 Mr. Sullivan, could you speak to that issue, please, as well?

20 MR. SULLIVAN: Yes, I could. My apologies for
21 that. That is just administrative error. That was just a
22 mistake. But we have met with the LeDroit Park Civic
23 Association and at that meeting there were many very nearby
24 neighbors, so we don't think that anybody was prejudiced by
25 having the notice be a little bit late.

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1 CHAIRMAN HILL: Okay, what is a little bit late?

2 MR. SULLIVAN: It was two days.

3 CHAIRMAN HILL: Okay. All right, does the Board
4 have any issue with waiving that requirement?

5 MEMBER WHITE: I don't have any issue with it, Mr.
6 Chair, it doesn't seem to prejudice the rights of any party.
7 It doesn't appear to be prohibited by law.

8 CHAIRMAN HILL: Okay. All right, then we'll go
9 ahead and waive that as well. So then that being all of the
10 waivers, Mr. Sullivan, if you can go ahead and tell us again
11 about what your client is trying to do and then how they're
12 meeting -- Mr. Sullivan, you've been here so many times I
13 feel like I'm repeating myself over and over again -- how
14 you're meeting the standard for which we can approve or deny
15 this application.

16 And I guess you do know that the Office of Planning
17 is not in full support of your application in terms of their
18 analysis and so you can go ahead and speak to that issue as
19 well. I'm going to put 15 minutes on the clock just so I
20 know where we are and you can begin whenever you like.

21 MR. SULLIVAN: Thank you, Mr. Chairman and members
22 of the Board. We're asking for four areas of relief relating
23 to lot occupancy, nonconforming structure which is related
24 to the lot occupancy --

25 CHAIRMAN HILL: I'm sorry, the Vice Chair has just

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1 asked me a question. Has everybody been sworn in? Okay,
2 thank you. Sorry, Mr. Sullivan.

3 MR. SULLIVAN: Thank you. Asking for relief --
4 area variance relief for lot occupancy, in addition to that
5 nonconforming structure relief which is related to the lot
6 occupancy, a use variance for the use of the first floor and
7 the extension of that use into an existing space that was not
8 previously commercial use, and then special exception relief
9 for alteration of a rooftop architectural element. And I
10 would like to dive right in and hand it over to Ms. Amy
11 Philips who is with the owner of the property to start the
12 presentation and then move on to the architect.

13 MS. PHILIPS: Good afternoon. We are really
14 excited to bring this site back to life. The last
15 Certificate of Occupancy was issued in the 1990s for ground
16 floor retail and it began as a grocery store and ended as a
17 beauty supply store. It's been empty for many, many years.
18 No Certificates of Occupancy exist for the prior residential
19 uses and our proposal is to maintain a residential use in the
20 second and third floors, with two units total. We'll be
21 increasing the overall residential square footage and then
22 reestablish the ground floor as a small neighborhood serving
23 cafe. The cafe is intended to serve as a third space and a
24 gathering space adjacent to the park at LeDroit.

25 There are a few corner stores within a several

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1 block radius, but no real place to stop for coffee or linger
2 over a meal beyond the options in the larger perimeter roads
3 of Georgia, Florida, and Rhode Island Avenues.

4 The site in particular is special to us as it is located
5 in an opportunity zone. As part of our opportunities on
6 fund, we are making a long-term investment with a plan to own
7 this property for at least ten years and we're looking
8 forward to being part of the community. We are also
9 committed to planting perennials in the park this fall.

10 The design created by Nelson Architects reflects
11 our vision for the property and what it can become for the
12 neighborhood including visually, enlivening the stretch of
13 4th Street where our neighbor across the street is a full
14 block parking garage for Howard.

15 The design marries the old with the new with some
16 subtle separation, provides for a break in plane to create
17 texture and shadow along 4th Street which is in direct
18 contrast to the flat facade of the existing structure and
19 footprint. This design gives a jewel box visibility to the
20 cafe space and brings the building to the street wall line
21 of the other building and fence on the north of the block.

22 The ground floor footprint allows just enough space
23 for a small kitchen, code required restrooms, and a small
24 seating area. It will be less than 1,000 square feet.

25 Our team has met with the LeDroit Park Foundation,

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1 twice with the LeDroit Park Civic Association, twice with the
2 ANC Zoning Preservation and Development Committee, and I'm
3 pleased to report that both LeDroit Park Civic Association
4 and the ANC have voted to support the project as seen in the
5 application.

6 I'm going to turn it over now to Jane Nelson to
7 describe the project in detail.

8 MS. NELSON: The site is located at the corner of
9 4th Street and Oakdale Place. One block to the west is
10 Howard University Hospital and Medical College and then two
11 blocks to the north is the Howard University main campus.
12 Directly across 4th Street is as Amy said, an above grade
13 parking garage that serves Howard University. There are
14 single family row houses to the north and to the south and
15 Oakdale Place dives into the park at LeDroit.

16 The site plan on the left is the existing
17 conditions. On the north side of the block is a row house
18 that fronts on V Street with its side elevation on the west
19 property line. The curb cut that you see here is actually
20 serving parking for that row house. To the east of our
21 property is a multi-family condominium building.

22 On our site, the building was constructed in two
23 phases. The south half was constructed in about 1850 and
24 then in 1940, there was an addition constructed. Both of
25 those facades are set back from the west property line by

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1 three feet and there are a series of existing steps that --
2 exterior steps that are in that three-foot projection or
3 setback.

4 At the rear of the building is an existing deck at
5 the second floor. And below that is a screened patio.

6 The site plan on the right is our proposed. We are
7 proposing to remove that deck that abuts the property line
8 to the adjacent residential building. We would remove the
9 exterior steps and we would bring the ground floor store
10 front and a portion of the second and third floor to the west
11 property line and therefore aligning with the row house on
12 the north end of the block.

13 So this is the existing building. The three-story
14 portion is the part that was built in 1850 and the two story
15 is the 1940's addition. You can see here by the steps that
16 there are four entrances, none of them are at street level.
17 The corner entrance is for the commercial space. This
18 entrance opens directly to a staircase that then serves the
19 upper dwelling unit two floors. This entrance serves the
20 second story dwelling unit. And this entrance serves the
21 first floor dwelling unit.

22 And on the side facade, you can see that there are
23 no openings. One existing opening has since been filled in.

24 Additional views, this is on the upper left. We're
25 looking north. These are the projecting steps with the row

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1 house on V Street at the corner of the block. The lower left
2 this is looking south. This is a side of the row house. You
3 can see that that in their rear yard is on the property line
4 and our building is set back to three feet.

5 In the lower right is the adjacent condominium
6 building and here you can see a picture of the deck that is
7 proposed to be removed.

8 A couple more pictures of the existing condition of
9 the row house. Again, this is a better view of that, the
10 deck and the screen porch and its proximity. So our property
11 line is right here, right at the edge of that deck.

12 The upper left is a picture of the parking garage
13 across the street. And the lower three images are at the
14 intersection of 4th and Oakdale, what you see as you rotate
15 around the corner.

16 These plans are of the existing conditions. So on
17 the first floor here you can see this is the 1850's building.
18 And the 1940's addition was really just tacked on to that
19 building. So the existing bearing wall still exists. So
20 currently on the first and second floor there is no internal
21 connection between the two structures.

22 You can see on the first floor the corner entrance
23 to the very small commercial space. It's about 530 usable
24 square feet. And then the two non-code compliant stairs,
25 they're very narrow, and in the 1940's addition the

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1 residential unit, these are really tiny spaces. They're
2 about 320 square feet, usable square feet. You can see
3 that's the kitchen right there.

4 Here you can see the existing deck that extends to
5 the property line that is adjacent to the residential
6 building.

7 The image on the left is our proposed design. The
8 image on the right is our inspiration. This is Slim's Diner.
9 Some of you might recognize it. It's on Georgia Avenue. If
10 you look on the upper portion of it, it could possibly be a
11 twin to our building, our 1850's building. So this design
12 motif for commercial on the ground floor and residential
13 above is a very common one that you see in D.C. You have the
14 storefront that wraps the corner. It projects from the
15 masonry building above and visually, it's separated by a
16 strong horizontal band. And on our design, we are proposing
17 that same motif, also this corner entrance and as well as our
18 corner entrance.

19 We're proposing to add a third story over the
20 second -- the two story 1940's building and a new facade at
21 the second floor. Both floors would be flush to the three
22 foot projected storefront below. The metal of the storefront
23 is carried to the upper floor addition. The slight
24 projection provides a nice transition from the historic brick
25 facade to the new metal facade and provides -- the projection

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1 provides a natural sort of stopping point for the decorative
2 cornice of the existing building.

3 The tall narrow portion of the windows of the
4 historic facade are reinterpreted on the new facade by
5 subdividing the larger windows into tall, narrow sections.
6 We will restore the brick facades and decorative corners of
7 the original 1850's building.

8 The existing ground floor, as I mentioned, has four
9 different levels, none of which are at the same level as the
10 sidewalk.

