

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 10, 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:

ANTHONY J. HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEVEN COCHRAN  
MATT JESICK  
JONATHAN KIRSCHENBAUM  
CRYSTAL MYERS

The transcript constitutes the minutes from the  
Public Hearing held on April 10, 2019.

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

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9:40 a.m.

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

This is the April 10th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, chairperson. Joining me today is or will be Carlton Hart. He's coming in a little late. Lesyllee White, Lorna John board members and representing the Zoning Commission will be Anthony Hood for the day with Michael Turnbull on a decision case.

Copies of today's hearing agenda are provided to you and located in a bin by the door. Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the board please turn on and speak into the microphone first stating your name and home address. When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor

1 or in opposition must have raised their hand and been sworn  
2 in by the secretary. Also, each witness must fill out two  
3 witness cards. These cards are located on the table near the  
4 door and on the witness table.

5           Upon coming forward to speak to the board please  
6 give both cards to the reporter sitting to the table to my  
7 right.

8           If you wish to file written testimony or  
9 additional supporting documents today please submit 1  
10 original and 12 copies to the secretary for distribution.  
11 If you do not have the requisite number of copies you can  
12 reproduce copies on an office printer in the Office of Zoning  
13 located across the hall. Please remember to collate your  
14 copies.

15           The order of procedure for special exceptions,  
16 variances and appeals are also located as you walk into the  
17 door.

18           The record shall be closed at the conclusion of  
19 each case except for any materials specifically requested by  
20 the board. The board and the staff will specify at the end  
21 of the hearing exactly what is expected and the date when the  
22 persons must submit the evidence to the Office of Zoning.

23           After the record is closed no other information  
24 shall be accepted by the board.

25           The board's agenda includes cases set for

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1 decision. After the board adjourns the Office of Zoning in  
2 consultation with myself will determine whether a full or  
3 summary order may be issued. A full order is required when  
4 the decision it contains is adverse to a party including an  
5 affected ANC. A full order may also be needed if the board's  
6 decision differs from the Office of Planning's  
7 recommendation.

8 Although the board favors the use of summary  
9 orders whenever possible an applicant may not request the  
10 board to issue such an order.

11 The District of Columbia Administrative Procedures  
12 Act requires that the public hearing on each case be held in  
13 the open before the public pursuant to section 405(b) and 406  
14 of that act.

15 The board may consistent with its rules and  
16 procedures and the act enter into a closed meeting on a case  
17 for purposes of seeking legal counsel on a case pursuant to  
18 DC Official Code Section 2-575(b)(4) and/or deliberating on  
19 a case pursuant to DC Official Code 2-575(b)(13) but only  
20 after providing the necessary public notice and in the case  
21 of an emergency closed meeting after taking a roll call vote.

22 The decision of the board in contested cases must  
23 be based exclusively on the public record. To avoid any  
24 appearance to the contrary the board requests that persons  
25 present not engage the members of the board in conversation.

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

3           Preliminary matters are those which relate to  
4 whether a case will or should be heard today such as requests  
5 for postponement, continuance, or withdrawal, or whether  
6 proper and adequate notice of the hearing has been given.

7           If you're not prepared to go forward with a case  
8 today or believe that the board should not proceed now is the  
9 time to raise such a matter.

10           Ms. Secretary, do we have any preliminary matters?

11           MS. ROSE: Yes. Good morning. Staff has a couple  
12 of preliminary matters.

13           First, application number 19971 of GRID  
14 Alternatives Mid-Atlantic for the District of Columbia has  
15 been postponed to the hearing of May 22, 2019.

16           Application number 19963 of District Properties  
17 at 5705 E Street NE has been postponed to the public hearing  
18 of April 17, 2019.

19           BZA CHAIR HILL: Okay, great. Thank you, Ms.  
20 Rose.

21           If anyone is here wishing to testify if you would  
22 please stand and take the oath administered by the secretary  
23 to my left.

24           (Whereupon, the witnesses were sworn.)

25           BZA CHAIR HILL: Okay. Good morning, everybody.

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1 Last week I said good morning and everybody responded back  
2 good morning. It was so nice. No, that's all right. I'm  
3 just saying if it happens all at once. It has to happen  
4 impromptu. It can't be like, you know, you can't like ask  
5 for it. But it really felt nice. I'm going to try to do  
6 that more often.

7 Let's see. So we're going to -- unfortunately for  
8 the people that are here, if anyone is here for the decision  
9 cases we're waiting for another member of the board to join  
10 us. So we're actually going to move on to the hearing  
11 docket.

12 And it is going to be in the order that you see  
13 it in terms of the agenda as you came into the room. So Ms.  
14 Rose, if you want to call our first hearing case.

15 MS. ROSE: First is application number 19952 of  
16 Atlantic Residential A, LLC pursuant to 11 DCMR Subtitle X  
17 Chapter 9 for a special exception under Subtitle C Section  
18 1500.3(c) to permit a rooftop bar and lounge in the penthouse  
19 of the existing mixed use building in the MU-10 zone at  
20 premises 2112 8th Street NW, square 2875, lot 1109.

21 BZA CHAIR HILL: Okay. Hello, good morning. If  
22 you could please introduce yourself for the record.

23 MS. HOTTEL-COX: Meghan Hottel-Cox with Goulston  
24 & Storrs.

25 MR. ZHANG: Mai Zhang with JBG Smith.

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1 BZA CHAIR HILL: Could you spell your last name  
2 for me?

3 MR. ZHANG: Z-H-A-N-G.

4 BZA CHAIR HILL: Okay. Ms. Hottel-Cox, I assume  
5 you're going to present to us?

6 MS. HOTTEL-COX: Yes.

7 BZA CHAIR HILL: Okay. Mr. Zhang, if you could  
8 just turn off your microphone. If there's more than one on  
9 it kind of feeds back. Thank you.

10 All right. Ms. Hottel-Cox, I'm going to go ahead  
11 and -- I don't think I had any particular questions, but I'm  
12 going to let you go ahead and walk us through the -- are you  
13 here for all three of them?

14 MS. HOTTEL-COX: Yes.

15 BZA CHAIR HILL: Okay. So I'll go ahead and let  
16 you walk us through what you're trying to do and then also  
17 how you're meeting the standard for us to approve the relief.  
18 And I'm going to put 15 minutes on the clock, Ms. Rose, if  
19 you wouldn't mind. And you can begin whenever you like.

20 MS. HOTTEL-COX: Great. Good morning again. My  
21 name is Meghan Hottel-Cox with Goulston & Storrs and I am  
22 here today representing JBG, the applicant in this case.

23 This project is located at the intersection of 8th  
24 and V Streets NW. The building is already operational  
25 providing ground floor retail uses and an apartment building

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1 above.

2           The building provides a beautiful penthouse space  
3 for residents to use. To increase the amenities for  
4 residents in this apartment building JBG would like to  
5 include a penthouse bar for residents and their guests.

6           The bar will be located in an interior portion of  
7 the existing penthouse as shown in the plans submitted in the  
8 record and on the screen.

9           This amenity space will increase the appeal of the  
10 apartment building and provide a unique and exciting  
11 opportunity for residents to enjoy the premium penthouse  
12 space with professionally crafted drinks.

13           JBG has undertaken significant outreach with the  
14 community and I am happy to report that we are here today  
15 with the support of the ANC.

16           The project will go back to the community through  
17 the ABRA process once an operator is chosen for this  
18 penthouse space.

19           At that time the operator will work with the  
20 community to address issues such as hours, noise attenuation  
21 and similar operational issues.

22           The ANC agreed this was the appropriate time to  
23 address those operational details.

24           We are also pleased to be here today with support  
25 from the Office of Planning and DDOT. Additionally, the

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1 applicant agrees to the condition in OP's report that the use  
2 of the penthouse bar be limited to residents and their guests  
3 only.

4           With that we have one witness today, Mai Zhang  
5 with JBG will testify on behalf of the applicant outlining  
6 the need for this relief and JBG's vision for the rooftop  
7 space.

8           MR. ZHANG: Good morning. My name is Mai Zhang.  
9 I am testifying on behalf of JBG Smith. JBG Smith is an S&P  
10 400 company. It owns and operates and develops assets  
11 concentrated solely in the Washington, DC metro area.

12           Our mixed use operating portfolio includes about  
13 19 million square feet of high-quality office, multifamily  
14 and retail assets. We like to focus on place-making which  
15 means adding value by creating many walkable neighborhoods.

16           We've made significant investments in the Shaw  
17 neighborhood and continue to do so today. Atlantic Plumbing  
18 is one of those buildings in the Shaw neighborhood which we  
19 delivered in October 2015 along with about 500,000 other  
20 square feet of mixed use development in that area.

21           So it's currently a 310-unit mixed use residential  
22 building that also has 19,000 square feet of ground floor  
23 retail. And as Meghan mentioned we have a rooftop communal  
24 space where residents gather, enjoy views of the city today.

25           And our vision is to take a portion of that space

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1 and dedicate it for a rooftop bar area to be used exclusively  
2 for our residents and their guests. So the vision really is  
3 it's a great area where our residents can gather today and  
4 it would be great if we can offer them a hospitality like  
5 service like they do in hotels when they come home from work  
6 or on the weekends.

7 And we envision partnering with an operator that  
8 is probably one of our ground floor retailers.

9 As Meghan mentioned we went through the extensive  
10 community outreach process and gained support from our ANC  
11 SMD as well as the Zoning, Planning and Transportation  
12 Committee. And I received full support at the ANC as well.

13 MS. HOTTEL-COX: That concludes our presentation  
14 but we're happy to answer any questions or address any issues  
15 that the board has.

16 BZA CHAIR HILL: Okay, great. Thank you. Does  
17 the board have any questions for the applicant?

18 MEMBER WHITE: One question. Were there any  
19 parameters set regarding hours of operation? I realize that  
20 the city will probably interface with you with respect to  
21 noise levels, but I wondered if any of those other issues  
22 were addressed by the community.

23 MS. HOTTEL-COX: Sure. So, we had some  
24 conversations with the community about the best time to  
25 address some of those issues. And everyone agreed that the

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1 ABRA process when the operator would apply for the liquor  
2 license for this space would be the best time because the  
3 operator will be most versed to be able to discuss with the  
4 community hours and address those concerns.

5 So the ANC and the community members we met with  
6 were comfortable with that approach to handle hours as well  
7 as noise during the ABRA process because the ANC is also a  
8 part of that hearing process.

9 MEMBER WHITE: Okay.

10 ZC CHAIR HOOD: Mr. Chairman, so the only thing --  
11 you're already up there now. The only thing you're asking  
12 for is to be able to do the bar and the lounge.

13 MS. HOTTEL-COX: Correct.

14 ZC CHAIR HOOD: So the residents are already  
15 utilizing that space.

16 MS. HOTTEL-COX: Correct.

17 ZC CHAIR HOOD: So no changes, no setbacks, none  
18 of those issues are in this equation.

19 MS. HOTTEL-COX: Correct.

20 ZC CHAIR HOOD: Thank you.

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

23 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
24 members of the BZA. I'm Maxine Brown-Roberts from the Office  
25 of Planning.

1           The Office of Planning recommends approval of the  
2 inclusion of the amenity space to be used for a bar and  
3 lounge, and with the condition that they would only be  
4 available to residents in building -- residents and their  
5 visitors as proposed by the applicant.

6           Regarding the special exception these are  
7 outlined. These are the general special exceptions for --  
8 that we usually use.

9           The existing space is currently set up as an  
10 entertainment and would be in harmony with general purpose  
11 and intent of the zoning regulations.

12           And the bar and lounge would be within an enclosed  
13 area and would be limited to residents and their guests only.  
14 Most of the properties in surrounding areas are at lower  
15 heights and are developed with parking currently.

16           And therefore we do not think that the use would  
17 adversely affect the use of neighboring properties. And  
18 therefore we recommend approval with the condition. Thank  
19 you, Mr. Chairman.

20           BZA CHAIR HILL: Thank you. Does anyone have any  
21 questions for the Office of Planning? I have a quick  
22 question.

23           So after we were kind of having a discussion with  
24 OAG. So, it seems as though that condition might be a little  
25 difficult to enforce in terms of that or if -- I was kind of

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1 curious as to either -- how OP kind of saw enforcement and  
2 then also what you thought the adverse impact that it was  
3 mitigating.

4 MS. BROWN-ROBERTS: I think what we wanted to do,  
5 especially since we were not able to look at the hours and  
6 all that, that we wanted to make sure -- we think that having  
7 it limited to only the residents will help to mitigate any  
8 adverse impacts that may come along later.

9 It was recommended by the applicant, so.

10 BZA CHAIR HILL: Okay. Anyone else for the Office  
11 of Planning?

12 MEMBER WHITE: My only comment was that, you know,  
13 concurrently with what you just asked. I think it would be  
14 good to have the condition, you know, to limit it to  
15 residents of the building.

16 But the language as proposed by the applicant, I  
17 don't see that as being a condition that would be enforceable  
18 that is directly tied to mitigating adverse impacts.

19 BZA CHAIR HILL: Okay. All right. Anyone else?  
20 Okay.

21 Is there anyone here wishing to speak in support?  
22 Is there anyone here wishing to speak in opposition? Okay,  
23 Ms. Hottel-Cox is there anything else you'd like to add?

24 MS. HOTTEL-COX: No, thank you.

25 BZA CHAIR HILL: Okay. I'm going to close the

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

3 I agreed with the Office of Planning's analysis.  
4 I also agree with the -- I'm glad that the ANC was in  
5 support. I didn't particularly have an issue with the  
6 relief.

7 I don't think that I'm going to be able to support  
8 the condition, however, just because I don't think it's  
9 necessarily something that would be easy to figure out how  
10 we would enforce. So I'd be just voting to support the  
11 application.

12 Does anyone else have anything they'd like to add?

13 MEMBER WHITE: The only question I have is does  
14 that mean that you would not be in favor of the limitation  
15 for residents.

16 BZA CHAIR HILL: It's not that I wouldn't be in  
17 favor of it. If the applicant wants to do that on their own  
18 then that's fine. I don't really necessarily know how it  
19 would necessarily be enforced.

20 And I guess as we had kind of discussed in a phone  
21 call with OAG I guess you know, I would kind of also agree  
22 that if there was some kind of way that the board was  
23 concerned about the adverse impact then there would be like  
24 limiting number of people, or things like that. But at this  
25 point I just don't have an issue with it so I would just vote

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1 without the condition.

2 ZC CHAIR HOOD: Mr. Chairman, I was not on the  
3 call so I will -- I don't really have a problem with it being  
4 there. I think that part of what's being proposed in this  
5 condition will work itself out. So whether it's in there or  
6 out, I'm not sure if Board Member White wanted it there. I  
7 could support it either way because I think it's going to  
8 work its way out on that condition.

9 BZA CHAIR HILL: Okay. All right. I'm going to  
10 go ahead and make a motion without the condition to approve  
11 application 19952 as captioned and read by the secretary and  
12 ask for a second.

13 MEMBER JOHN: Second.

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

16 (Chorus of ayes)

17 BZA CHAIR HILL: All those opposed? The motion  
18 passes, Ms. Rose.

19 MS. ROSE: Staff would record the vote as 4-0-1  
20 with the motion by Mr. Hill, second by -- is it Ms. John?

21 MEMBER JOHN: Yes.

22 MS. ROSE: Second by Ms. John with Mr. Hood and  
23 Ms. White in support of the motion. Mr. Hart not present,  
24 not voting.

25 BZA CHAIR HILL: All right, thank you. I think

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1 you all should just get up and come back. I'm actually  
2 kidding, I'm kidding. You can just sit there.

3 MS. ROSE: Next is application number 19953 of  
4 Atlantic Residential C, LLC, pursuant to 11 DCMR Subtitle X  
5 Chapter 9 for a special exception under the penthouse  
6 requirements Subtitle C Section 1500.3(c) to permit a rooftop  
7 bar and lounge use in an existing mixed use building in the  
8 MU-10 zone at premises 945 Florida Avenue NW square 2873, lot  
9 799.

10 BZA CHAIR HILL: Great, thank you, Ms. Rose. If  
11 you could please introduce yourselves for the record.

12 MS. HOTTEL-COX: Meghan Hottel-Cox with Goulston  
13 & Storrs.

14 MS. MARTINO: Samantha Martino with JBG Smith.

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

17 MS. MARTINO: Martino, M-A-R-T-I-N-O.

18 BZA CHAIR HILL: Okay, great. Thank you. Ms.  
19 Hottel-Cox, I assume you're presenting.

20 MS. HOTTEL-COX: Yes.

21 BZA CHAIR HILL: Okay, great. Thank you. I guess  
22 very similar kind of back to where we are.

23 So if you want to go ahead and walk us through  
24 what your client is trying to do and then how you think  
25 you're meeting the standard for us to grant the relief. I'm

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1 going to put 15 minutes on the clock, Ms. Rose, if you  
2 wouldn't mind, and you can begin whenever you like.

3 MS. HOTTEL-COX: Thank you again. Good morning.  
4 My name is Meghan Hottel-Cox with Goulston & Storrs and I am  
5 here again today representing JBG Smith, the applicant in  
6 this case.

7 This project is located along Florida Avenue NW  
8 and consists of a residential tower and a hotel tower which  
9 are separated by a private extension of W Street.

10 The building is already under construction and JBG  
11 is hoping to increase the project's appeal with a penthouse  
12 bar and lounge area on the hotel tower.

13 The penthouse space is already included in the  
14 building permit, but we are here today to request a special  
15 exception to use this rooftop space as a bar and lounge for  
16 residents, hotel guests and the general public.

17 The bar and lounge is envisioned to be an  
18 extension of a ground floor restaurant associated with the  
19 hotel.

20 Often the bar and lounge would be an amenity and  
21 a destination for building residents and hotel guests to take  
22 advantage of the rooftop space for the building.

23 When the bar and lounge is open to the public it  
24 will provide a neighborhood amenity space that takes  
25 advantage of the project's amazing location and views of the

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1 city.

2 JBG has undertaken significant outreach with the  
3 community and government agencies for this project and I am  
4 happy to report that we are here today with the support of  
5 the Office of Planning, DDOT and the ANC.

6 The project again will go back to the community  
7 through the ABRA process once an operator is chosen for the  
8 penthouse space. At that time the operator will work with  
9 the community to address issues such as hours, noise  
10 attenuation and similar operational details.

11 The ANC agreed this was the appropriate time to  
12 address these operational issues.

13 We have one witness today, Samantha Martino with  
14 JBG who will testify on behalf of the applicant outlining the  
15 need for this relief and JBG's vision for this rooftop space.

16 MS. MARTINO: Good morning. I'll be brief because  
17 we have a couple of these today. I'm Samantha Martino with  
18 JBG Smith. JBG Smith is a DC focused developer and is very  
19 active in this neighborhood. As my colleague who went before  
20 me mentioned we have several properties that we own and  
21 operate in this market and this one is currently under  
22 construction.

23 It is an apartment and hotel building with ground  
24 floor retail. We have 161 apartment units in one tower and  
25 then 95 hotel units in a separate tower bisected by the

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1 private W Street extension.

2 We are requesting approval to operate our south  
3 tower amenity space as a bar/lounge. This is the amenity  
4 space on the hotel tower.

5 We anticipate that the operation will be in  
6 conjunction with a ground floor restaurant operator which is  
7 an affiliate of the hotel.

8 We have already met with the ANC and our SMD and  
9 secured full ANC support. Also, OP and DDOT have also  
10 provided their support for the application.

11 In this application we have not addressed the  
12 hours of operations. We anticipate that this will be  
13 finalized through the ABRA process when we are farther along  
14 with the operator.

15 MS. HOTTEL-COX: That concludes our presentation.  
16 We're happy to answer any questions or address any issues  
17 that the board has.

18 BZA CHAIR HILL: Okay. Does the board have any  
19 questions for the applicant?

20 MEMBER WHITE: This is a similar application so  
21 you've addressed the -- I looked at the records. There don't  
22 appear to be any ANC issues or concerns that are expressed.  
23 This is an MU zone so it's a lot of commercial activity.  
24 What hotel will be there?

25 MS. MARTINO: So it's not a like national brand.

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1 It's like a small boutique operator. And they're going to  
2 do an extended stay concept. So they don't have any  
3 locations in DC. They're just like a small -- they have a  
4 couple of locations. They're currently in Philadelphia.

5 MEMBER WHITE: Okay.

6 ZC CHAIR HOOD: I'm trying to remember. Weren't  
7 these PUD cases sometime back? Atlantic Plumbing, old  
8 Atlantic Plumbing building.

9 MS. HOTTEL-COX: Some of this area was part of an  
10 old PUD that expired. The PUD is no longer in effect.

11 ZC CHAIR HOOD: So you're letting it expire.

12 MS. HOTTEL-COX: Yes.

13 ZC CHAIR HOOD: -- matter of right.

14 MS. HOTTEL-COX: Yes, this building is matter of  
15 right.

16 ZC CHAIR HOOD: Okay. But even with that, the  
17 setbacks again like I asked you in the other case.

18 MS. HOTTEL-COX: Yes, yes. The penthouse space  
19 has already been permitted and it meets all of the zoning  
20 requirements.

21 ZC CHAIR HOOD: What rationale do you have now to  
22 start doing a bar? I know that's the going thing. What  
23 stemmed that? Was it the penthouse regulations or just  
24 something that the developer initially left off? What  
25 stemmed that?

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1 MS. MARTINO: So I think the first thing is it was  
2 the change in regulations. But also we weren't -- when we  
3 were getting underway with the building we weren't that far  
4 along with the operator and so we weren't sure whether or not  
5 it was actually going to like come through.

6 And so now that we're a little bit more solidified  
7 with the operator and like the programming for the south  
8 tower we're moving forward with the variance.

9 ZC CHAIR HOOD: All right. Thank you. Thank you,  
10 Mr. Chairman.

11 MEMBER JOHN: So can you explain what's happening  
12 with W Street? Is that just a pedestrian extension?

13 MS. MARTINO: So, it's a private street but we do  
14 plan for it to be open to pedestrian and vehicular traffic.  
15 And then we have the second case for this particular project  
16 that we're also requesting a loading variance as we'll get  
17 into on the next application.

18 MEMBER JOHN: Thank you.

19 BZA CHAIR HILL: Ms. Hottel-Cox, I'm just kind of  
20 curious. So you guys -- in the previous case you all  
21 proposed a condition but this one you weren't proposing the  
22 same condition. How come you guys proposed the condition on  
23 the last one?

24 MS. HOTTEL-COX: So, a couple of pieces on that.  
25 One is the nature of this being for the hotel use and in

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1 conjunction with the ground floor restaurant. The ground  
2 floor restaurant obviously being open to the public.

3           The other was in conversations with the ANC. They  
4 had concerns about two open to the public rooftop bars. The  
5 two properties are right across the street from each other,  
6 they're very close by. And so they understood that the  
7 nature of the operation of this building right along Florida  
8 Avenue would be an appropriate place for the public to be  
9 able to go up and have rooftop bar space, but not necessarily  
10 something that they wanted on the residential building.

11           And the idea for the residential building bar was  
12 really as just amenity space for the residents, whereas this  
13 being a hotel it's more of a public interfacing building and  
14 so that would be an appropriate place for the public to have  
15 a rooftop bar.

16           BZA CHAIR HILL: And that still was the intent for  
17 the previous case. Just for the people that are in the  
18 building.

19           MS. HOTTEL-COX: Yes, the previous case --

20           BZA CHAIR HILL: I'm sorry, I was just kind of  
21 curious because you're all here for a bunch of stuff. Okay.  
22 Let's see. I'm going to turn to the Office of Planning.

23           MS. MYERS: Good morning. Crystal Myers for the  
24 Office of Planning.

25           The Office of Planning is recommending approval

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1 of this case and stands on the record of the staff report.

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

5 MS. HOTTEL-COX: No.

6 BZA CHAIR HILL: All right. Is there anyone here  
7 wishing to speak in support? Is there anyone here wishing  
8 to speak in opposition? Ms. Hottel-Cox, do you have anything  
9 you'd like to add at the end?

10 MS. HOTTEL-COX: No, thank you.

11 BZA CHAIR HILL: Okay. I'm going to go ahead and  
12 close the record. Is the board ready to deliberate? Okay.  
13 Let's see. Would someone else like to go first?

14 MEMBER WHITE: Yes, I can go, Mr. Chair. This is  
15 a fairly complete record. They're requesting a special  
16 exception relief from penthouse use requirements under C  
17 Subtitle 1500.3(c) to permit a rooftop bar and lounge use in  
18 an existing mixed use building in the MU-10 zone located at  
19 premises 945 Florida Avenue NW.

20 I'm comfortable with the testimony from the  
21 applicants as well as the Office of Planning recommending  
22 approval. I believe they met the criteria for a special  
23 exception. It appears to be in harmony with the zoning  
24 regulations.

25 I was not able to identify any specific adverse

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1 impacts that this application will have as well as the fact  
2 that I believe that they're meeting the special conditions  
3 under the specific title.

4 The ANC is in approval so I would be comfortable  
5 making a motion to approve this application.

6 ZC CHAIR HOOD: Second.

7 BZA CHAIR HILL: Okay. Do you have anything, Ms.  
8 John? Okay. Yes. I mean, I still can't believe this area  
9 and how it's changed and everything. And so it's just -- I  
10 mean I always get shocked as to what's going on down there.