11 As part of the renovation, we propose to lower all
12 four floor levels to align with the adjacent sidewalk.
13 Lowering this first floor structure means that we also have
14 to lower the existing basement slab so that we can provide
15 a space with adequate ceiling height to be used by the
16 commercial space for storage. These are expensive
17 undertakings, but we feel it's important to make the
18 commercial space accessible not only from the sidewalk, but
19 also to provide one accessible level at the interior.

20 Here are the existing floor plans. We have removed
21 that interior bearing wall so we can provide not only a
22 contiguous space at the ground floor commercial space, but
23 also it allows for a much more efficient dwelling unit.

24 The three residential entrances have been
25 consolidated to one entrance on Oakdale Place and the two

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1 sets of non-code compliance stairs have been replaced with
2 one new staircase. By shifting the residential entrance to
3 the quieter Oakdale Place, it allows us to have a useable
4 commercial space that fronts the busy 4th Street.

5 We have removed the two existing -- I mean we have
6 removed the existing second floor deck and screened patio and
7 reestablished the 1850's rear yard.

8 As mentioned earlier, the first floor slab will be
9 lowered so that the entire first floor will be ADA compliant
10 and all of these modifications allow us to get rid of those
11 existing steps on 4th Street which are not only unsightly,
12 but they're also a tripping hazard on the sidewalk.

13 The new first floor extends to the property line
14 and incorporates the same recessed entrance at the corner.
15 This slight projection does a couple of things for us, both
16 at the ground floor and at the upper two floors. One, it
17 creates a natural point where the historic facade can die
18 into the transition at the new facade. And it gives us added
19 area for the -- to provide the three-bedroom units at the
20 second and third floor.

21 And here are two-dimensional drawings of the
22 proposed design. On Oakdale Place, you can see the
23 storefront wraps the corner just by the one bay and then
24 having the new entrance, residential entrance, separated from
25 the commercial storefront.

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1 So we are requesting variance relief for lot
2 occupancy. The drawings on the top row are of the proposed
3 floor plans and structure and the drawings on the lower row
4 are the existing conditions.

5 The existing building is a nonconforming structure
6 as it exceeds the 60 percent allowable lot occupancy on the
7 first and second floors. We are proposing to redistribute
8 the lot occupancy from the rear yard by removing this deck
9 and locating, as I said redistributing that lot occupancy to
10 the 4th Street by a small 3-foot projection on the first
11 floor and the 3-foot projection at the 1940's building.

12 This redistribution actually reduces the lot
13 occupancy on the first floor from 78 percent to 76 percent
14 and on the second floor it reduces it from 78 percent to 72
15 percent. The addition of the third floor provides a lot
16 occupancy of 72 percent, the same as on the second.

17 It is worth noting that if our lot had the minimum
18 lot area of 1800 square feet, our lot is only 1750 square
19 feet, that we could have a 70 percent lot occupancy at the
20 second and third floors. The first floor, with our current
21 design would still be at 73 percent lot occupancy.

22 Overall, the degree of variance relief we've
23 requested is relatively minor when considering that the
24 additional building footprint is in the front of the building
25 adjacent to the public right of way, rather than at the rear

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1 or sides of the building adjacent to other residential
2 properties. We feel that shifting that lot occupancy away
3 from the adjacent residential building to the busy 4th Street
4 is an improvement to privacy, light, and air of the existing
5 conditions.

6 We are also requesting use variance relief to
7 reestablish and expand the commercial space. The first floor
8 and cellar have been used as a retail grocery store since
9 1960, but the space has been vacant for more than three
10 years, and therefore, we are required to request variance
11 relief to reestablish the commercial use.

12 As Amy said, the owners would like to have a small
13 restaurant in the space. This site is a particularly good
14 location for this use due to its proximity to Howard
15 University campus and hospital and to the adjacent single-
16 family homes and apartment buildings.

17 The existing building was non-conforming for use
18 since it had the three dwelling units and ground floor
19 retail. We are proposing to reduce the dwelling units from
20 three to two and therefore are not causing substantial
21 detriment to the public good. The renovation is making both
22 residential and commercial spaces more efficient by
23 consolidating the three residential entrances and two non-
24 code-compliant stairs to one new entrance and one stair, the
25 overall efficiency of the building has benefitted. The

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1 residential floors go from 82 percent efficient to 89 percent
2 and the first floor commercial goes from 84 percent to 88
3 percent.

4 Consolidating the two stairs to a single stair and
5 locating it on the south facade provides not only a code-
6 compliant stair for the upper two floors, but it also
7 provides an open space at the ground floor to maximize the
8 commercial space's presence on 4th Street and still provide
9 a back of house space at the rear of the building.

10 These changes do expand the existing commercial
11 space, but we have not reduced the amount of residential
12 space. The existing building has 2,580 gross square feet of
13 residential and the proposed has 2,693 gross square feet.
14 The commercial space goes from 680 gross square feet to 1,321
15 gross square feet.

16 Now some of that additional square footage is by
17 the fact that we are removing that dividing wall between the
18 two structures and making the building just more efficient.

19 Shifting to residential from 4th Street first floor
20 to the second and third floors is locating the residential
21 to a more desirable location. 4th Street has a lot of
22 vehicular traffic. The existing residential units in the
23 1940's building are very small and they're only about 320
24 usable square feet and they are in poor condition.

25 The third area of relief that we are looking for is

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1 regarding the architectural element and is a special
2 exception. The new zoning regulations have a provision that
3 is intended to prevent the loss of significant architectural
4 features as a result of a rooftop addition such as turrets
5 that have a distinct profile against the sky. We are
6 proposing to remove the existing sheet metal coping of the
7 1940's addition and that's this right here. You can see its
8 condition here.

9 This existing coping is in poor condition and it is
10 really not much more than part of the roof flashing system.
11 We will restore the cornice of the 1850's building and our
12 new storefront design incorporates the corner entrance that
13 exists today.

14 So as Amy said, we have presented the project to
15 the ANC Zoning Committee twice and there was actually
16 different members at each, each time we presented. We
17 presented the project to the LeDroit Park Civic Association
18 twice and then to the full ANC and we have received full
19 support from all these groups.

20 And that concludes my presentation. I did not
21 include all of the sheets in the package, but they're at the
22 back of this, so if you have any questions, I can bring them
23 up to answer the questions.

24 MR. SULLIVAN: Mr. Chairman, we submitted a second
25 PowerPoint to go over the legal part of it following up on

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1 the design part of if we could?

2 CHAIRMAN HILL: Yes, yes. That would be helpful.
3 Where is it? Exhibit 40?

4 MR. SULLIVAN: It should be that exhibit.

5 CHAIRMAN HILL: I'll just pull up Exhibit 40.

6 VICE CHAIRPERSON HART: Could I have a couple of
7 questions for -- before we go --

8 CHAIRMAN HILL: Sure, go ahead.

9 VICE CHAIRPERSON HART: You weren't going to
10 present it. You were just waiting?

11 CHAIRMAN HILL: Yes, he was going to present it.

12 VICE CHAIRPERSON HART: That's fine. One of them
13 is with regard to -- you are, I guess this is -- I'm not sure
14 who this is for, so one of them has to do with you're
15 removing one of the units because you just can't fit it into
16 the design, it's just not enough space to do it? Because you
17 go from three to two units.

18 MS. NELSON: That's correct. The zone currently is
19 for two dwelling units. So right now, the three is
20 nonconforming. And as I mentioned, the two of those three
21 units are really tiny. They're in the 1940's and they're
22 like 320 usable square feet.

23 VICE CHAIRPERSON HART: Kind of a micro size.

24 MS. NELSON: Yes, so what we are providing is three
25 bedroom units, two three-bedroom units which is a very

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1 desirable unit, not only in this neighborhood but really all
2 across the city.

3 VICE CHAIRPERSON HART: Okay. Thank you. And you
4 also said that you were reducing -- you are lowering the
5 first floor?

6 MS. NELSON: Yes.

7 VICE CHAIRPERSON HART: Did I hear that correctly?

8 MS. NELSON: Right. So the first floor actually
9 has four different levels.

10 VICE CHAIRPERSON HART: Okay.

11 MS. NELSON: And the commercial space is also one
12 step above sidewalk, so just even from that commercial, the
13 existing space we would want to lower that, so it is ADA
14 compliant from the sidewalk. But in order to provide that
15 contiguous commercial space on that first floor, we would
16 have to lower all of those floor levels because otherwise the
17 first floor space would not be ADA compliant.

18 VICE CHAIRPERSON HART: And the first floor, the
19 retail space, the existing retail space you said was 500 --

20 MS. NELSON: Five hundred thirty usable square
21 feet, inside the walls, what you could like paint to paint.

22 VICE CHAIRPERSON HART: And that includes
23 everything like storage space and all that other stuff? I
24 thought it was larger. That's why I was --

25 MS. NELSON: Not usable. Let me go to the plans.

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1 So as you can see, so these are very thick walls.