11 MEMBER WHITE: It's growing by leaps and bounds.

12 BZA CHAIR HILL: Ms. Hottel-Cox, do you know, the  
13 owner of the 9:30 Club, do you know if they own that  
14 building?

15 MS. HOTTEL-COX: I am not aware.

16 BZA CHAIR HILL: That's okay. Just curious.  
17 Okay. All right, well I think you kind of made a motion but  
18 I'm going to go ahead and make a motion then to approve  
19 application number 19953 as captioned and read by the  
20 secretary and ask for a second.

21 MEMBER WHITE: Second.

22 BZA CHAIR HILL: Motion made and seconded. All  
23 those in favor say aye.

24 (Chorus of ayes)

25 BZA CHAIR HILL: All those opposed? Motion

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1 passes, Ms. Rose.

2 MS. ROSE: Staff will record the vote as 4-0-1  
3 with the motion by Mr. Hill, chairman, second by Ms. White.  
4 In support would be Ms. John and Mr. Hood. Mr. Hart is not  
5 present, not voting.

6 BZA CHAIR HILL: Okay, great. Thank you. Thank  
7 you very much.

8 MS. ROSE: Next is application number 19955 of  
9 Atlantic Residential C, LLC pursuant to 11 DCMR 3104.1 for  
10 a special exception under Subsection 2204.13 from the loading  
11 requirements of Sections 2204.8, 2204.9 and 2204.10 to permit  
12 flexible, non-loading use of three of the existing loading  
13 docks in an existing mixed use building in the MU-10 zone at  
14 premises 945 Florida Avenue NW square 2873, lot 799.

15 BZA CHAIR HILL: Okay. Could you please introduce  
16 yourself for the record?

17 MS. HOTTEL-COX: Meghan Hottel-Cox with Goulston  
18 & Storrs.

19 MS. MARTINO: Samantha Martino with JBG Smith.

20 MR. ANDRES: Good morning, Chairman Hill. Erwin  
21 Andres with Gorove Slade Associates.

22 BZA CHAIR HILL: Okay, Ms. Hottel-Cox. I'm going  
23 to go ahead and let you present to us. I'm a little bit  
24 confused in terms of this was under the '58 regs, correct?

25 MS. HOTTEL-COX: Yes.

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1           BZA CHAIR HILL:    And then now after kind of  
2 consulting with OAG and also kind of looking through this it  
3 seems as though you might not need this relief actually?  
4 Because like it's already matter of right.  Is that -- I'm  
5 a little confused as to whether or not we're actually going  
6 to be able to approve anything because -- yes.  I don't know.  
7 Do you understand what I'm asking about?

8           MS. HOTTEL-COX:  Yes, and I think we can address  
9 that in our presentation.

10          BZA CHAIR HILL:  Okay.  Well, then I'll go ahead  
11 and put 15 minutes on the clock and you can begin whenever  
12 you like.

13          MS. HOTTEL-COX:  Okay.  Good morning again.  My  
14 name is Meghan Hottel-Cox with Goulston & Storrs and I am  
15 here again today representing JBG, the applicant in this  
16 case.

17                 This project again is located along Florida Avenue  
18 NW and consists of a residential tower and a hotel tower  
19 which are separated by a private extension of W Street.

20                 The building is already under construction and JBG  
21 is here trying to create an exciting streetscape experience  
22 at the project.

23                 We are here today to request flexible use of some  
24 of this project's loading spaces to create an enlivened and  
25 interactive streetscape in this one-way private portion of

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1 W Street.

2           While the project will maintain two dedicated 30-  
3 foot loading berths for use at all times we are asking the  
4 board for a special exception under the 1958 zoning  
5 regulations to use one 55-foot loading berth and two 20-foot  
6 delivery spaces for flexible use.

7           During certain times these spaces could be used  
8 for loading, but for the times when the ground floor retail  
9 use would be active these spaces could be used for outdoor  
10 seating and other uses that would enliven the ground floor  
11 of the building.

12           In analyzing the loading needs for the project and  
13 the proposed flexible space Gorove Slade, the project's  
14 transportation consultant, prepared a loading management plan  
15 which will ensure the requested relief will not have a  
16 negative impact on the project's operation or on the  
17 neighboring properties.

18           JBG has again undertaken significant outreach with  
19 the community and government agencies for this project and  
20 I'm happy to report that we are here today with the support  
21 of the Office of Planning, DDOT and the ANC.

22           I'm happy to address the board's question  
23 regarding the 1958 zoning regulations and why this  
24 application has been self-certified under those.

25           This building was permitted under the 1958 zoning

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1 regulations and under the 1958 zoning regulations the loading  
2 that is required is what is being provided. The two 30-foot  
3 loading berths, the one 55-foot loading berth and two 20-foot  
4 delivery spaces.

5 Under the 2016 zoning regulations they only come  
6 into play when they are triggered by a change in use in the  
7 building or a change in the plans. And the Zoning  
8 Administrator has been very clear that projects may not opt  
9 in to certain provisions of the 2016 zoning regulations  
10 including the decreased parking and loading requirements.

11 Theoretically under the 2016 zoning regulations  
12 only two 30-foot loading berths would be required for this  
13 project. Those are being reserved at all times under this  
14 application.

15 So theoretically this project complies with the  
16 2016 loading regulations. However, because we haven't  
17 changed anything in the building and we haven't changed any  
18 of the plans for the building the Zoning Administrator has  
19 made it clear that projects can't just opt in to that lower  
20 loading requirement.

21 And so therefore because under the 1958 zoning  
22 regulations all of the loading berths that were required in  
23 the '58 regs would have to be available for loading at all  
24 times we are requesting the flexibility as allowed under the  
25 '58 regulations that necessitated those loading berths for

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1 a special exception to use that area as flexible space.

2 So that's the reason that we've self-certified the  
3 application under the '58 regulations because we do not see  
4 a way based on the Zoning Administrator's interpretation of  
5 how the new regulations come into play for things like  
6 parking and loading that we would not need relief to be able  
7 to use these spaces for another use.

8 With that we have two witnesses today. Samantha  
9 Martino with JBG will testify on behalf of the applicant and  
10 Erwin Andres with Gorove Slade who we are offering as an  
11 expert in traffic engineering.

12 So with that I'll turn it over to Sam to introduce  
13 JBG and its vision for this portion of the project.

14 MS. MARTINO: Hi, I'm Samantha Martino with JBG  
15 Smith. As I previously mentioned for the last application  
16 I'm with JBG. We are a DC focused developer and are very  
17 active in this market. We own several properties and operate  
18 several properties in the Shaw U Street area.

19 This project is under construction. It is two  
20 towers bisected by the private W Street extension of which  
21 one is going to be 161 apartments and the south tower is  
22 going to be 95 hotel units.

23 We have about 20,000 square feet of ground floor  
24 retail.

25 This application if you can see on the plan is for

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1 the loading areas that are along our W Street extension. At  
2 the moment we have loading happening in front of the south  
3 tower.

4 We are requesting the relief to have the loading  
5 areas in front of the ground floor retail to be allowed to  
6 be shared with non-loading uses. From what I understand the  
7 DC regulations require loading areas to be used for only  
8 loading 24/7 which is why we need the relief to actually put  
9 non-loading uses in these areas.

10 We really envision W Street as being this kind of  
11 vibrant pedestrian focused area and so by allowing to put  
12 other uses such as like outdoor seating in these areas we can  
13 really activate the ground floor of this property.

14 We have in terms of just general hours we expect  
15 that the areas in front of the retail will be open for  
16 loading only during morning hours when we expect most of the  
17 tenants will get their deliveries.

18 And then in the evening hours and on weekends they  
19 would then be opened up for non-loading uses. And then as  
20 Meghan mentioned we have two loading areas that will remain  
21 for loading only. And these would be all that would be  
22 required if we were under the current zoning regulations.

23 We have gone to the ANC with this request and they  
24 have come back and indicated that they are supportive. I  
25 think we also have OP and DDOT support with some conditions.

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1           And I am going to then turn it over to our  
2 consultant Erwin who can talk a little bit more about the  
3 loading management plan that we're planning to put in place  
4 in order to make sure that this loading is managed properly  
5 with all the other traffic that's going to be occurring on  
6 W Street.

7           MR. ANDRES: Good morning, Chairman Hill, members  
8 of the board. Again for the record Erwin Andres.

9           With respect to our involvement in this project  
10 we've coordinated with DDOT to develop a loading management  
11 plan that allows us to utilize the private extension of W  
12 Street that allows for significant pedestrian activity as  
13 well as loading activity related to uses that allow them to  
14 coincide in that same space.

15           The W Street extension is a private street. It's  
16 essentially going to be shared space similar to sort of a  
17 woonerf where there's going to be activity in that area.

18           We've designated two 30-foot loading docks which  
19 if we were under ZR '16 that's all we would need. But  
20 considering that we were permitted under the '58 regs we are  
21 looking to provide the three additional berths, but those  
22 berths will have a time constraint on them because we -- in  
23 times where there isn't a peak we'd like to use that for  
24 other items.

25           The cross section of W Street is approximately 40

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1 feet so the 12-foot loading areas allows us for 26 feet of  
2 clear space. So that provides us enough room for both the  
3 pedestrians and a single eastbound travel lane to take place.

4 So with that we've coordinated with the client and  
5 DDOT to develop a loading management plan that DDOT finds to  
6 be acceptable. That includes providing a loading dock  
7 manager who will coordinate all the deliveries. The loading  
8 dock manager will also assist with the trash.

9 Consistent with a lot of residential buildings in  
10 the District the tenants will require to schedule their  
11 deliveries as well.

12 So these elements are elements that we've worked  
13 on on similar type projects where loading is managed. And  
14 so given that we believe that we meet the criteria associated  
15 with the relief being requested.

16 BZA CHAIR HILL: Okay. Does the board have any  
17 questions for the applicant?

18 MEMBER WHITE: I just wanted to clarify something.  
19 So, the relief that you're seeking is under ZR '58 because  
20 the project vested under ZR '58. Correct?

21 MS. HOTTEL-COX: Yes, that's correct.

22 MEMBER WHITE: But the modifications that you're  
23 requesting, do they also comply with ZR '16?

24 MR. ANDRES: Yes.

25 BZA CHAIR HILL: Okay. I don't know if I'm

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1 necessarily any clearer on this one. So, did you have a  
2 question, Ms. John? Okay. I'm going to turn to the Office  
3 of Planning.

4 MS. MYERS: Hello again. Crystal Myers for the  
5 Office of Planning.

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

8 BZA CHAIR HILL: Okay. Does the applicant have  
9 any questions for the Office of Planning?

10 MS. HOTTEL-COX: No, thank you.

11 BZA CHAIR HILL: Okay. Does the board have any  
12 questions for the Office of Planning? No? Okay.

13 Is there anyone here wishing to speak in support?  
14 Is there anyone here wishing to speak in opposition?

15 I did have a question for OAG I guess in that I  
16 think I understand now they're here self-certified. They're  
17 trying to do this under -- for the reasons that they put  
18 forward. Was there any question from OAG or is there  
19 anything that you think that is not being addressed?

20 MS. NAGELHOUT: No. I just think pursuant to A  
21 102.4, it says an application to the BZA for a modification  
22 to a vested project shall conform with the 2016 regulations  
23 as the 2016 regulations apply to the requested modification.

24 So in this case it's a peculiar situation where  
25 they would have needed relief under the '58 regs. That

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1 relief is no longer available, but on the other hand they  
2 don't need relief if they were to do this now under the 2016  
3 regulations. So I believe -- it is a self-certified  
4 application. The board could dismiss the application as  
5 saying no relief is needed and that would alert the ZA to the  
6 fact that it's not just the applicant opting to switch from  
7 '58 to '16, it's actually the board's opinion that this  
8 modification does not require relief.

9 BZA CHAIR HILL: Okay. So I'm going to turn to  
10 my fellow colleagues here because I think -- so, I understand  
11 what OAG is letting us know. And so I am -- I guess, Ms.  
12 Hottel-Cox, you heard what OAG just had to say.

13 And so what kind of seems to us is that either we  
14 could dismiss this, or issue an order that you don't need  
15 relief. And so do you have an opinion one way or the other?

16 MS. HOTTEL-COX: I think we recognize this is a  
17 very unique case just given when the building was vested  
18 under the '58 regs.

19 We believe that the -- and why we submitted the  
20 application, we believe that the most effective way to  
21 address that the Zoning Administrator has interpreted the  
22 regulations would be to have an order approving the relief  
23 that we've requested under the '58 zoning regulations since  
24 those are the ones that generally do control the project  
25 although I understand where OAG is coming from and what

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1 they've set forth about Subtitle A.