2 VICE CHAIRPERSON HART: Yes.

3 MS. NELSON: So it's really just what -- and then
4 also there's that staircase that existing staircase right
5 here that brings you up to the second floor.

6 VICE CHAIRPERSON HART: Yes, and that second floor
7 is one -- it's only one unit?

8 MS. NELSON: That's correct. In the 1840's
9 building.

10 VICE CHAIRPERSON HART: Yes.

11 MS. NELSON: So basically, the square footage
12 inside that wall and on the outside of that staircase --
13 oops, I'm on the wrong floor, sorry.

14 Yes, so that really only opens up to -- from a
15 zoning standpoint it's larger because you go to the exterior
16 walls, but from a usable standpoint of what they would lease,
17 it's like 530 square feet.

18 VICE CHAIRPERSON HART: And you're also saying that
19 that's kind of -- and I'm assuming that Mr. Sullivan will get
20 to that as part of the hardship issue, but because it is so
21 small, do you have an idea of what typically the size of
22 retail spaces are in this area?

23 MS. NELSON: I would say even 1,000 square feet is
24 still rather small.

25 VICE CHAIRPERSON HART: Okay.

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1 MS. NELSON: And that's why -- which actually for
2 this site as Amy mentioned, the type of restaurant that they
3 want to bring in that would serve the community there really
4 is a small sort of neighborhood restaurant coffee type of
5 space.

6 VICE CHAIRPERSON HART: And you are -- in the
7 renovation, in the proposed drawings there was the removal
8 of the load-bearing wall that's where, between the two
9 buildings? Or at least a portion of that. So are you
10 gutting the building? I mean you're taking out the first
11 floor. There was some issues about just different floor
12 levels and it just seemed like that was the -- I'm not sure
13 if I actually saw those words, but it seems as though that's
14 where the direction that it was going in.

15 You're going to have to have to take out all of the
16 kind of the existing insides to be able to then create the
17 floors where you want to have them. And the reason I'm
18 asking is that you're doing a lot of intervention for the
19 building as it is.

20 The Office of Planning has raised some issues about
21 well, kind of the variance. But also kind of how are you
22 dealing with the -- if you're doing this much work, is it
23 that much more work to go to getting down to the actual lot
24 area, lot occupancy?

25 MS. NELSON: Well, it's partly because of that

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1 amount --- it's part of that that extensive work. In order
2 to restore the existing 1850's building which not only I
3 like, but my client likes that building. There is a lot of
4 work and it is expensive. To make that ground floor ADA
5 accessible, and then so that bearing wall, the floor joists
6 are spanning from left to right.

7 VICE CHAIRPERSON HART: They're perpendicular here.

8 MS. NELSON: Yes, that's correct. So there's a
9 couple of ways of doing that. One is you put a big transfer
10 beam at that level, but while we are on that second floor,
11 the floors are basically sloping.

12 VICE CHAIRPERSON HART: I read something about that
13 as well.

14 MS. NELSON: Yes, so we are assuming that it is
15 better and from our field measurements, the two buildings
16 don't connect, so I don't know exactly if the second floor
17 of the 1940's, is at the same level as the 1850's. So
18 chances are, once you get rid of that wall, you would have
19 floors that would go across.

20 And it's important to get rid of that interior wall
21 because as I said that dwelling unit on the 1940's addition
22 is 320 square feet. There's barely a kitchen. That's the
23 bathroom and the bedroom. So again, we just feel that there
24 has been a lot of requests, every project we work on, for
25 three-bedroom units. So we really felt that this was an

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1 opportunity to provide that unit mix.

2 VICE CHAIRPERSON HART: And you're also saying that
3 because of the extensive work that you're having to do now
4 doing even more to get it down to below or at the lot
5 occupancy is just cost prohibitive?

6 MS. NELSON: That three-foot projection on the --
7 let me to go -- this three-foot projection on the second --
8 it's right here. It's just 3 feet by 14 feet. That
9 projection, you can see sort of the bedroom side. That
10 really does make it -- it allows us to provide that three-
11 bedroom unit. But financially, and I don't do the numbers,
12 that added square feet really does help pay for all of those
13 expensive items that we were doing that we feel are improving
14 that corner property.

15 MS. PHILIPS: I'd also like to emphasize again,
16 this is a nonconforming lot. It's 1,750 square feet as
17 opposed to the 1,800. It is an oddly-shaped lot and we are
18 actually overall reducing the lot occupancy that exists
19 today.

20 Your question about -- as Jane mentioned, that
21 additional rentable square footage is very helpful in
22 offsetting those costs, to gut the building, to move the
23 stairs and to do all that structural work.

24 VICE CHAIRPERSON HART: Okay. Thank you.

25 MEMBER WHITE: Maybe I should wait for the Office

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1 of Planning to weigh in, but where was the disconnect with
2 the Office of Planning not being on board with signing off
3 on the variance? What could you have modified in order to
4 get their buy in on the proposed project that you're doing?

5 It looks great, but I understand that there are
6 criteria and parameters that they are going to want to see
7 and I wondered whether or not there were any modifications
8 that you were discussing to try to get them on board with
9 this.

10 MR. SULLIVAN: I think it wasn't so much a question
11 of modifications. They're happy with the project itself.
12 It was one of those discussions about we don't think you've
13 given us enough, enough meat on the bone of the variance
14 argument. In some ways maybe it's not the most overwhelming
15 variance argument, but there's a lot going on.

16 It is a small lot. I'll note in the OP report he
17 said the lot is regularly shaped which it's regular not for
18 the RF-1 Zone and it's larger an area than many of the record
19 lots on the surrounding squares. But it's the next to the
20 smallest lot on this particular square. So in this square
21 the lots are 2,800, 5,000, 8,700, and 1,893. If we were just
22 the size of the 1,893, we would do what we wanted to do with
23 the design that they wanted to do without a problem with lot
24 occupancy.

25 So I think from our standpoint, I think there's a

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1 lot going on with this lot as far as exceptional conditions.
2 It is a smaller lot for this square. We're dealing with an
3 existing footprint that we want to keep. Now you could argue
4 it's not in a Historic District so you don't have to keep it,
5 you don't have to raise it, but it's across the street from
6 a Historic District, so there is a desire and a need, I think
7 from looking at the potential success of a project or a
8 success of an endeavor. Design is critical to the success
9 of endeavor. It's not a meaningless factor in attracting a
10 commercial tenant or attracting residents and of course,
11 pleasing the neighborhood, and particularly, when you're
12 across the street from a Historic District. And to do the
13 design that Ms. Nelson thought was the right design to meet
14 that objective, it required the three feet coming out.

15 Another factor that plays into that, too, if we
16 were on the property line instead of three feet back, we
17 could do it as a bay and it wouldn't count against the lot
18 occupancy. So in a sense, the practical difficulty then
19 becomes if that's the right design and that's the way to do
20 the building and that's the way the building should be done,
21 we can do that. The practical difficulty becomes then
22 removing two percent or six percent of the building in the
23 back and then you're tearing down some of the back and that
24 becomes a practical difficulty, too.

25 But overall, all these things, they work together,

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1 these various factors and they make restoration of an
2 existing building quite complex and more difficult than it
3 otherwise would be, if it was a vacant lot or if it was just
4 a slightly larger lot. And that's the heart of our argument.
5 I have a PowerPoint that's kind of wordy and you have it in
6 front of you and I don't want to switch it out because you
7 may have questions about it. I like that picture better than
8 my words that I would submit.

9 So that's the gist of it and I don't know where we
10 fell short.

11 CHAIRMAN HILL: That's fine, Mr. Sullivan. Did you
12 come onto this project a little late or were you here from
13 the beginning?

14 MR. SULLIVAN: I was here from the beginning.

15 CHAIRMAN HILL: Okay, so do you want to walk us
16 through your slide deck a little bit. I just want to hear
17 the argument, go ahead and persuade us with the area variance
18 argument. You can flip us through your slide deck if you
19 want to.

20 MR. SULLIVAN: So I won't bother putting it in in
21 case you have questions that relate to this PowerPoint. Is
22 that okay? Do you have it in front of you or do want me to
23 put it up on the screen?

24 CHAIRMAN HILL: I'd put it up on the screen and
25 walk us through it.

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1 MR. SULLIVAN: Okay. So all these points are
2 things that Ms. Nelson brought up as part of her
3 presentation, but I'll go over them and summarize them.

4 Some of the unique conditions, exceptional
5 conditions of this property, the building was constructed in
6 two phases. The building has consisted of three residential
7 units in the past, along with the commercial space. So it's
8 an existing mixed-use building or it historically was built
9 as and operated as a mixed-use building which I think is
10 important.

11 It was not built to the front property line which
12 the other house on the street which Ms. Nelson stated on 4th
13 Street is on the property line. This building is three feet
14 back from the property line.