2           So I think we've been caught a bit between a rock  
3 and a hard place with the Zoning Administrator's  
4 interpretation so that when we go through the permitting  
5 process we don't get turned down at DCRA from a zoning issue.

6           So that's been the reason that we had requested  
7 the relief from the board and why we self-certified the  
8 application the way we did.

9           BZA CHAIR HILL: Okay. So, I don't know what my  
10 colleagues -- I'm just kind of now thinking that I would just  
11 move forward with the way the application is before us so  
12 that it again was self-certified. But does the board have  
13 any thoughts?

14           ZC CHAIR HOOD: Mr. Chairman, I think I would like  
15 to -- I would prefer that -- my vote would be to prefer that  
16 we move in the rationale of what legal counsel has advised  
17 us because I'm trying to still understand why the ZA -- can  
18 the board go back to the '58 regs.

19           There's some other questions that come into play  
20 with what the applicant is asking me because the Zoning  
21 Commission, we rule on ZR '16. Those are the regulations in  
22 place now and I think on the advice of counsel I think that's  
23 the way we need to proceed because if not you will start  
24 being -- having to ask -- will come more of these '58  
25 regulations.

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1           And I'm not clear on the legality of how we can  
2 go back to something when we have something else in place.  
3 But I think Ms. Nagelhout's counsel is the way I would advise  
4 us to move forward.

5           And as we note to the ZA that they do not need  
6 relief. And that will send him a strong message.

7           And even more than that, that's a question I think  
8 that's going to come up when he comes to our training as  
9 well.

10           BZA CHAIR HILL: Okay. I'm fine with that.  
11 Chairman Hood was around when '58 started, so you know. Was  
12 that good with the board?

13           MEMBER WHITE: Yes, that makes sense to me. But  
14 also including -- do we need to include a condition regarding  
15 the loading plan? Or no? No.

16           So yes, I would be comfortable with making that  
17 notification in the order regarding the relief that they're  
18 seeking.

19           BZA CHAIR HILL: Okay. So the motion then is --  
20 Chairman Hood, is that we make a motion to dismiss? We just  
21 dismiss.

22           ZC CHAIR HOOD: Dismiss that relief that they're  
23 asking for from the '58 and make a note in the -- I think as  
24 Ms. Nagelhout had mentioned make a note in the order the  
25 board has said there's no relief requested. So he will then

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1 not give them a problem.

2 And if he does come back and let Chairman Hill  
3 know.

4 BZA CHAIR HILL: Please don't come back and let  
5 Chairman Hill know.

6 MS. HOTTEL-COX: Thank you.

7 BZA CHAIR HILL: All right. Okay, so then I'm  
8 making a motion to dismiss. And then in the order OAG can  
9 write up what was said here on the dais.

10 So I'm making a motion to dismiss 19955 and ask  
11 for a second.

12 MEMBER JOHN: Second.

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

15 (Chorus of ayes)

16 BZA CHAIR HILL: Ms. John. All those in favor say  
17 aye.

18 (Chorus of ayes)

19 BZA CHAIR HILL: All those opposed? Motion  
20 passes.

21 MS. ROSE: Staff would record the vote as 4-0-1  
22 to dismiss the application with the motion by Mr. Hill,  
23 seconded by Ms. John with Ms. White and Mr. Hood in support  
24 of the motion. Mr. Hart not present, not voting.

25 BZA CHAIR HILL: Thank you. Thank you all very

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1 much. Chairman Hood, that was out of respect.

2 ZC CHAIR HOOD: You know what, don't make up for  
3 it because it's coming back.

4 (Laughter)

5 BZA CHAIR HILL: Okay. We actually are going to  
6 take a quick break because I think the board member that we  
7 needed for the discussion is here. So, we'll be right back.

8 (Whereupon, the above-entitled matter went off the  
9 record at 10:25 a.m. and resumed at 11:26 a.m.)

10 BZA CHAIR HILL: All right, Ms. Rose. You guys,  
11 we're going to rearrange something here just a little bit.  
12 We had something, some commissioners are here and so we're  
13 going to actually take case 19944 next and then we're going  
14 to follow the order as it was written down. But Ms. Rose,  
15 if you want to go ahead and announce it?

16 MS. ROSE: Application 19944 of 3554 10th Street  
17 LLC pursuant to 11 DCMR Subtitle X Chapter 9 for a special  
18 exception under the residential conversion requirements of  
19 Subtitle U Section 320.2 to construct a three-story rear  
20 addition to an existing semi-detached principal dwelling unit  
21 and convert it to a three-unit apartment house in the RF-1  
22 zone at premises 3554 10th Street NW square 2832, lot 52.

23 BZA CHAIR HILL: All right. Everybody just have  
24 a seat wherever you like. Okay. If we can just go ahead and  
25 start off by introducing ourselves from my right to left,

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1 please.

2 MR. CLOCK: My name is Jason Clock, C-L-O-C-K.

3 BZA CHAIR HILL: Thank you.

4 MS. LOVE WADE: Hi, Dottie Love Wade, vice chair,  
5 Advisory Neighborhood Commission 1A.

6 BZA CHAIR HILL: Hi, Commissioner.

7 MR. BOESE: Kent Boese, chair of ANC 1A.

8 BZA CHAIR HILL: Thank you, Commissioner.

9 MR. GREENHOUSE: Jake Greenhouse, owner.

10 MR. SULLIVAN: Marty Sullivan with Sullivan &  
11 Barros on behalf of the applicant.

12 BZA CHAIR HILL: All right. So this is a  
13 continued hearing and we -- Mr. Sullivan, I guess I'm going  
14 to start with you. And I know the ANC is here to also be a  
15 participant.

16 And so they're going to have an opportunity as  
17 before to ask questions of you from your testimony that  
18 you're going to give, from your continued testimony, and then  
19 we're going to have the ANC again have an opportunity to  
20 participate in this limited scope hearing to what -- we don't  
21 have to repeat everything we did the last time, but go ahead  
22 and present to us on what has happened since the last time.  
23 And then we'll see where we get.

24 So Mr. Sullivan, if you could go ahead and just  
25 kind of tell us what happened since the last time you were

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1 here. I see you have a slide deck. Do you want to go  
2 through? You can take your time pulling it up there I think.  
3 But I am going to put 15 minutes on the clock, Ms. Rose, just  
4 so I know where I am.

5 MR. SULLIVAN: Thank you, Mr. Chairman and members  
6 of the board.

7 So we wanted to address the comments that were  
8 brought up last time and respond to the ANC's concerns and  
9 specifically to focus on the issue of the curb cut in the  
10 parking and the potential impact of the project on  
11 neighboring properties.

12 At the conclusion of the hearing the board asked  
13 for a revised plan showing the site without the curb cut and  
14 asked for the applicant to address the ANC's parking impact  
15 concerns.

16 We haven't submitted the revised plan showing the  
17 site without the curb cut. It really wouldn't change much  
18 in the back other than the driveway would just be a grass  
19 yard.

20 But I wanted to address that if the removal of the  
21 curb cut was going to be a reason for the denial then we'd  
22 like to step back, ask for a continued hearing and take the  
23 time for a couple of reasons.

24 One, it appears that we might be able to garner  
25 ANC support for that.

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1           And two, that we would also need to investigate  
2 and prepare a request for special exception relief for  
3 parking because we would no longer have a parking space. So  
4 that's not our first preference but it is our second  
5 preference. And I want to make that clear up front.

6           I'd like to go quickly through the requirements  
7 if you'd like me to, although I believe we've shown that we  
8 meet these requirements, the specific requirements. And I  
9 think that the ANC is actually in support of the design.  
10 They're in support of the waiver of the architectural element  
11 and they don't have an issue with any of the specific  
12 requirements of U 320.2.

13           Which leaves us the general requirement for  
14 special exception relief, whether or not granting relief does  
15 not adversely affect the use of neighboring properties. And  
16 so I want to focus on that.

17           What I believe the discussion relates to is, and  
18 I think I'm accurately representing what Mr. Boese said in  
19 the first hearing, it's the third unit. What does the  
20 density of the third unit do and what is the impact of that  
21 combined with the loss of public parking as a result of the  
22 curb cut.

23           Now, we still maintain that the curb cut is a  
24 separate issue that was decided by the Public Space Committee  
25 and the granting of the relief doesn't actually change that.

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1           But specifically to hit that head on, regarding  
2 the provision of parking we have devised a plan to have a  
3 thruway going to the next neighbor. So the neighbor adjacent  
4 to us will also have an onsite parking space after not having  
5 a parking space. He's a longtime owner in the community and  
6 he's happy to get a parking space.

7           And so now even according to the ANC's official  
8 resolution the net impact would be zero. You'd have two  
9 spaces now coming onsite replacing what they have said is one  
10 to two spaces offsite in the public.

11           BZA CHAIR HILL: Mr. Sullivan, I'm going to cut  
12 you off just for a second and just see where we get with  
13 this. I appreciate you kind of just putting it all on the  
14 table and let's just kind of work through this a little bit.

15           So, Mr. Commissioner and Madam Commissioner, Mr.  
16 Commissioner, Ms. Commissioner, where are you guys with this?

17           MR. BOESE: Interesting question. In looking at  
18 the post hearing submissions I think we're getting really in  
19 the weeds as to what was approved by DDOT.

20           I'll just go to the heart of the matter. While  
21 there seems to be this narrative that the curb cut's been  
22 approved and it's already been put in and that that's not an  
23 issue and that the applicant actually is meeting the  
24 offstreet parking requirements that's not true.

25           The permit expired. The driveway has not been put

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1 in. There's still a section of public space that needs to  
2 be transversed to get to the offstreet parking.

3 And while there's now this proposal to extend with  
4 an easement to the neighbor that to me looks like a private  
5 alley and one questions would DDOT have approved a curb cut  
6 for a private alley that then increases the volume of traffic  
7 going across pedestrian path.

8 I think it actually makes it worse. So I mean,  
9 there are a host of issues.

10 BZA CHAIR HILL: Okay. So did you guys already  
11 talk with the applicant about the -- if they remove the curb  
12 cut?

13 MR. BOESE: From the last hearing there have been  
14 no conversations between the ANC and the applicant.

15 MS. LOVE WADE: The last conversation was that  
16 they were not removing it and that it had been approved so  
17 it was a part of their plan.

18 But with their new recommendation it created a  
19 whole series of new questions for us. They did not give us  
20 a site plan so we can't even envision how these two cars  
21 would actually get up on that lot. Would they have room to  
22 turn around. Would these vehicles be required to back out  
23 onto that very narrow one-way street.

24 And I mean, just how that whole thing works, we  
25 don't have anything except what they said to go by. I mean,

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1 how can you give someone a revised plan without a revised  
2 plan.

3 MR. BOESE: I'll add to that that a revised plan  
4 was in their post hearing materials that were submitted and  
5 they were sent to us at the time of submission.

6 But to Commissioner Wade's point while it shows  
7 perhaps a three-point turn on the neighbors of the new  
8 proposed neighbor there does not appear to be enough space  
9 to do a three-point turn at the rear of this property. And  
10 I would think that would be back out.

11 BZA CHAIR HILL: Okay. All right. So just give  
12 me one second. I'm going to look to the board here just a  
13 little bit. I mean, what seems to be in front of us again  
14 is we can continue and ask our questions and see what's going  
15 on and then determine whether or not we think the applicant  
16 is meeting the standard for us to approve this one way or the  
17 other, or if we think that the argument that the ANC is  
18 making in terms of the adverse impact from the curb cut and  
19 how that affects the project.

20 The applicant is now saying that perhaps -- and  
21 I'm going to ask the applicant. The applicant is also saying  
22 that they would like to take a step back and then see if they  
23 could do this again without the curb cut and thereby gain  
24 ANC's approval. And what does the board think?

25 ZC CHAIR HOOD: I'm trying to figure out, Mr.

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1 Chairman, and I don't recall everything. I thought they were  
2 supposed to be having some continued discussions. And  
3 obviously it looks like that didn't happen. So my first  
4 question is why are they even here.

5           Maybe I heard that wrong, but they haven't had  
6 discussions. That was the whole -- one of the reasons that  
7 we pulled back to go back and see if they can have  
8 discussions and those discussions haven't been had until  
9 today. I have a problem with that. But anyway, it's just  
10 me.

11           BZA CHAIR HILL: So, Mr. Sullivan, and your  
12 client's here. I mean, if you were to pull back as you say.  
13 Because again, I've mentioned this before. If you get the  
14 ANC's approval then you can get a summary order as opposed  
15 to a full order. And that's going to take up a lot less of  
16 your time in terms of this project actually moving forward.

17           But I think your applicant probably -- your client  
18 probably knows that, right? So, are you requesting to take  
19 a step back? I don't understand.