15 We're working with an existing lot occupancy of 78
16 percent, so we're actually reducing the lot occupancy. And
17 we're transferring it essentially from a deck that goes to
18 the property line to the east on Oakdale Place up against the
19 property that has a condominium building.

20 The lot itself is a substandard site for this zone.
21 Yes, the lots across the street are quite small. They're
22 smaller than that. But on this particular square which
23 really represents sort of a transition into the Howard
24 University portion, there's a Howard University parking
25 garage across the street, these lots are much larger and

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1 compared to those lots, this lot is quite small.

2 Some of the other unique conditions is the wide
3 party wall which is, of course -- the center party wall is
4 being removed. You heard about some of the issues with the
5 existing structure, floors, moving of the floors, the ADA
6 issue, and the floors even on the second floor not being in
7 great shape and the building itself not being in great shape.

8 Also, I brought up the fact that yes, it's non-
9 historic and we might talk about that if Historic
10 Preservation was requiring something specific like the three-
11 foot protrusion in the front as part of the design. But it
12 is across the street from a Historic District.

13 I want to note that, of course, the practical
14 difficulty test is not whether or not it's impossible to
15 comply with the zoning regulations and it's not whether or
16 not there are some reasonable alternatives or possible
17 alternatives. There's possible alternatives. You could do
18 a different design. You could scale the building back, lose
19 a bedroom or cut the building back to the back to get within
20 the 70 percent that the Office of Planning would support.
21 But we think that it's not just a question of whether design
22 is a practical difficulty or not. It's the impact of that
23 design and the desire, the need to do a design in order to
24 attract the mixed use, the commercial use in particular to
25 an area that hasn't been able to support it and a building

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1 that hasn't been able to support it for more than ten years
2 as far as we know. So it's a building that has resisted
3 restoration for many years.

4 So the practical difficulties listed on the
5 PowerPoint, I've already talked about a lot of these. We're
6 going to -- we are reducing the footprint, of course. The
7 main point I want to bring up is the difficulty in the
8 overall construction and the additional square footage does
9 help. That's one thing. But the design is another thing and
10 both of those things make it a better project. And it's
11 critical when you have a building and a property that it's
12 not clear whether or not it will be successful, the design
13 and the quality of the project is important in that success.
14 And that requires us to either have the lot occupancy, have
15 the design come out front, and ask for the relief or to
16 remove a portion of the back of the building.

17 The last thing I'd like to talk about is the degree
18 of variance relief requested. Of course, the question is for
19 a practical difficulty is would strict compliance with the
20 zoning regulations be unnecessarily burdensome? And the
21 Court of Appeals has stated that the degree of relief
22 requested can be a factor in considering practical
23 difficulty. And I believe this ties into the word
24 unnecessarily. If something is unnecessarily burdensome,
25 meaning it's burdensome, but it doesn't have to be, and it's

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1 not burdensome to the community.

2 The degree of relief is yes, six percent as far as
3 numbers. But as far as what the community sees, that lot
4 occupancy is essentially, if you give us the design in the
5 front, its building in back that nobody sees and has been
6 there already and the existing lot occupancy is actually
7 being reduced.

8 So in this case, I think the degree of relief -- it
9 amounts to a three-foot section in the front which is yes,
10 provided primarily to make the design hopefully that ensures
11 the financial success of what in the end is a rather small,
12 but complicated in-fill project. So that's all I have. Do
13 you have any questions?

14 CHAIRMAN HILL: A couple, just real quick. The ANC,
15 they had a condition concerning the commercial use, hours of
16 operation be limited to 7 a.m. to 10 p.m. Were you guys in
17 agreement to that?

18 MS. PHILIPS: Yes.

19 CHAIRMAN HILL: Okay. Does the Board have some
20 more questions for the applicant?

21 VICE CHAIRPERSON HART: Just so that I have it
22 clear and I think this was Ms. Nelson, you provided this
23 information. How much residential space did you have before
24 and how much will you have after? I want to say it was like
25 2,094 square feet before, but I couldn't remember what the

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1 after was. Because it's going up, but how much is it going
2 up?

3 MS. NELSON: The existing building has 2,580 gross
4 square feet residential and we're going to 2,693 gross square
5 feet.

6 VICE CHAIRPERSON HART: Thank you. I think that's
7 it. Thank you.

8 CHAIRMAN HILL: Just to follow along those
9 questions and maybe you've answered this. The ground floor
10 square footage that is there now, what do you have?

11 MS. NELSON: Five hundred thirty useable.

12 CHAIRMAN HILL: Five thirty usable. And then what
13 would it be after you're done if we were to approve this?

14 MS. NELSON: Are you asking for the overall
15 building footprint?

16 CHAIRMAN HILL: No, just the ground floor.

17 MS. NELSON: The ground floor gross square feet is
18 --

19 CHAIRMAN HILL: Currently, currently.

20 MS. NELSON: Currently, about 1,230.

21 CHAIRMAN HILL: And then if this were approved?

22 MS. NELSON: It would be 1,335.

23 CHAIRMAN HILL: Okay, and Mr. Sullivan, you
24 mentioned a number 1,893 at one point. What was that number
25 again?

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1 MR. SULLIVAN: That was just the second smallest
2 lot or the second largest lot. I mentioned the lot sizes for
3 four other lots in the square. There's only six lots in the
4 square, 1,893 was one of the sizes of the lots. That was the
5 smallest of the four bigger lots.

6 CHAIRMAN HILL: Okay. Okay. Thank you. Can we
7 turn to the Office of Planning?

8 MR. KIRSCHENBAUM: Good afternoon, Chair Hill and
9 members of the Board. Jonathan Kirschenbaum for the Office
10 of Planning.

11 So we are supportive of this project in concept and
12 we do commend the applicant for proposing a very nice design
13 which makes these projects sometimes more difficult when we
14 have strict criteria to evaluate.

15 We recommend approval for a use variance to the
16 existing -- sorry, to use the entire existing first floor of
17 the building as a restaurant and we recommend approval for
18 a special exception to remove the existing rooftop cornice
19 or coping from the northern portion of the existing 1940's
20 building.

21 We recommend denial of the lot occupancy variance
22 and related variance for enlarging an existing nonconforming
23 building. The applicant states that the variance relief is
24 necessary because of the need to have three-bedroom
25 apartments and an aesthetically pleasing facade and a larger

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1 commercial space beyond what the use variance would permit.
2 The arguments for this variance do not present an exceptional
3 situation and would not result in a practical difficulty.

4 In this case, OP does not consider the need to
5 provide large apartments by shifting the front wall forward
6 to be a practical difficulty or the existing built condition
7 and configuration of the building to be a practical
8 difficulty that would require lot occupancy variance.

9 Further, if the Board were to approve the use
10 variance for the restaurant on the first floor which we do
11 support, it would double the size of the commercial floor
12 area that has ever historically ever existed at the subject
13 premises. Please let me know if you have any further
14 questions.

15 CHAIRMAN HILL: How would it double that size? Can
16 you explain that?

17 MR. KIRSCHENBAUM: Sure. So historically, that
18 commercial space was 680 square feet. The use variance is
19 to provide a restaurant use on the entire first floor of the
20 building. That would be removing the first floor apartment
21 in the 1940's portion of the building. So by the very
22 granting of the use variance, it would double the square
23 footage of the commercial space. On top of that, the lot
24 occupancy variance would then further increase the overall
25 footprint of the building providing even more space for the

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1 commercial use.

2 CHAIRMAN HILL: Okay. Does the Board have any
3 questions for the Office of Planning?

4 VICE CHAIRPERSON HART: Yes, in that regarding the
5 lot occupancy issue or just their nonconformance to it, so
6 are you arguing that you think that they need to provide more
7 information or that they need -- your suggestion would be
8 that they would reduce the size of what is that they're
9 proposing. So if they didn't do the three feet, that would
10 help them towards -- three, I think it is? 4th Street, that
11 if they didn't do that three feet that would help them. So
12 if they just built out kind of what it is where the existing
13 building lines are, footprint is, that that would help?

14 MR. KIRSCHENBAUM: Right. So I don't think we need
15 any additional information from the applicant. We're happy
16 to evaluate anything else the Board may want to review. The
17 existing footprint of the building minus that rear deck is
18 at 70 percent lot occupancy.

19 So we would feel more comfortable if the third
20 floor addition on the 1940's portion of the building which
21 doesn't exist right now -- right now, the third floor of the
22 building is at 42 percent lot occupancy. So there could be
23 a special exception, go to 70 percent for that third floor
24 addition and we would feel more comfortable with that since
25 that is another sort of area of relief that they can get that

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1 would not be a variance.

2 VICE CHAIRPERSON HART: I think that's helpful to
3 understand that and you've heard the applicant talk about
4 this. I'm assuming that they've had the same conversation
5 with you earlier, so this isn't like it was new information
6 today.

7 MR. KIRSCHENBAUM: It is not new information, no.

8 VICE CHAIRPERSON HART: Thank you.

9 MEMBER WHITE: So if they went to 70 percent lot
10 occupancy and requested a special exception instead, how does
11 that change the project visually?