20           MR. SULLIVAN: Only if the board is going to deny  
21 the application based on the existence of a curb cut. We  
22 strongly feel that the curb cut, whether it exists or not is  
23 approved under a separate authority.

24           There's two things being argued here I think. And  
25 I'll put the classist elitist argument aside because I don't

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1 really understand that and I don't think it has anything to  
2 do with zoning.

3           And I would also point out at the same ANC meeting  
4 where this was approved we got another project approved where  
5 they asked us to bring a parking space onsite. Now, albeit  
6 it was through an alley, but still if the issue is bringing  
7 a parking space from public to private I don't really think  
8 that's a real issue. I think the real issue could be impact  
9 on parking and we meet the parking requirement. We  
10 specifically did this to meet the parking requirement.

11           MS. LOVE WADE: That's kind of disingenuous.

12           MR. SULLIVAN: When --

13           BZA CHAIR HILL: Okay, all right --

14           MR. SULLIVAN: When somebody buys a property and  
15 they look at a property. Can I do a conversion? I would  
16 tell them yes, you can do a conversion but you need a parking  
17 --

18           BZA CHAIR HILL: Mr. Sullivan, I understand. I  
19 understand. And I'm just trying to -- I'm sitting here  
20 trying to figure this out with the board's help as well.

21           I don't know whether or not this is going to get  
22 denied. I just don't know yet. So that's where I'm kind of  
23 stuck. Once it's been denied it's been denied. And so what  
24 has happened -- and you've waited all morning here to do  
25 this. And we have to stay here after you guys leave.

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1           So, you know, I mean I'm sorry that whatever you  
2 all -- the community outreach that happened during this whole  
3 process didn't go smoothly. And so that is clear.

4           And so now I just don't know what to do with this.  
5 And so I'm looking to the board to see whether or not we want  
6 to continue this again and see if the applicant can work with  
7 -- and to your point, Chairman Hood, we did -- part of what  
8 was supposed to happen was working with the community.

9           Mr. Sullivan, you don't have to put up that slide  
10 right there. That's okay.

11           MR. SULLIVAN: But I would --

12           BZA CHAIR HILL: Sure.

13           MR. SULLIVAN: I would like to go through the  
14 entire presentation first and then -- it's only a couple more  
15 slides.

16           BZA CHAIR HILL: Okay, sure.

17           MR. SULLIVAN: The only other point that I wanted  
18 to make is there's two potential pieces of impact, one on the  
19 private property and one in the public space. And as to the  
20 private property we meet the parking requirement.

21           As to the public space the Public Space Committee  
22 has said that the curb cut is okay. So that's the only point  
23 I wanted to get across.

24           And I'm just -- it's a matter of preference.

25           BZA CHAIR HILL: Sure.

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1 MR. SULLIVAN: The board does give feedback in  
2 cases where there is -- you are sort of stuck in between.  
3 And you run that risk of the project being a complete failure  
4 or just being damaged. And so the feedback would be  
5 appreciated.

6 And obviously what I'm saying is the applicant  
7 would prefer to have a conversion and do three family sized  
8 units with or without a curb cut would be the second best  
9 choice I guess.

10 BZA CHAIR HILL: Okay. We're going to keep going  
11 through this.

12 VICE CHAIR HART: And so -- I guess this is a  
13 question for us. We would be approving the plans and the  
14 plans would -- if we were approving the plans or not  
15 approving them we would be focusing on the plans that are  
16 before us which include the curb cut.

17 So, because there isn't any relief that's being  
18 requested for it I'm just having a hard time as to try to  
19 understand if they remove it then they would have to be  
20 asking for relief. If they keep it then they're not asking  
21 for relief. Right?

22 BZA CHAIR HILL: One second, Commissioner.

23 VICE CHAIR HART: So as I look through the  
24 conversion special exception criteria the issues that seem  
25 to be coming up are with the special exception criteria, the

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1 general under Subtitle X 901.2 and I'm assuming that's B  
2 which is that the project will not tend to adversely affect  
3 the use of neighboring property in accordance with the zoning  
4 regs and zoning maps.

5 And so we are really looking at once we have a  
6 deliberation, Mr. Sullivan, then we're not going to be  
7 stopping that. So either you all have -- and you have  
8 decided that you want to move forward with the project that  
9 is before us.

10 While you have said that there is an option, that  
11 is more information for us to -- well, it's a possible route  
12 for you all, but it's not something that is before us so we  
13 really can't look at that as being an option. Sure.

14 MR. SULLIVAN: If I could, thank you. Then I  
15 would just like the option before you close the record and  
16 start to deliberate and then we could confer.

17 VICE CHAIR HART: You could confer to do?

18 MR. SULLIVAN: To decide whether or not to  
19 withdraw or not.

20 VICE CHAIR HART: If we close the record then that  
21 means that we are deciding right now.

22 MR. SULLIVAN: Right.

23 VICE CHAIR HART: So I'm not sure what you're  
24 conferring --

25 MR. SULLIVAN: I would like to confer with the

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1 client and --

2 ZC CHAIR HOOD: So what you really want, there's  
3 two things in the pipeline. And just before we decide on the  
4 one that you'd rather have you'd rather pull the other card  
5 out and see if that's what you want.

6 And I've actually, Mr. Chairman, I'm starting to  
7 hear a lot of this down here. Not just on the BZA but on the  
8 Zoning Commission as well.

9 So I think it goes to the vice chair's point.  
10 What's before us is before us. Either you can do that prior  
11 or do it after. Don't wait until you see how it goes and we  
12 get to the point and you kind of get a feel for where we may  
13 go and then you throw something else in. I'm just calling  
14 it from how I see it and how I'm interpreting what you're  
15 actually -- your discussion with the vice chair.

16 And I support what the vice chair is saying. I  
17 think he's exactly correct.

18 BZA CHAIR HILL: Commissioner, you had something  
19 you wanted to say?

20 MR. BOESE: Just a general question. I mean, I  
21 keep hearing that this proposal is meeting the parking  
22 requirement.

23 My question that I would like answered is how can  
24 this be considered as meeting the offstreet parking  
25 requirement if there is not currently an approved permit to

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1 connect that parking space to some way to get a vehicle on  
2 or off the space.

3 VICE CHAIR HART: My only question was that we are  
4 not the ones that would be giving that curb cut. That's  
5 going to be the Public Space Committee that has to do that.  
6 So it's up to them to figure that out.

7 Now, if they can't get that parking space then  
8 they're going to have to come back to us because they're  
9 going to have to say that they can't get -- they will not be  
10 in compliance with the parking regs. So it will take them  
11 longer to do that.

12 That's up to them to determine and figure out.  
13 What I was saying was that they are providing a parking  
14 space. There is an access to get that parking space. The  
15 Public Space Committee will have to deal with providing them  
16 with that approval. You're correct. We're not doing that.

17 If Public Space Committee says no then that  
18 applicant has to come back to us because they won't have any  
19 parking that they're providing.

20 BZA CHAIR HILL: Mr. Sullivan, so I'm going to  
21 propose this. We're going to go -- we'll hear the next case.  
22 Why don't you talk to your client. Why don't you talk to the  
23 ANC here, see if you guys can figure out something and then  
24 come back and tell us what you want to do. Okay?

25 And if you want to come by and roll the dice the

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1 way it is then do that. If you want to do another  
2 alternative then do that. But just come back and tell us,  
3 okay?

4 MR. SULLIVAN: Fair enough. Thank you.

5 BZA CHAIR HILL: All right. So we're going to  
6 take the next case and then we'll come back and see what  
7 happened.

8 MS. ROSE: The next case is 19943 of the Mills  
9 Building Associates LLC pursuant to 11 DCMR Subtitle X  
10 Chapter 10 for area variances from the loading requirements  
11 of Subtitle C Section 901.1 and from the habitable penthouse  
12 regulations of Subtitle C Section 1500.3(d) to renovate and  
13 construct additions to an existing office building in the D-  
14 5/D-6 zones at premises 1700 Pennsylvania Avenue NW square  
15 168, lot 50.

16 BZA CHAIR HILL: Okay. Good afternoon. Good  
17 morning. If you could please introduce yourself for the  
18 record.

19 MR. FERRIS: Lawrence Ferris with the law firm of  
20 Goulston & Storrs here on behalf of the applicant.

21 MR. TUCHMANN: David Tuchmann with Akridge.

22 BZA CHAIR HILL: Okay. I'm sorry, your last name  
23 again, sir?

24 MR. FERRIS: Ferris.

25 BZA CHAIR HILL: Ferris. You would think I would

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1 know by now. Okay. So Mr. Ferris, I guess you're going to  
2 tell us what happened since the last time you were here. And  
3 I'm going to put 15 minutes on the clock just so I know.

4 Is the ANC here? No? Okay, all right. Okay, go  
5 ahead, Mr. Ferris.

6 MR. FERRIS: Yes. So at the board's last hearing  
7 the board had requested additional information regarding our  
8 request for penthouse relief. So we have submitted a market  
9 survey in the record at exhibit 36 and 36A. Really we're  
10 just here happy to answer any questions that you may have.  
11 I have David Tuchmann here on behalf of the applicant as  
12 well.

13 BZA CHAIR HILL: Okay. Does the board have any  
14 questions for the applicant? I had a question. Do you know  
15 if 1900 N Street is done?

16 MR. TUCHMANN: I don't think the building is  
17 completely done at this point.

18 BZA CHAIR HILL: Are you building it?

19 MR. TUCHMANN: It's not our project.

20 BZA CHAIR HILL: Oh, okay. The penthouse looks  
21 fantastic.

22 MR. TUCHMANN: I'll let JBG know.

23 BZA CHAIR HILL: I'd like to see that penthouse.  
24 Okay. Does anybody have any questions for the applicant?

25 MEMBER JOHN: Yes. Can you describe the results

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1 of your survey and why it supports the burden of proof?

2 MR. TUCHMANN: Sure. What we did is in working  
3 with our leasing team whose role it is to canvass the market  
4 for all the different buildings that we might be competing  
5 with.

6 And what we looked at were all the buildings that  
7 are competitive with 1700 Pennsylvania either by the class  
8 of building, the address, or potentially the views. The  
9 views from this building will be fairly impressive.

10 And we looked at those buildings either that are  
11 undergoing major renovations such as what we're proposing at  
12 1700 Pennsylvania or brand new buildings. And those are the  
13 ones that have been able to use after ZR '16 habitable  
14 penthouse as an option.

15 And what we found was we really couldn't find any  
16 project within that cluster that was not taking advantage of  
17 either conference space, lounge space, some type of  
18 entertainment space that would connect to the outdoors as a  
19 way to take advantage of that opportunity.

20 The ones that we did find that didn't have that  
21 were buildings that were older, that were under the previous  
22 regulations. I think there were some maybe that simply had  
23 too small a footprint or for historic preservation reasons  
24 they didn't have that opportunity.

25 But for any building of significant scale that's

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1 competitive they all had that feature.

2 BZA CHAIR HILL: Okay. Did OP have anything  
3 they'd like to add from last time?

4 MR. KIRSCHENBAUM: No, we're still in support.  
5 Thank you.

6 BZA CHAIR HILL: Okay. Okay, great. Anybody  
7 else?

8 VICE CHAIR HART: So we're still also looking at  
9 the flexibility issue?

10 MR. FERRIS: Correct.

11 VICE CHAIR HART: Do you have a -- I don't know.  
12 Well, flexibility with respect to the design in the plans.  
13 Could you just talk about that a little bit more?

14 MR. FERRIS: Sure. So because this project has  
15 to go before the Commission of Fine Arts in addition to the  
16 board we are asking for flexibility that's unrelated to the  
17 relief that we're requesting from the board here which is the  
18 loading relief and the habitability of the penthouse. Not  
19 the penthouse design, just the fact that it will be occupied  
20 and habitable under the regulations.

21 So, we're requesting flexibility to adjust the  
22 design, the facade, the sort of massing of the design in ways  
23 that might need to be adjusted based on the Commission of  
24 Fine Arts review.

25 Again, none of that is in any way related to what

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1 the board's reviewing in this case, the relief we're  
2 requesting. So we feel like it's appropriate to have  
3 flexibility for those adjustments since they're not related  
4 at all to the relief we're requesting.

5 VICE CHAIR HART: Yes, and I think we had this  
6 discussion before. The hard part about it for us is that we  
7 have plans that are before us that we are approving, and then  
8 to change those, then it becomes okay, so we're not really  
9 sure what the ultimate -- what that ultimately is going to  
10 be. And that just has me somewhat -- I'm somewhat concerned  
11 about it and I just don't know exactly.

12 Maybe it's just the terminology that we use in a  
13 condition to allow that.

14 MR. FERRIS: So just to clarify the only  
15 adjustments that would be made would be most likely upper  
16 story adjustments and the square footage and the height  
17 potentially.

18 Probably not I think -- as we noted last time we  
19 were here our architect had said they had been in discussions  
20 with staff for the Commission of Fine Arts and that we felt  
21 fairly certain that there wouldn't be major adjustments to  
22 our design, but we are still asking for flexibility if we  
23 need to adjust the square footage of the design, or the  
24 height, or the exterior design, the massing and the facade  
25 elements.

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1           VICE CHAIR HART:    You do realize that you're  
2 talking about the entire top of the building, right? No, I'm  
3 not being funny, what I'm saying is that what we do, and  
4 you've heard probably some of the cases already. We've said  
5 this is what it is. We had a case just before you that was  
6 talking about, okay, so there's a parking space, one parking  
7 space, or there isn't a parking space. Which is it. Well,  
8 we're not really sure.

9           Well, we have to be sure because we are actually  
10 doing the approving for that. So that's the problem that I'm  
11 trying to grapple with is how much is that flexibility that  
12 we should be building into this. I just find that to be  
13 somewhat troubling to try to kind of make sure that we are  
14 knowing what we are approving.

15           And I understand what you're asking, what you're  
16 stating in terms of what you are here for. I just feel a  
17 little uncomfortable about the parameters around which that  
18 design flexibility is being requested.

19           MR. FERRIS:    And I understand your caution and  
20 concern that there would be a potential for abuse. I think  
21 in this situation -- the difference between this case and say  
22 the previous case is that the parking was at issue in the  
23 board's review. The parameters the board is reviewing in  
24 that case involves parking.

25           Here, we're asking for massing and design changes

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1 but that's completely unrelated to the loading relief and  
2 allowing the penthouse to be habitable. We're not requesting  
3 relief for setback or for height for the penthouse or for the  
4 lower building.

5 VICE CHAIR HART: No, I understand that. I also  
6 know that you're before us because you are required to under  
7 the zoning regs to have our approval before you can kind of  
8 move forward with the project.

9 When you're going to CFA, CFA is an advisory board  
10 that is giving advice on architectural aesthetics. And they  
11 do that well. They've been doing it for many years, over a  
12 hundred years.

13 I'm just saying that there is a level of -- this  
14 is approval that we are trying to deal with. They are giving  
15 advice on it and you are looking at the information and  
16 saying this is what we are -- can do and not do.

17 We could provide a this is the design that is  
18 before you and CFA would have to look at that and say okay,  
19 well -- I mean as you're trying to advance or understand what  
20 CFA is doing you're also trying to understand that there are  
21 parameters and there are approvals that we're giving that  
22 also have implications.

23 And so you know, while I understand that CFA has  
24 their own purview I just think that one doesn't trump the  
25 other. They just need to be worked in tandem.

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1           And so what I'm trying to get to is what is our  
2 level of comfort in terms of what that condition would be  
3 that would allow you to have some flexibility but not just  
4 give carte blanche. And that's what I'm trying to get to.

5           MR. FERRIS: Certainly, and we're not asking for  
6 carte blanche. The applicant would be happy to work with OAG  
7 to craft appropriate language for a condition that would be  
8 limiting and that would be directly related to the Commission  
9 of Fine Arts review rather than it being some sort of open-  
10 ended phrasing that would allow for much more aggressive  
11 adjustments if that would address the board's concern.

12           MR. TUCHMANN: And Mr. Vice Chair, if I can.

13           VICE CHAIR HART: Sure.

14           MR. TUCHMANN: We'd be happy -- if there were any  
15 material issues either that came up at the ANC or that came  
16 up before you the idea of working in tandem makes perfect  
17 sense. We'd want to make sure that both this board as well  
18 as the Commission were comfortable and that we weren't trying  
19 to get one before the other -- look, this group already  
20 approved that so you have to approve it.

21           So if there were any issues that related to --  
22 they would all be matter of right in terms of that massing  
23 and then the penthouse.

24           But if there were issues related to that that the  
25 board was concerned about or an interested party was we'd be

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1 happy to take that issue and work it in tandem in front of  
2 both. We haven't seen one of those issues to date, but if  
3 there were we can do that.

4 VICE CHAIR HART: I understand. This is a  
5 question for OAG. How much flexibility would we be able to  
6 -- and I'm not sure if that's actually even the right  
7 question, but how much flexibility would we be able to give?  
8 As much as we wanted to? Is there a limit to that?

9 MS. NAGELHOUT: I'm not sure I can answer that off  
10 the top of my head.

11 VICE CHAIR HART: I'm sorry for putting you on the  
12 spot about it. I'm just trying to get to the --

13 MS. NAGELHOUT: The regulations do allow -- the  
14 default is that the board approves plans. And then there's  
15 a provision where the ZA can approve modifications to certain  
16 aspects. I don't think I can answer off the top of my head  
17 how this request for flexibility would play into the already  
18 permitted levels of flexibility.

19 VICE CHAIR HART: I was thinking that maybe it's  
20 something that's within the ZA, but I'm not sure if we need  
21 to have some sort of condition that describes where we are  
22 with it. Okay, thank you.

23 BZA CHAIR HILL: All right, so he's going to think  
24 about it. Okay. We're again back to this discussion that  
25 we've had many times about flexibility. And so just how to

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1 word the flexibility request that's being asked of us so that  
2 it doesn't actually change what we're approving. Do you have  
3 a suggestion?

4 MR. FERRIS: So, the Zoning Administrator gives  
5 essentially 2 percent in most cases flexibility under  
6 Subtitle A. So, if there is a threshold that the board is  
7 comfortable with, a square footage threshold or if it's  
8 height, a number of feet that we can lower we'd be happy to  
9 again work with OAG to craft language and the drafting --  
10 order drafting process if we get there to have the board  
11 review that language before the final order is issued.

12 MR. TUCHMANN: If I may. I'm not as versed in  
13 these issues in what the board can and can't grant, but what  
14 would be uncomfortable or would seem -- there wouldn't be a  
15 nexus in my opinion between coming up with a limitation on  
16 level of flexibility that did not relate to specific concerns  
17 or issues that are before the board or that come from zoning  
18 rather than what the CFA will look at that would suggest that  
19 the board was interested and has an interest in confining  
20 what the CFA might ultimately decide to push this facade back  
21 from 17th Street by an extra 8 feet because they'd like to  
22 see a certain viewshed.

23 And I don't know if by random that would be under  
24 a certain percentage or not. My hope is that we could  
25 identify if there were relevant issues to this board that

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1 related to how we would propose the by right project in terms  
2 of its massing and what it looks like then we could identify  
3 those and those would be ones that we would not have  
4 flexibility on or that we'd have to come back before you.

5 MEMBER JOHN: So, Mr. Chairman, I have lost the  
6 flexibility argument many times because I find it very  
7 difficult to ask the board to determine what flexibility is  
8 appropriate in a particular case. And every project is  
9 different.

10 And so I believe the ZA authority to grant this  
11 2 percent change is appropriate. And I am not in favor of  
12 setting a precedent that the board will always consider the  
13 issue of flexibility.

14 We've in the past written language that said where  
15 there's a particular request for a particular thing we have  
16 said as long as it does not require zoning relief we will  
17 grant this flexibility.

18 Here you're not sure what you want. It might be  
19 massing, it could be the setback. So it's difficult for us  
20 in this case I think to grant that flexibility. It might be  
21 in your interest to delay, keep the record open until you're  
22 more clear about what kind of relief you would like. But  
23 right now it's too open-ended in my view.

24 VICE CHAIR HART: The other alternative is that  
25 we approve it without the flexibility. And whatever the ZA,

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1 that 2 percent that the ZA would be --

2 BZA CHAIR HILL: No, I understand. And Ms. John,  
3 I think you've won some of the arguments and you've lost  
4 other ones. You've lost every one. I think actually what  
5 happened was that we came up with better language when you  
6 lost perhaps.

7 So, I don't think you're going to lose this one  
8 because we don't have -- see, what happened in all the other  
9 times the applicant had specific places of flexibility they  
10 were able to ask us for and then we were able to tie that as  
11 to whether or not it was going to require -- we mentioned  
12 those specific alternatives as well as then whether or not  
13 it was going to require -- as long as it didn't require any  
14 further zoning relief.

15 So, but at this point I think if you have to come  
16 back to us then you're just going to have to come back to us.

17 All right. Does anyone have anything else?

18 MEMBER WHITE: I agree with your comments. My  
19 main question because I had to read into the record for this  
20 particular one and so my main question is what exactly are  
21 we approving.

22 And so the request that they're -- in terms of  
23 what the plans currently look like. Is this the document or  
24 is this the architectural plans that they previously filed  
25 in the record? Okay.

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1 Well, I would be in favor of kind of limiting the  
2 flexibility issue at this point until -- unless they have to  
3 come back to us.

4 BZA CHAIR HILL: Okay. It doesn't sound like  
5 we're -- I don't even think the applicant is necessarily  
6 caring right now about the flexibility. This is more a  
7 discussion that we've been having and we're continuing to  
8 have. So, okay.

9 Does anyone have any further questions for the  
10 applicant? Is there anyone here wishing to speak in support?  
11 Is there anyone here wishing to speak in opposition? Is  
12 there something, Mr. Ferris, you wanted to add at the end?

13 MR. FERRIS: I can't quite read the tea leaves,  
14 but if the board is not comfortable with the flexibility  
15 condition or the --

16 BZA CHAIR HILL: Request.

17 MR. FERRIS: Yes, the request. We're happy to  
18 come back for a minor modification. Obviously it will be a  
19 very quick modification.

20 BZA CHAIR HILL: Sure. And I've got to tell you,  
21 the reason why this tends to be of discussion is I don't want  
22 to see you back here anyway.

23 All right, so I'm going to close the record.  
24 Okay. I'm going to go ahead and close the record. Is the  
25 board ready to deliberate? Okay. I can start.

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1 I was comfortable with the application even before  
2 the continued hearing, but now that they have added  
3 information into the record in terms of how the other  
4 competition in the area also has roof decks. I would agree  
5 with their argument.

6 And also the analysis the Office of Planning has  
7 provided as well as that of DDOT and the ANC. So I'm going  
8 to be voting to approve.

9 Does anyone have anything they'd like to add?

10 VICE CHAIR HART: Just one question. Actually,  
11 just to make sure I understood this. Does DDOT have a  
12 condition? Did I remember seeing that? Loading management  
13 plan.

14 BZA CHAIR HILL: Yes, sorry, right. From the  
15 February 11 transportation memo. And that's a condition that  
16 I believe the applicant had agreed to the last time. Okay.  
17 But thanks for pointing that out.

18 VICE CHAIR HART: So, I'll second. You need to  
19 make a motion first.

20 BZA CHAIR HILL: Okay. Well, I'll make the motion  
21 first. So I'm going to make the motion to approve  
22 application number 19943 as captioned and read by the  
23 secretary including the DDOT condition concerning the loading  
24 management plan from February 11 and ask for a second.

25 VICE CHAIR HART: Second.

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1 BZA CHAIR HILL: Motion made and seconded. All  
2 those in favor say aye.

3 (Chorus of ayes)

4 BZA CHAIR HILL: All those opposed? The motion  
5 passes.

6 MS. ROSE: Staff would record the vote as 5-0-0  
7 with a motion by Mr. Hill seconded by Mr. Hart to approve the  
8 application with the DDOT condition as mentioned. In support  
9 also was Ms. John, Ms. White and Mr. Hood.

10 BZA CHAIR HILL: Okay. Thank you, Mr. Ferris.  
11 Thank you, gentlemen. Okay. Ms. Rose, I guess we're going  
12 to see the people back at the table it looks like from the  
13 10th Street if you could recall that. I don't know if  
14 everybody is here or not.

15 And so okay, all right. Then actually never mind.  
16 We'll just go ahead and go to the next one then. It looks  
17 like they're not ready for us yet. So can we go ahead and  
18 move to 19842 when you get a chance?

19 MS. ROSE: Next application is 19842 of Ana DeCruz  
20 as amended pursuant to 11 DCMR Subtitle X Chapter 9 for  
21 special exceptions under Subtitle E Section 5201 from the  
22 non-conforming structure requirements of Subtitle C Section  
23 202.2, and from the rear yard requirements of Subtitle E  
24 Section 306.1, under Subtitle E Sections 206.2 and 5203.3  
25 from the upper floor addition requirements of Subtitle E

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1 Section 206.1, and under Subtitle C Section 1504.1 from the  
2 penthouse setback requirements of Subtitle C Section  
3 1502.1(c)(1)(A) to construct a third story addition and  
4 penthouse and convert the existing attached principal  
5 dwelling unit to a flat in the RF-1 zone at premises 1365  
6 Meridian Place NW, square 2835, lot 15.