12 MR. KIRSCHENBAUM: I am not an architect, so I
13 don't want to speak to that.

14 MEMBER WHITE: Okay. I'm just curious, but okay.
15 Thank you.

16 MEMBER JOHN: So in light of what OP said, if you
17 were to reduce the size of that third floor addition towards
18 the back, hear me out, with a balcony, could you get to 70
19 percent?

20 MS. NELSON: I don't understand the question.

21 MR. SULLIVAN: I'll ask her so it's on the record.
22 If we were to do a 70 percent on the top floor would there
23 be a practical difficulty in doing that on top of the
24 footprint below it to get an extra 2 percent of that top
25 floor?

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1 MS. NELSON: Only the top floor? If we got rid of
2 the three foot -- right now that three-foot projection is on
3 the first and then partial second and third.

4 MEMBER JOHN: Right, but what I think I understand
5 you to say is that the front projection is really what
6 distinguishes the building and lines it up with the other
7 townhouse or something on the other side. And personally,
8 I think it's a very attractive design. But I'm also
9 listening to what OP is saying and even if I think it's a
10 waste of space personally, could you get to the 70 percent
11 by reducing the size of the third floor addition at the rear?
12 Would that get you to 70 percent?

13 MS. PHILIPS: No, because we're having to do the
14 test on every floor including the ground floor. So we'd have
15 to lose basically all of that projection.

16 MEMBER JOHN: You'd have to do what? I'm not
17 getting that.

18 MS. NELSON: So if we kept the three-foot
19 projection at the front --

20 MEMBER JOHN: Yes.

21 MS. NELSON: What would we have to do, carve away
22 to get rid of -- to go down to 70 percent?

23 MEMBER JOHN: Yes. You have to meet the very high
24 variance standard. And when the Office of Planning is not
25 in agreement, then the Board has to find a reason to override

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1 that. That's where we are.

2 And you know, I'm listening to what your attorney
3 has said and I'm trying to get there. So I wanted to see if
4 there was another way that would not do violence to what your
5 plan is. So you would have one very nice size three bedroom
6 apartment and another one that might just have a den at the
7 back and a patio or something.

8 MS. NELSON: So the lot occupancy is actually
9 measured at all three levels, so number one, the rear deck,
10 basically what we're doing -- the existing lot occupancy at
11 that second and first floor is 78 percent and what we are
12 doing is getting rid of it where it abuts the adjacent
13 residential building. So if we get rid of that rear deck and
14 the screen patio at the back of the building and then we're
15 moving it and not even one for one, we're actually less.
16 We're 76 percent at the first floor and only 72 at the second
17 and third floor. We're just moving that lot occupancy to the
18 4th Street, the existing lot occupancy.

19 And so in order to keep the projection for the
20 second and third floor and the first floor, we would have to
21 remove a lot -- not only that deck, but we'd have to remove
22 a lot of the building, existing building at the back, at the
23 rear.

24 MR. SULLIVAN: If I can ask the Board for a minute
25 to confer with my client because I understand the question.

1 CHAIRMAN HILL: Go ahead, Mr. Sullivan. I'm going
2 to stand.

3 (Pause.)

4 CHAIRMAN HILL: All right, Mr. Sullivan, did you
5 confer with your client?

6 MR. SULLIVAN: We did, but I don't know if we got
7 it straight or not.

8 CHAIRMAN HILL: Okay.

9 MR. SULLIVAN: I wanted to clarify, I guess that
10 what I thought the suggestion was from the Office of Planning
11 was they would be more comfortable with 70 percent on the top
12 floor and then possibly be okay with relief on the first and
13 second floor.

14 Okay, so then I was wrong. They were right. And
15 I think the answer is then -- you know how to respond to
16 that.

17 MS. PHILIPS: So this property is an opportunity to
18 own, as we mentioned before, which we're very excited about
19 and bringing an investment to the site. But we also have a
20 time clock that's ticking. We think we've designed a great
21 project. We have community support from the ANC, from the
22 community association. No one asked twice about the
23 projection of the lot occupancy at any of those community
24 meetings, to be honest.

25 But we have to finish putting our investment into

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1 this project within the next 20 to 24 months, so going back
2 and redoing the design wouldn't necessarily help at this
3 point. We would probably just go back and take off the front
4 because we don't want to spend the time to re-engineer the
5 back again. We don't have the option.

6 CHAIRMAN HILL: Okay. Short answer. Go ahead.

7 MEMBER WHITE: Explain what you mean by opportunity
8 zone. I know what it means, but are these affordable units
9 or -- I know they're designated areas in various cities that
10 need investment.

11 MS. PHILIPS: Exactly. They're designated by the
12 local governments for investment that has tax benefits for
13 capital gains from investors coming out of the other
14 investments, typically real estate. And it goes into a
15 neighborhood that has been designated as a census tract for
16 targeted investment and that is one of these projects. And
17 so we have a distinct time line for that to put in our
18 investment.

19 MEMBER WHITE: So are they affordable or no?

20 MS. PHILIPS: They are market rate.

21 MEMBER WHITE: They are market rate. Okay.

22 MS. PHILIPS: There's no affordable requirement
23 with the opportunity zone. It's not targeted that way.

24 MEMBER WHITE: Right. I understand. Just curious.

25 Thank you.

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1 VICE CHAIRPERSON HART: And just to kind of get off
2 the area variance for a minute and just to kind of double
3 back with the use variance, Mr. Sullivan, if you could just
4 talk about the use variance a bit that requests -- I
5 understand that you're looking at having the use go from
6 whatever 600 square feet to the entire first floor, but if
7 you could talk why the residential use is not viable for
8 this?

9 Anyone. I said you, but anyone could answer.

10 MS. PHILIPS: So we're looking at the best way to
11 make this a commercial use on the ground floor, as well as
12 keeping the residential that is existing. And we're actually
13 expanding the residential use.

14 To make the ground floor viable, we need to extend
15 it to make a cafe use. In order to incorporate a kitchen,
16 code compliant bathrooms, storage, receiving areas and even
17 just a small seating area, once you take away the exterior
18 walls, you're talking probably about a thousand square feet
19 of commercial space which is small, very small for any kind
20 of restaurant or cafe.

21 I'll be honest, I didn't want to cite this, but our
22 example to the community has always been Big Bear and that's
23 basically the size that we're talking about and to be any
24 smaller than that I don't think we could make it work.

25 CHAIRMAN HILL: Ms. Philips, just to let you know,

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1 I think we like the project. We think it looks good. We
2 think it looks lovely. That's not, unfortunately, what we
3 get to necessarily decide upon and so that's why -- so don't
4 get me wrong on -- if you want to throw back up the front --
5 Mr. Miller had a question first or no?

6 COMMISSIONER MILLER: Yes, thank you, Mr. Chairman.
7 I just wanted to comment. I hadn't commented yet.

8 CHAIRMAN HILL: Sure.

9 COMMISSIONER MILLER: I wanted to thank the
10 applicant for the presentation and a very well designed and
11 attractive project which my colleagues and others in the
12 Office of Planning even mentioned. But I -- and I know we're
13 not in deliberations yet, but I think that the existing
14 conditions, the historical configuration, I think you've made
15 a persuasive case that there are a confluence of factors that
16 create an exceptional or unique condition which requires --
17 which enables the variance both on the use side and on the
18 area side.

19 And the variance is, as you said, is overall being
20 the lot occupancy variance is being diminished overall. So
21 I just think that all of the -- many of the arguments that
22 were made in your Exhibit 40 and that you verbally noted as
23 well, Mr. Sullivan, I think do leave me to be persuaded that
24 there are a confluence of factors that create a uniqueness
25 to this property that justifies -- that leads to practical

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1 difficulties to do something different that doesn't really
2 make a lot of sense. This project makes a lot of sense and
3 I think we should try to support it.

4 CHAIRMAN HILL: Your all's day just got better.

5 (Laughter.)

6 I don't know whether you are there yet or not, but
7 your all's day just got better.

8 Let's see. Okay, so any questions for the
9 applicant? No.

10 Is there anyone here who wishes to speak in
11 support? Please come forward.

12 We'll swear you in over here.

13 Mr. Moy, could you please swear in the witness and
14 if there's anybody else here who plans on testifying and
15 hasn't been sworn in, please stand up.

16 (Witness sworn.)

17 CHAIRMAN HILL: Please sit down, sir, and give us
18 your name?

19 MR. NELSON: Good afternoon, Chair, and members.
20 My name is Patrick Nelson. I've been here before and made
21 testimony. I am the current chair of the ANC 1B Zoning
22 Preservation and Development Committee.

23 I wanted to come --

24 CHAIRMAN HILL: Commissioner, can I just interrupt
25 you first of all? First of all, I'm sorry you had to be here

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1 all day like that. Were you here at the very beginning of
2 the day?