7 BZA CHAIR HILL: Okay. Could you please introduce  
8 yourself for the record?

9 MR. CRUICKSHANK: My name is Neil Cruickshank,  
10 architect, Architectural Solutions.

11 MS. DACRUZ: I'm Ana DaCruz.

12 BZA CHAIR HILL: All right, Ms. DaCruz. Welcome,  
13 Mr. Cruickshank. Welcome back.

14 Okay, Mr. Cruickshank, if you could just go ahead  
15 and tell us what happened since the last time you were here.

16 MR. CRUICKSHANK: Went back and reviewed the  
17 project. Almost like starting over in terms of checking the  
18 lot occupancy, see what I can do to make sure that we don't  
19 have -- we're not applying for an extra lot occupancy  
20 variance.

21 I was able to redesign the rear stair access which  
22 was pushing us over the lot occupancy to make sure that the  
23 new stair is matching the existing stair that's there and  
24 therefore keeping the existing lot occupancy, the existing  
25 non-conforming lot occupancy.

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1 BZA CHAIR HILL: So you no longer need the  
2 variance for the area variance?

3 MR. CRUICKSHANK: Correct.

4 BZA CHAIR HILL: Okay. Does the board have any  
5 questions for the applicant?

6 VICE CHAIR HART: So you're saying that you've  
7 condensed the rear balcony landing and the stairs are no  
8 longer larger than what's there existing?

9 MR. CRUICKSHANK: That's correct.

10 VICE CHAIR HART: So even though -- so this would  
11 be a continuing non-conforming. It's not expanding the non-  
12 conforming is what you're saying.

13 Because you're above the allowed lot occupancy  
14 now. Presently.

15 MR. CRUICKSHANK: Yes. So we're not extending the  
16 non-conformity.

17 MEMBER JOHN: So what was the dimension of the  
18 previous proposal? Here it's 7.6 feet.

19 MR. CRUICKSHANK: So that's the rear yard setback.

20 MEMBER JOHN: Yes. I'm not sure what the  
21 difference is.

22 MR. CRUICKSHANK: In terms of?

23 MEMBER JOHN: In terms of reducing the size of the  
24 staircase. Oh, you made it a circular staircase instead.  
25 Is that?

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1 MR. CRUICKSHANK: So it was always a circular  
2 staircase. The landing was a little bit bigger. So I had  
3 to relocate the circular stair closer to the entrance and  
4 then erode it away from the proposed landing and turn into  
5 the building until I got to the point where it matched pretty  
6 much exactly the area of the existing stair that's there now.

7 So the existing stair is under -- on my left as  
8 I'm looking at the picture in front of you. And the proposed  
9 stair is on the right. Proposed stair and landing.

10 MEMBER JOHN: Okay, thank you.

11 MR. CRUICKSHANK: There is a stair going straight  
12 down to the basement on the right which is in the grid. It's  
13 an area really that's not part of the lot occupancy.

14 BZA CHAIR HILL: Okay. Does the Office of  
15 Planning have anything they'd like to add?

16 MR. KIRSCHENBAUM: Nothing that we'd like to add.  
17 We continue to support the application. Thank you.

18 BZA CHAIR HILL: All right. Does the applicant  
19 have anything they'd like to ask of the Office of Planning?

20 MR. CRUICKSHANK: We do not.

21 BZA CHAIR HILL: Okay. All right, is there anyone  
22 here wishing to speak in support? Is there anyone here  
23 wishing to speak in opposition? Does the board have any  
24 further questions?

25 All right, Mr. Cruickshank, do you have anything

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1 you'd like to add at the end?

2 MR. CRUICKSHANK: No, thank you.

3 BZA CHAIR HILL: Okay. I'm going to go ahead and  
4 close the record. Is the board ready to deliberate? Okay,  
5 I can start.

6 I am glad that they were able to get rid of one  
7 piece of relief that they requested. I think that they are  
8 meeting the standard for us to grant this relief. I would  
9 agree with the analysis provided by the Office of Planning.  
10 And I am going to be voting to approve.

11 Does anyone have anything they'd like to add?  
12 Okay. I'm going to -- I know that the secretary did read the  
13 application in when she announced it without the area  
14 variance so I'm not going to repeat myself.

15 So I'm going to make a motion to approve  
16 application number 19842 as read by the secretary and ask for  
17 a second.

18 ZC CHAIR HOOD: Second.

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

21 (Chorus of ayes)

22 BZA CHAIR HILL: All those opposed? Motion  
23 passes, Ms. Rose.

24 MS. ROSE: Staff would record the vote as 4-0-1  
25 on a motion by Mr. Hill seconded by Mr. Hood with Mr. Hart

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1 and Ms. John in support of the motion. Ms. White not  
2 participating.

3 BZA CHAIR HILL: Okay, thank you.

4 MS. DACRUZ: Thank you very much.

5 BZA CHAIR HILL: You too. All right, Ms. Rose,  
6 I guess you can call back up 19944 when you get a chance.

7 MS. ROSE: 19944 is the application of 3554 10th  
8 Street LLC pursuant to 11 DCMR Subtitle X Chapter 9 for a  
9 special exception under the residential conversion  
10 requirements of Subtitle U Section 320.2 to construct a  
11 three-story rear addition to an existing semi-detached  
12 principal dwelling unit and convert it to a three-unit  
13 apartment house in the RF-1 zone at premises 3554 10th Street  
14 NW, square 2832, lot 52.

15 BZA CHAIR HILL: Okay, if you guys could please  
16 introduce yourselves again for me from right to left.

17 MR. CLOCK: Sure. Commissioner Jason Clock.

18 MS. LOVE WADE: Dottie Love Wade, vice chair, ANC  
19 1A.

20 MR. BOESE: Kent Boese, chair, ANC 1A.

21 MR. GREENHOUSE: Jake Greenhouse, applicant.

22 MR. SULLIVAN: Marty Sullivan for the applicant.

23 BZA CHAIR HILL: Okay, great. So Mr. Sullivan,  
24 can you tell me what happened?

25 MR. SULLIVAN: Yes. We have had a discussion with

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1 the principals and with the ANC and we would like leave to  
2 amend the application to include special exception for  
3 parking relief, remove the curb cut.

4 To the extent that the board is otherwise in favor  
5 we would love to have an approval today subject to following  
6 up with revised documents.

7 BZA CHAIR HILL: If you missed the flexibility  
8 thing we had the whole flexibility discussion just a minute  
9 ago. And so when are you here again, Mr. Hood?

10 ZC CHAIR HOOD: I'm not sure.

11 BZA CHAIR HILL: Mr. Sullivan, when do you think  
12 you can get all this done?

13 MR. SULLIVAN: Friday.

14 BZA CHAIR HILL: Okay. And then Mr. Boese, are  
15 you going to go -- are they going to go back before the ANC  
16 again for a vote?

17 MR. BOESE: They don't need to. We discussed this  
18 when we took the original vote and the commission is already  
19 onboard with this.

20 But what I can do which I think would be a good  
21 matter of policy for the board is we do meet tonight and we  
22 can review a document that supports this.

23 BZA CHAIR HILL: So you can submit something on  
24 the record.

25 MR. BOESE: We can submit something with an

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1 official vote.

2 BZA CHAIR HILL: Great. Mr. Commissioner Clock,  
3 you're also a commissioner on this ANC?

4 MR. CLOCK: Correct.

5 BZA CHAIR HILL: How many commissioners do you  
6 guys have?

7 MR. BOESE: We have 12.

8 BZA CHAIR HILL: Okay. Wow, you have 12. I was  
9 like thinking isn't the whole ANC here. Okay.

10 So, okay Mr. Sullivan, then you can help me out.  
11 You can tell me when you think you can get all this done.  
12 You said Friday.

13 MR. SULLIVAN: Yes.

14 BZA CHAIR HILL: Okay. And then -- well, then I  
15 guess Mr. Chair Hood you can just submit, right?

16 ZC CHAIR HOOD: Yes, I can submit because I'm not  
17 back until the 15th. And I'm sure they don't want to wait  
18 until the 15th of May.

19 BZA CHAIR HILL: Okay. Office of Planning, you  
20 don't have anything to add, correct? Okay. All right.

21 So then if you can get this Friday and you can  
22 submit something into the record then we can go ahead and put  
23 this on decision next week. Okay?

24 MR. SULLIVAN: Great. Thank you.

25 BZA CHAIR HILL: Okay. All right. So wait a

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1 minute. Hold on. How does this work. So if they submit  
2 something on Friday, Ms. Rose, then the parties have to have  
3 time to respond. And so, but the parties are -- the only  
4 other party is the ANC and they're here. And so I'm kind of  
5 looking to OAG in terms of the time also. Like can I get  
6 back here for a decision next week?

7 MS. NAGELHOUT: I think the regulation says seven  
8 days or such other time as the board sets.

9 BZA CHAIR HILL: Okay. So I'm setting the time  
10 now then. Okay. So then you guys are on notice. You're the  
11 only other party. And so they're going to submit something  
12 into the record on Friday. Maybe you can give us something  
13 Monday?

14 MR. BOESE: If you want to wait that long.

15 BZA CHAIR HILL: Okay. Well, I'm just saying then  
16 you can at least see what they submit on Friday just in case  
17 there's something that you -- whatever. And then just give  
18 us something on Monday. Please give us on Monday so that we  
19 can discuss this on Wednesday. Okay?

20 MR. BOESE: Easy.

21 BZA CHAIR HILL: Okay, great. All right. Mr.  
22 Sullivan, anything else?

23 MR. SULLIVAN: No.

24 BZA CHAIR HILL: Okay. Was there anyone else here  
25 wishing to speak in support? Was there anyone else here

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1 wishing to speak in opposition? Okay, then I'm going to go  
2 ahead and close the hearing except for the material that  
3 we've requested by the applicant and the ANC. And we'll put  
4 this on decision for next Wednesday.

5 MS. LOVE WADE: May I make a statement?

6 BZA CHAIR HILL: Sure, of course.

7 MS. LOVE WADE: I'd just like to thank the  
8 developers and thank the Commission for working with us to  
9 resolve this issue to the satisfaction of our community. We  
10 appreciate the hard work that went in.

11 BZA CHAIR HILL: Thank you, Commissioner, that's  
12 kind of you to say. All right. Okay, guys. Have a nice  
13 lunch or day or whatever you're going to do.

14 MS. ROSE: So this is for a decision meeting on  
15 April 17?

16 BZA CHAIR HILL: Yes.

17 MS. ROSE: Thank you.

18 BZA CHAIR HILL: Okay, Ms. Rose. Just so  
19 everybody knows we're going to do one more case here and then  
20 we're going to break for lunch. And so we're going to hear  
21 the next case which I think is 19976.

22 MS. ROSE: Yes.

23 BZA CHAIR HILL: Okay.

24 MS. ROSE: Application number 19976 of Paul and  
25 Rosie Nathanson pursuant to 11 DCMR Subtitle X Chapter 9 for

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1 a special exception under Subtitle E Section 5201 from the  
2 lot occupancy requirements of Subtitle E Section 304.1 to  
3 construct a one-story rear addition and a two-story accessory  
4 building to an existing attached principal dwelling unit in  
5 the RF-1 zone at premises 124 11th Street SE, square 989, lot  
6 38.

7 BZA CHAIR HILL: All right, great. Could you  
8 please introduce yourselves for the record?

9 MR. GOETZ: Eric Goetz here on behalf of the  
10 owners Paul and Rosie Nathanson.

11 MR. SULLIVAN: Marty Sullivan on behalf of the  
12 applicant.

13 BZA CHAIR HILL: Mr. Goetz, are you an architect?

14 MR. GOETZ: We're a design build firm.

15 BZA CHAIR HILL: Okay. Because you've been before  
16 us --

17 MR. GOETZ: Yes.

18 BZA CHAIR HILL: -- a few times.

19 MR. GOETZ: Yes. Blue Star.

20 BZA CHAIR HILL: Okay. All right. Mr. Sullivan,  
21 I didn't have a lot of questions for you actually about this  
22 one. And I wanted to make sure we got you in here before  
23 lunch. So you can go ahead and walk us through what you are  
24 trying to do and how you're meeting the standard for us to  
25 grant the relief requested. I'm going to put 15 minutes on

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1 the clock just so I know where we are, Ms. Rose, if you  
2 wouldn't mind. And then you can start whenever you like.

3 MR. SULLIVAN: Thank you, Mr. Chairman. I think  
4 I'll have Mr. Goetz go through the plans and then I'll  
5 briefly sum up with the criteria.

6 MR. GOETZ: Hello. There's two different  
7 components. There's a house and then a carriage house. On  
8 the house itself there are two components, one which is a  
9 rear relatively small 12 and a half feet wide by 4 feet deep  
10 one-story addition. And so that's at the very rear of the  
11 house, first floor only.