3 MR. NELSON: No. Actually, I came in midday.

4 CHAIRMAN HILL: Okay. Good, good. All right, so
5 as you know, you're a party to the application.

6 MR. NELSON: Right.

7 CHAIRMAN HILL: So I didn't mean to interrupt other
8 than to just say welcome. And go ahead and begin whenever
9 you like.

10 MR. NELSON: So I wanted to come today in person
11 and make a brief statement which will be very brief and ask
12 that you support this project as proposed.

13 I will respect OP and its comments and its report
14 which I have reviewed, but say that I do not agree with the
15 denial. The committee took time to review this project at
16 two separate meetings to make sure that there was input from
17 both the SMD Commissioner, her community members, as well as
18 different community members or committee members. So I had
19 different committee members at each meeting to weigh in on
20 this. And that was because of the amount of discussion that
21 we were getting from the LeDroit Park Civic Association and
22 I wanted to make sure that they had a clear input so that
23 there was no argument as to not having their voice well
24 heard.

25 The building as it is now is over the lot occupancy

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1 and is a nonconforming structure. And there was discussion
2 about the rationale of the plan at the committee and how that
3 affects the lot occupancy. The committee supported the
4 higher percentage of lot occupancy based on the plan and
5 along with the fact that it was a small decrease. The plan
6 to reduce the number of residential units to two and make
7 them three-bedroom units was of great importance to us. We
8 see more projects wanting to do more smaller efficiency, one-
9 and two-bedroom units and far less three-bedroom units which
10 are a real need for us.

11 Support of the larger retail on the ground floor
12 level was also important to the community as it wants to see
13 a community cafe/eatery with indoor seating rather than a
14 small corner store. They also requested stipulated hours
15 which was put in the ANC report that I submitted for the
16 retail which the applicant agreed to do.

17 The committee also is really pleased with the
18 design of the front bay on the ground floor level and the
19 fact that the new addition is an accent and an architectural
20 element in and of itself defining it from the older section
21 of the building.

22 I just personally also want to add that this
23 building -- on my committee, I have a lot of architects and
24 this is one of the few buildings that in the time that I've
25 been the chair of this committee that they were all in unison

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1 of, that they respected this design and thought it was
2 phenomenal which hardly ever happens on my committee. I
3 always have at least one of the architects that picks it
4 apart from one end to the other. And one of the committee
5 members who is an architect and usually is my worst advocate,
6 literally sent me an email after the meeting to say this one
7 has to go through the way it is. I really, really like it.

8 So I just figured I'd come down and specifically
9 point that out to you guys since you only got a report that
10 the ANC sent in.

11 CHAIRMAN HILL: Okay. Well, Commissioner, thank
12 you so much. Obviously, as you know, when we're trying to
13 analyze the different cases and I know you've been down here
14 before that particularly if we're going to be talking about
15 things that the Office of Planning sees things one way and
16 the community might see things the other way, it's always a
17 benefit for you to come down here. So thank you for coming
18 down. The applicant is very fortunate that you stayed.

19 So does anybody have any questions for the
20 Commissioner? Okay.

21 Does the applicant have any questions for the
22 Commissioner?

23 MR. SULLIVAN: No, Thank you.

24 CHAIRMAN HILL: Okay, thanks, Commissioner. Okay,
25 I did support.

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1 Anybody here in opposition? Okay.

2 Mr. Sullivan, do you have anything you'd like to
3 add at the end?

4 MR. SULLIVAN: No, I don't think so. I think you've
5 heard it all. If you have any other questions, if I sum up
6 I would probably restate the whole thing all over again, so
7 I'll leave it at that.

8 CHAIRPERSON HILL: Okay, great. Mr. Miller thanked
9 everybody for their presentations. I don't normally do that.
10 I should try and do that. That's very kind of you.

11 So let's see. I'm ready to close the hearing. Is
12 the Board ready to deliberate? Would someone like to start?

13 VICE CHAIRPERSON HART: As he looks at me. He's
14 staring at me there. If I can do this without coughing I'd
15 be happy.

16 So, I had a number of questions that I asked, and
17 I appreciate the Applicant for giving the responses that they
18 did and having, it helped me understand some of the
19 difficulties that they were kind of dealing with. And I
20 understand that while the Office of Planning, while they are
21 in support of most of the relief that's requested, they were
22 not in support of the variance for lot occupancy, and I
23 understood why they were not in support of that.

24 So, I felt that the Applicant, just to kind of get
25 to the chase, I would be in support of the application. I do

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1 believe that the Applicant has provided sufficient
2 information for me to be able to approve and accept their
3 argument. I understand that the lot occupancy in this case
4 is, actually kind of -- there is an issue with the lot being,
5 the existing building being several feet off of the street,
6 I guess 4th Street, that causes the lot occupancy issues.

7 The setback, as the Applicant has stated, they're
8 trying to get some of that back without kind of building onto
9 the rear of it, and moving some of that lot occupancy to the
10 street level or to the 4th Street.

11 And I appreciate that. I think the design is fine,
12 I didn't have a particular issue with that, but I was trying
13 to get at whether or not if in the work that's being done,
14 which I understand now is fairly significant, when you're
15 having to relocate or move the first floor down, that's not
16 really an easy thing to do. So there's quite a bit of work
17 that will need to be done to ensure that that is able to be
18 done.

19 And also looking at, because the buildings were
20 built at different times, that it is very likely that they
21 will not have the same floor levels and you're going to have
22 to really deal with all of the floors making sure that
23 they're at the same level. So all of the work that's being
24 done would definitely be a very costly endeavor.

25 And I thought that the amount of square footage,

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1 and I understand that the amount of square footage that they
2 had for the retail space is fairly small. It's five to six
3 hundred square feet of spaces, really a fairly small space.
4 Having to incorporate things like the kitchen, the code
5 compliant bathrooms and that sort of thing would eat into
6 that and make that space very difficult to be able to be used
7 as a retail space. And I would be in support of their request
8 for the variance for that aspect of the project as well.

9 With regard to the architectural element, I thought
10 that was fine to remove that, and I think the building that
11 they are providing is actually a very handsome building and
12 I did not have a particular issue with what they are
13 removing. I think it's a stretch to call that an
14 architectural element. I think the cornice that's on the
15 brick building, on the three-story brick building is probably
16 more substantive of an architectural element than what was
17 proposed on the, or what was existing on the two-story
18 building to the north, so I didn't really have much of a
19 concern with that.

20 I appreciate their removal of the decks, I think
21 that that helps in reducing the lot occupancy. I understand
22 that it will still be above what would be allowed, but I
23 think that they've tried to accommodate the floor plate in
24 a way that would be kind of modernizing the building and
25 providing some units that are sizeable and able to be used

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1 by a family moving into that area. So I'd be in support of
2 the application, and that's about it.

3 MEMBER JOHN: Mr. Chairman, I don't have a lot to
4 add to what Vice Chairman Hart said. I will support the
5 application. I had some difficult getting to the burden of
6 proof on the area variance but I've been looking through the
7 Applicant's submission and the slides at Exhibit 40. I
8 thought that page 4 sort of sets up the unique or exceptional
9 conditions that the Applicant is faced with, and I think that
10 the overall reduction of the lot occupancy, despite the
11 addition of the three-foot setback, is not a significant
12 variance and it's something that we consider in deciding
13 whether or not to grant a variance.

14 I think that there's been testimony regarding the
15 use variance and the inability or the financial difficulty
16 in converting the commercial space on the ground floor into
17 residential space, but I think that that's sort of offset by
18 the fact that the Applicant is creating two three-bedroom
19 units on the second and third floors. Based on all of this
20 information and what's in the record, I ordinarily give great
21 weight to the recommendation and analysis of the Office of
22 Planning.

23 However, with respect to the area variance, I
24 cannot agree with the Office of Planning because I think
25 overall, the reduction in the lot occupancy by removing the

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1 deck and moving the front setback sort of balances the fact
2 that there is still a need for an area variance for this non-
3 conforming lot, and the fact that the entire renovation is
4 done within the existing footprint. So I can support the
5 application, Mr. Chairman.

6 MEMBER WHITE: Yes, Mr. Chair, obviously when
7 there's some pushback on a variance we all pay particular
8 attention to that to make sure that we're really looking at
9 it very closely, because the criteria there is just such a
10 higher bar. I usually don't contradict, you know, some of the
11 thought processes of the Office of Planning, and I can see
12 his analysis, I can see how he came to that conclusion, but
13 I have a different kind of conclusion on my end after hearing
14 the testimony of the Applicants and listening to some of my
15 colleagues, especially Ms. John and Mr. Miller, kind of got
16 me very comfortable with making some of those adjustments
17 with respect to the area variances that were being requested.

18 The special exception criteria, I obviously, I felt
19 very comfortable that the criteria has been met. The ANC's
20 testimony was very helpful that there's been no pushback from
21 the community in terms of getting this project developed in
22 an opportunity zone, so we want to see development but we
23 just want to make sure it's done in compliance with the
24 zoning regulations.

25 So I will be in support of the special exception.

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1 I'm also going to support the request for an area variance
2 for lot occupancy as well as the variance from the
3 nonperforming structure requirements. And then finally, I
4 think it's a very smart design, I think it's going to be very
5 compatible for that area that's beginning to grow quite well
6 in a positive way, but the use variance in terms of
7 establishing a commercial retail space, a restaurant on that
8 lower level, I think the design will fit well in the
9 community and won't have any negative impacts.

10 I think they've made a compelling argument that
11 there are some exceptional circumstances associated with the
12 configuration of this particular building and the history of
13 the building, so I think it will be an added plus for the
14 community. So I'll support the application.

15 COMMISSIONER MILLER: I concur with my colleagues.
16 I agree with all that's been said by them and as I previously
17 stated I think there is a confluence of factors which make
18 this building, including the historical configuration of the
19 building, the two different buildings that are part of the
20 building, will be part of the building, the uneven floors and
21 all of that I think do create an exceptional condition which
22 justifies both the use variance and the area variance that's
23 being requested.

24 And I of course support the special exception for
25 removal of what's being labeled an architectural element. As

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1 Board Member Hart said, it's hardly a fabulous architectural
2 element, and what's being provided instead is pretty
3 fabulous. We've commented on the design, but also the other
4 existing condition is the vacancy and the condition of this
5 eyesore for too many years in this community. This really
6 will be of benefit, and I appreciate all the outreach that
7 the Applicant did do with the community of LeDroit Park Civic
8 Association and ANC. So I'm ready to move forward, hope my
9 colleagues are.

10 CHAIRPERSON HILL: Okay, great. Well, thank you,
11 Commissioner. I just wanted to, you were helping to provide
12 clarity during the testimony, and I appreciate having my
13 colleagues here with me because honestly I was a little, when
14 we get to issues of confluence of factors and we have a lot
15 of complicated or different arguments that come together as
16 to why a variance should be allowed, I sometimes get a little
17 bit confused, I must say.

18 And so I think that you all have provided some more
19 clarity on it. I don't -- I completely understand why the
20 Office of Planning has the argument that they have. I didn't
21 have any issues with the special exception or I was actually
22 most surprised, like we've had some use variance cases
23 recently that have had a lot of testimony and controversy to
24 those as well, and so I was a little surprised -- or not
25 surprised, but just how the argument for the use variance was

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1 also brought forth.

2 But I was again struggling to understand the
3 difference of opinion between the Applicant and that of the
4 Office of Planning. It was helpful that the Commissioner had
5 stayed when he did and came when he did, and it's very --
6 what's the word -- he should feel good about himself to, you
7 know, come here and take the time to do that for your
8 community, to give us that kind of testimony is something
9 that I think does sway the opinion of the Board. That's
10 something that the Board does appreciate.

11 And so I appreciate my colleagues for helping me
12 understand the argument. I do feel uncomfortable about it
13 still in that there was another side to it but I'm going to
14 go with my colleagues in terms of the rationale that they're
15 getting to, even though you don't need my vote right now
16 anyway.

17 So I'm going to go ahead and make a motion to
18 approve application number 19958 as captioned and read by the
19 secretary and ask for a second. Oh, sorry, with the condition
20 that commercial use hours of operations be limited to 7:00
21 a.m. to 10:00 p.m. and ask for a second?

22 VICE CHAIRPERSON HART: Second.

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

25 (Chorus of aye.)

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1 CHAIRPERSON HILL: All those opposed? Motion passes.
2 Mr. Moy?

3 MR. MOY: Staff would record the vote as 5 to 0 to
4 0. This is on the motion, Chairman Hill, to approve the
5 application for the relief requested along with the one
6 condition as cited by the Chairman in his motion. Seconding
7 the motion, Vice Chair Hart, also in support Ms. John, Ms.
8 White and Commissioner Rob Miller. Motion carries, sir.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,
10 all.

11 MR. NELSON: Chairman, can I also, not for the
12 record, but just also let you know that part of our
13 negotiation with this group was that the civic association
14 asked if they would be willing to donate some flowers to help
15 facilitate some redecorating of some of the tree boxes, which
16 they also did agree to. I also noted that on the 129 that was
17 sent in but it was not a required one, nothing that I knew
18 that you could force them to do but I just wanted to let you
19 know that that was something they also agreed to do.

20 CHAIRPERSON HILL: Okay, Commissioner, thanks. I do
21 remember that and I's sure they'll be happy to do that. Okay,
22 thank you. We're going to take a two-minute break.

23 (Whereupon the above-entitled matter went off the
24 record at 4:16 p.m. and resumed at 4:21 p.m.)

25 CHAIRPERSON HILL: All right, Mr. Moy, could we do

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1 our final case here for the day?

2 MR. MOY: Thank you, Mr. Chairman. So we are at
3 Application No. 19959 of Capitol Enterprise LLC. Caption
4 advertised for area variance from the density requirements
5 Subtitle E, Section 201.4, to add an additional unit to an
6 existing five-unit apartment house, RF-1 zone at 2801 R
7 Street Southeast, Square 5636, Lot 51.

8 CHAIRPERSON HILL: Okay, great. Thank you. Could you
9 please introduce yourselves for the record?

10 MS. WILSON: Alex Wilson, from Sullivan and Barris,
11 on behalf of the Applicant.

12 MR. SALEHI: Hykal Salehi, the Applicant.

13 CHAIRPERSON HILL: What's your name, I'm sorry?

14 MR. NYANKAH: Hykal Salehi --

15 CHAIRPERSON HILL: Can you spell your last name,
16 please?

17 MR. SALEHI: S-A-L-E-H-I.

18 CHAIRPERSON HILL: Salehi. Okay, thank you. All
19 right, Ms. Wilson, I assume you're going to be presenting?

20 MS. WILSON: Yes.

21 CHAIRPERSON HILL: Okay. There was one quick thing,
22 I guess. You guys are asking for a lot of waivers today. So
23 there was a waiver from the 15-day post-hearing requirement.
24 Can you explain that, please?

25 MS. WILSON: Sure. It was a similar administrative

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1 error. We didn't post until two days after. It was a
2 miscommunication between our office and the Applicant.

3 CHAIRPERSON HILL: Okay. But you've gone to the ANC
4 and ---

5 MS. WILSON: They are in support.

6 CHAIRPERSON HILL: Okay, right. So I think the
7 community has had adequate notice. I'm fine with waiving the
8 15-day posting requirement. Does anyone have an issue with
9 that? Okay, then by consensus we'll go ahead and do that. I'm
10 going to put 15 minutes on the clock for us. If you could go
11 ahead and again walk us through what the project is and how
12 you're meeting the standard for us to grant the relief
13 requested, and you can begin whenever you like.

14 MS. WILSON: We are not proposing any exterior
15 changes to the building. It is an existing five-unit
16 apartment building with outdated facilities on the basement
17 floor and unused storage space, and the Applicant is
18 proposing to renovate the building and relocate the
19 utilities.

20 And as that existing utility space will be empty,
21 the Applicant is proposing to add one residential unit in
22 that subject space. Subtitle U-301.2 says that an apartment
23 house in RF-1 zone may not be renovated or expanded so as to
24 increase the number of dwelling units, unless the building
25 has 900 square feet per dwelling unit, existing and new. The

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1 property only has 2583 square feet, and therefore it does not
2 meet that requirement, and that is why we must request relief
3 for the additional unit.

4 This is the existing and proposed layout. As you
5 can see, we are just converting that existing space into one
6 unit. As I said, there will be no external changes.

7 Regarding the variance test, it is a purpose-built
8 five-unit apartment house, constructed in 1941. It only
9 became non-conforming after the adoption of the 1958
10 regulations. The building required a modernization, including
11 update to hot water heaters, common washing facilities, and
12 other mechanical systems located in half of the basement. The
13 systems would be moved to individual units, and HVAC
14 compressors are going to be moved to the roof which creates
15 free space in the basement as a result of this modernization.

16 Regarding the practical difficulty, if this space
17 were left vacant, it presents maintenance and security issues
18 as well as a potential attractive nuisance, as the utility
19 room has a exterior stair leading to separate entry for that
20 half of the basement. The Applicant has investigated
21 enlarging the existing units, but it would be extremely
22 difficult. There is significant cost to incorporate the
23 subject space into the existing units and further, he would
24 be left with one overly large unit which would be less
25 affordable than either the existing units or one new unit.

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1 There is already laundry and utilities in each
2 unit, so there is no need for additional utilities in that
3 space any more, and there is also no need for additional
4 storage space.

5 As I have mentioned a couple of times, there are no
6 exterior modifications proposed. The additional unit would
7 simply be within an existing vacant basement space. OP is
8 recommending approval of the application, the ANC has
9 unanimously supported and DDOT has no objection. Thank you.

10 CHAIRPERSON HILL: Okay. Does the Board have any
11 questions for the Applicant?

12 VICE CHAIRPERSON HART: Yes, Ms. Wilson. You noted
13 a few things. One of them had to do with maintenance costs.
14 What do you mean by that?

15 MS. WILSON: It can become difficult to -- it's
16 essentially you're maintaining the space the same way you
17 would maintain any other space in the building, except it's
18 vacant. So it's just the cost of maintaining the space
19 without being able to rent it out or have any value from that
20 space.

21 VICE CHAIRPERSON HART: Okay. So, I mean, it's being
22 maintained now, it is a conditioned space now, it just has
23 some use for storage and other things?

24 MS. WILSON: Correct. It has use, but it will
25 continue to go unused without the ---

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1 VICE CHAIRPERSON HART: Yes, but I'm just saying
2 that's not an additional cost. That's a cost that's already
3 being undertaken by the owner, currently. It's just that you
4 can't use it, you can't utilize the space because it's not
5 configured to be utilized. There is a maintenance cost,
6 there's no additional maintenance cost for it.

7 MS. WILSON: Correct, but we are losing, where the
8 utilities are being moved.

9 VICE CHAIRPERSON HART: No, I understood that. I was
10 just saying that that part of it is not necessarily an
11 additional one, it's still already being used within that.

12 MS. WILSON: Yes.

13 VICE CHAIRPERSON HART: Okay, so you said there was
14 a cost to absorb, if you wanted to add this unit, add this
15 space to another unit, that there would be a cost to that.
16 Do you have an estimate as to how much that cost is? Or does
17 your client have that?

18 MS. WILSON: We don't have an estimate. It was just
19 a general practical difficulty, as you imagine. There's a
20 staircase in the middle of both of those units, so we'd have
21 to find a way to connect it. The bigger difficulty is
22 creating such a large unit. It would be, to rent this out it
23 would be more expensive than the existing unit, it would be
24 disruptive to the tenant. So it just is overall practical
25 difficulty and part of that would be trying to configure and

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1 combine the units.

2 VICE CHAIRPERSON HART: I understand combine up, but
3 you could combine across. You could make this a four-bedroom
4 unit, one large four-bedroom unit.

5 MS. WILSON: So these are voucher units, so right
6 now they're affordable, small A, and combining the units
7 would make them more expensive than the existing units and
8 less marketable to have one large four-bedroom unit in the
9 cellar level, whereas it's currently been two-bedroom units.

10 VICE CHAIRPERSON HART: Okay. But do you have any
11 sort of cost estimate as to what that less marketable would
12 be, beyond just a general explanation of what that is?

13 MS. WILSON: No, we felt that the practical
14 difficulty didn't require financial statements. It seemed,
15 I don't want to say obvious, but it seemed relatively clear
16 to us that combining the adjacent space with the existing
17 unit would create an overly large unit and I think part of
18 the rationale too is that this has been approved by the BZA
19 in the past without financial information. So in this case
20 we did not provide it or feel like it was necessary. And in
21 talking with the Office of Planning, they also did not
22 require that financial information.

23 VICE CHAIRPERSON HART: I don't have any other
24 questions. Actually, what is the -- I do have one question.
25 You said these were small A affordable unit. What is the

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1 expected rent for the new unit?

2 MR. SALEHI: Each unit is about \$1500.

3 VICE CHAIRPERSON HART: Your assumption would be
4 that this one would be about the same?

5 MR. SALEHI: Correct.

6 VICE CHAIRPERSON HART: Okay.

7 MEMBER JOHN: I have one question. On the existing
8 basement floor, if you move all the utilities to the
9 individual apartments, would you still keep that boiler over
10 there in the corner?

11 MS. WILSON: No. We would be removing that.

12 MEMBER JOHN: So that area would not be conditioned?
13 You would have to put in, say, a split unit or something,
14 after you remove all of these things. Or just leave it
15 unheated or un-air conditioned?

16 MS. WILSON: Yes. You are saying we would have to
17 put in, the HVAC units are going to be on the roof, but yes.

18 MEMBER JOHN: So this would not be conditioned
19 space, it would not have any heat to AC in it if you remove
20 the boiler. You'd have to put in maybe a window unit or
21 something. If the boiler goes, because you're doing this
22 individually.

23 MR. SALEHI: Yes, I would put in AC window units.

24 MEMBER JOHN: So that would be a cost to keep ---

25 MR. SALEHI: Correct.

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1 MEMBER JOHN: Okay. Thank you.

2 CHAIRPERSON HILL: Okay. Now I'll turn to the Office
3 of Planning.

4 MR. COCHRAN: Thank you, Mr. Chair. OP is happy to
5 stand on the record, but of course answer any questions you
6 would like.

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

9 VICE CHAIRPERSON HART: Just a similar question
10 around the incorporation of this unit into the basement
11 level. Did you all consider that?

12 MR. COCHRAN: We certainly -- we didn't do a
13 feasibility analysis. We did look at what the Applicant has
14 said about the practicality of combining them. I also know
15 from conversations with DHCD that it's relatively unusual for
16 there to be demand for a four-bedroom unit, and that's with
17 respect to IZ units and other things. We're often talking
18 about the need for larger family units, but the types of
19 units that, they have more difficulty filling the larger
20 units than the smaller units.

21 This isn't IZ. It's probably what we used to call
22 Section 8, but the same kind of profile holds. Going to a
23 four-bedroom unit didn't seem as desirable as adding another
24 additional affordable unit.

25 CHAIRPERSON HILL: Okay. Anyone else? Okay. Does the

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1 Applicant have any questions of the Office of Planning?

2 MS. WILSON: No, thank you.

3 CHAIRPERSON HILL: Is there anyone here wishing to
4 speak in support? Is there anyone here wishing to speak in
5 opposition? Is there anything you would like to add, Ms.
6 Wilson?

7 MS. WILSON: No, thank you.

8 CHAIRPERSON HILL: Okay. I'm going to go ahead and
9 close the hearing. Is the board ready to deliberate? Would
10 someone else like to start?

11 MEMBER JOHN: Okay, I'll start. So when I read this
12 case I thought it was fairly straightforward. It seemed to
13 me that the Applicant does have an exceptional situation
14 because the building needs to be renovated and the utilities
15 are being moved from one big open space utility area in the
16 basement to the individual units, and that it would make
17 sense to convert that space into residential space.

18 I think that the Office of Planning has explained
19 the difficult in renting a four-bedroom unit for the price
20 point and the clientele that's anticipated and so based on
21 OP's testimony and analysis and the Applicant's
22 representation, I am able to support this application.

23 CHAIRPERSON HILL: All right. Thank you. Anyone
24 else?

25 MEMBER WHITE: Mr. Chair, I would support the

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1 application as well, especially with the Office of Planning
2 weighing in on the fact that he believed that they met the
3 criteria for the area variance test that there is an
4 exceptional condition as well as a practical difficult and
5 that it makes sense to modify part of that basement floor
6 into one unit, and that there's a demand and a need for these
7 sorts of Section 8-type units in the community. And the price
8 points made sense to me as well.

9 So I would be in support of the application. I
10 believe that we also got an ANC report, too, that was filed
11 yesterday, so it is supportive of the application as well.
12 I'll be voting in favor of it.

13 COMMISSIONER MILLER: Thank you, Mr. Chairman. I
14 agree with my colleagues and if I read the record correctly,
15 I think it is a benefit to public good that the existing
16 units and the proposed unit are going to be two-bedroom units
17 if I read it correctly. And so I think that's a beneficial
18 aspect to the public good, just speaking to the third prong.

19 VICE CHAIRPERSON HART: I would, I mean, I still
20 have some concerns about it. I don't think that the concerns
21 rise to me not being able to support it, but I think that
22 it's, I almost think that there could be a case to make this
23 into a one large unit. I understand, we've heard three
24 bedrooms, four bedrooms, might be viable but I understand
25 what the Applicant and the attorney here are describing.

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1 And I do understand it being, it could be
2 practically difficult to incorporate it, so that's where I
3 am.

4 CHAIRPERSON HILL: Okay. I have nothing to add. I'm
5 going to make a motion to approve application number 19959
6 as captioned and read by the Secretary, and ask for a second.

7 MEMBER JOHN: Second.

8 CHAIRPERSON HILL: Motion made and seconded. All
9 those in favor say aye.

10 (Chorus of aye.)

11 CHAIRPERSON HILL: All those opposed? The motion
12 passes. Mr. Moy?

13 MR. MOY: Staff would record the vote as 5-0-0. This
14 on the motion of Chairman Hill to approve the application for
15 the relief requested; seconding the motion, Ms. John. Also
16 in support Ms. White, Vice Chair Hart and Commissioner Rob
17 Miller. Motion carries, sir.

18 CHAIRPERSON HILL: Okay, great. Thank you. Thank you
19 very much. Mr. Moy, do we have anything left for the Board
20 today?

21 MR. MOY: Not from the staff, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. We stand adjourned. Thank
23 you.

24 (Whereupon the above-entitled matter went off the
25 record at 4:38 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DC BZA

Date: 04-03-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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