12 And that does not go lot to lot. It's within the  
13 lot. The lot is 18 feet wide and the addition is 12 and a  
14 half feet wide.

15 The second component is on the third floor.  
16 Currently the house has an existing third floor and so we're  
17 putting in another bedroom and bathroom at the rear of that  
18 third floor.

19 Currently there's a deck that's there, a roof deck  
20 above the second floor in the rear and we're going to be  
21 removing that and putting the addition on the back of the  
22 third floor.

23 As you can see from this section it doesn't get  
24 any higher than the front part of the building or anything  
25 like that.

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1           That addition also does not go over the existing  
2 or the original dogleg I shall say. The original dogleg is  
3 covered by an atrium and this will not go over that  
4 component. It's going to go over the original structure of  
5 the house.

6           So it will be abutting the south side and on the  
7 north it's still leaving the dogleg area open.

8           In terms of the carriage house it's a two-level  
9 garage lower with a studio above. The only access to the  
10 second floor is from the yard side, not from the alley side.

11           And you can see where the adjacent structures are  
12 there. It's going to be about 2 feet longer than some of the  
13 adjacent structures which are also two stories, carriage  
14 houses in the back.

15           MR. SULLIVAN: Thank you. So the addition that  
16 is being considered is the new accessory building and the  
17 addition to the rear and the partial addition on the third  
18 floor.

19           And the addition is relatively minor in relation  
20 to the neighboring buildings and the existing building and  
21 therefore does not unduly impact neighboring light and air  
22 or privacy. There's no windows on the north side.

23           MR. GOETZ: No, there are not. There are not any  
24 windows there and the north neighbor already has an existing  
25 third floor which will be the same height more or less.

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1 MR. SULLIVAN: And also the view from the alley  
2 is not substantially -- does not alter the character of the  
3 view -- or the view from the alley.

4 So, that's all we have. If the board has any  
5 questions.

6 BZA CHAIR HILL: Sure. Just clarifying, the  
7 applicant -- the proposed lot occupancy includes the  
8 approximately 1 foot deep projection of the second floor  
9 balcony past the rear wall line of the proposed first floor  
10 addition in exhibit 6, sheet A0300 and the balcony at the  
11 west side of the proposed accessory structure, correct?

12 MR. SULLIVAN: Yes.

13 BZA CHAIR HILL: Okay. Does anyone have any  
14 questions?

15 MEMBER JOHN: Just a quick question. Are you  
16 keeping the dogleg at the second and third floors? Did I  
17 hear that correctly?

18 MR. GOETZ: The dogleg is covered with an atrium,  
19 with basically a roof that has skylights in it right now.  
20 But the original structure is still there. We are not  
21 touching that at all. So that will remain.

22 BZA CHAIR HILL: Okay. Going to turn to the  
23 Office of Planning.

24 MR. COCHRAN: Thanks, Mr. Chair. Just a couple  
25 of clarifications.

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1 Yes, they did include that balcony in the lot  
2 occupancy. But there isn't actually a balcony off of the  
3 accessory building. It just looks like it in the drawings.  
4 On the elevation drawings it looks like there's a balcony.  
5 I was wrong when I looked at it. That's why we raised the  
6 question.

7 If you look at the plan drawings you'll see that  
8 actually what looks to be outside is actually internal to it.  
9 So there's no balcony. I just want to be sure that that's  
10 on the record.

11 And anyway, OP then recommends that you approve  
12 the request.

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

15 MEMBER WHITE: Just one question. So you're  
16 comfortable with the calculation of the lot occupancy?

17 MR. COCHRAN: Yes.

18 MEMBER WHITE: Okay. Thank you.

19 BZA CHAIR HILL: Okay. Does the applicant have  
20 any questions for the Office of Planning?

21 MR. SULLIVAN: No, thank you.

22 BZA CHAIR HILL: Okay. Is there anyone here  
23 wishing to speak in support? Is there anyone here wishing  
24 to speak in opposition? Mr. Sullivan, do you have anything  
25 you'd like to add at the end?

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1 MR. SULLIVAN: No, thank you.

2 BZA CHAIR HILL: Okay. I'm going to close the  
3 hearing. Is the board ready to deliberate? Okay. I can  
4 begin.

5 I think that the applicant has met the standard  
6 for us to grant the relief requested. I didn't really have  
7 any issues with the particular application.

8 I also would agree with the analysis that has been  
9 provided to us by the Office of Planning as well as that of  
10 ANC 6B and will be voting to approve. Would anyone like to  
11 add anything?

12 I'm going to go ahead and make a motion then to  
13 approve application number 19976 as captioned and read by the  
14 secretary and ask for a second.

15 VICE CHAIR HART: Second.

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

18 (Chorus of ayes)

19 BZA CHAIR HILL: All those opposed? The motion  
20 passes, Ms. Rose.

21 MS. ROSE: Staff would record the vote as 5-0-0  
22 with the motion by Mr. Hill, seconded by Mr. Hart with Ms.  
23 John and Ms. White in support of the motion. Also Mr. Hood  
24 in support of the motion.

25 BZA CHAIR HILL: Thank you.

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1 MS. ROSE: Thank you.

2 BZA CHAIR HILL: Thank you, gentlemen. Okay,  
3 we're going to take lunch. We'll probably be back at 1:15.

4 (Whereupon, the above-entitled matter went off the  
5 record at 12:28 p.m. and resumed at 1:28 p.m.)

6 BZA CHAIR HILL: All right, Ms. Rose, whenever  
7 you'd like.

8 MS. ROSE: Next is application number 19922 of  
9 1471 Girard Street Holding LLC as amended pursuant to 11 DCMR  
10 Subtitle X Chapter 9 for a special exception under Subtitle  
11 F Section 5201 from the lot occupancy requirements of  
12 Subtitle F Section 304.1 and pursuant to 11 DCMR Subtitle X  
13 Chapter 10 for a variance from the floor area ratio  
14 requirements of Subtitle F Section 302.1 to permit an  
15 existing four-unit apartment house in the RA-2 zone at  
16 premises 1471 Girard Street NW square 2669, lot 45.

17 BZA CHAIR HILL: Okay, great. If you could please  
18 introduce yourselves for the record.

19 MR. CLOCK: Sure. Jason Clock, commissioner of  
20 the affected district.

21 MS. MOLDENHAUER: Good afternoon, Meredith  
22 Moldenhauer from the law firm of Cozen O'Connor on behalf of  
23 the applicant.

24 BZA CHAIR HILL: Commissioner Clock, you were here  
25 before for the other one. Okay. You're staying with us all

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1 day. All right.

2 So I'll wait, Ms. Moldenhauer, for you to pull up  
3 your presentation. Okay, Ms. Moldenhauer, I'm going to let  
4 you kind of start, but there wasn't anything in particular  
5 I was interested in you addressing except for some of the  
6 things I guess that OP has brought up in their report.

7 But I'll go ahead and let you walk through it  
8 there and we'll see where we get. I'm going to put 15  
9 minutes on the clock just so I know where we are and you can  
10 begin whenever you like.

11 MS. MOLDENHAUER: Thank you very much, Chairman  
12 Hill. So the property is located in an RA-2 zone and here  
13 are some images. The property is the building with the white  
14 and then the angled roof second in this image.

15 You can see it's located across from a large  
16 community rec center and in a neighborhood in which obviously  
17 RA-2 apartment buildings are located.

18 The project was built in construction with a  
19 building permit that was issued June 24, 2016. We became  
20 aware following filing this application that the original  
21 building permit was approved in violation of the FAR that was  
22 permitted.

23 And so we have gone back and the building was  
24 built beyond the original scope of the building permit, but  
25 what we are now asking for is to reduce the top floor to what

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1 was just simply approved by the original building permit  
2 which is still as I indicated above the FAR requirements and  
3 so that is why we are asking for two areas of relief.

4 We are asking for, one, a variance for a de  
5 minimis amount of 15.8 square feet which equals 0.0097 FAR  
6 which is obviously over the 1.8 FAR permitted, and we are  
7 also asking for lot occupancy relief.

8 That was again something where the permits were  
9 approved initially anticipating that they were going to  
10 remove the front ornamental porch which at the time that the  
11 permit was approved was not required to be maintained by the  
12 zoning regulations.

13 But then when the applicant constructed the  
14 project they actually did not demolish the front porch but  
15 left it in place which then created this additional lot  
16 occupancy beyond the permitted lot occupancy.

17 We went and attended a January 2, 2019  
18 subcommittee that was at the time we were asking for a lot  
19 larger amount of FAR relief.

20 The community obviously indicated concern. We  
21 then went back in February 2019 and were saying well, let's  
22 see if we can't just bring it back to what was approved  
23 thinking we were going to be completely getting rid of the  
24 variance relief.

25 But then upon research we realized that even if

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1 we're bringing it back to what was approved on the original  
2 building permit we would still need the degree of FAR relief  
3 that we're asking today.

4           When we did reduce the relief though we went back  
5 to the ANC on March 13 and the ANC voted unanimously to  
6 support the application as it is proposed today.

7           This is an image as you can see, and I'm just  
8 going to kind of circle it with my cursor here, what was  
9 constructed and what exists today, the original plans just  
10 simply showed a landing here and this was open to the area  
11 below.

12           What was built and what exists today is obviously  
13 a larger area than what was approved. What we are proposing  
14 is to actually demolish this portion of the existing  
15 structure and to bring it back to what was originally  
16 approved in the building permit which is just a walkthrough.  
17 But this obviously area was not initially counted as FAR and  
18 that's where we're asking for the FAR relief.

19           We believe that we satisfy the variance standard  
20 for the FAR relief as multiple cases state, in Gilmartin and  
21 also in Stewart the Zoning Board, these cases determined that  
22 when you're looking at a degree of relief that the hardship,  
23 the practical difficulty that is required to be proven is  
24 obviously then correlates with the degree of relief being  
25 requested.

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1           And so from the special exception relief in  
2 regards to the special exception standard we believe that we  
3 are in harmony with the intent of the zone and that the lot  
4 occupancy relief for the special exception relief would have  
5 no adverse impact on the neighbors and would comply with the  
6 special conditions seeing that the -- maintaining the front  
7 porch actually is in keeping with the character of the  
8 neighborhood and is something that the community is in  
9 support of.

10           There are specific conditions related to the lot  
11 occupancy in regards to light, air, privacy, use and  
12 enjoyment -- that relief above the 70 percent lot occupancy  
13 really has to do with the front porch.

14           We don't believe that any of these -- that we  
15 satisfy all these conditions.

16           And I would be available for the board to answer  
17 any questions.

18           BZA CHAIR HILL: Okay. Does the board have any  
19 questions of the applicant?

20           VICE CHAIR HART: Yes, Mr. Chairman, I do have a  
21 question for Ms. Moldenhauer.

22           Could you just describe what the issue is with the  
23 cellar versus basement and when you expect the ZA to make a  
24 determination on this?

25           MS. MOLDENHAUER: The ZA made a determination on

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1 this yesterday via an email that came out. We worked  
2 extensively with the inspector's office and Jeff Ries from  
3 DCRA. We went out and had a third party surveyor go out and  
4 conduct an additional survey with specific measurements and  
5 dimensions that were requested.

6 I even took photographic evidence of those  
7 inspections occurring. I've had meetings. Mr. Ries then  
8 acknowledged and confirmed the surveyor's measurements in an  
9 email to Mr. LeGrant. Mr. LeGrant then issued an email to  
10 OP, to Karen Thomas even though I know Maxine Brown-Roberts  
11 is here today, myself and Jeff Ries and Rohan Reid at DCRA  
12 all acknowledging that he is accepting the lower level as a  
13 cellar and as a non-contributing FAR factor.

14 VICE CHAIR HART: This is -- did you submit that  
15 to the board?

16 MS. MOLDENHAUER: I did not. I can.

17 VICE CHAIR HART: I only bring it up in that there  
18 is a discussion in your statement, I think it's in your pre-  
19 hearing statement. I remember seeing it. I can't remember  
20 where I saw it.

21 MS. MOLDENHAUER: The ANC referenced it, yes. OP  
22 also referenced it.

23 VICE CHAIR HART: So I just wanted to kind of tie  
24 that up if it is tied up so at least we have an understanding  
25 of where that is. If you could submit that, I don't know.

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1 I don't know what we're going to be -- if we're going to vote  
2 on this today or not. But I would like to at least have that  
3 kind of tied up because other folks have brought it up and  
4 I'd just rather have that than not have it.

5 MS. MOLDENHAUER: It is a self-certified  
6 application. That's one of the things that we had said in  
7 our filings was that we have to deal with this obviously with  
8 the Zoning Administrator and as a self-certified application  
9 we were not asking for FAR relief on the cellar.

10 Obviously we would hope that the board would be  
11 able to hear the hearing and resolve the case today. And I  
12 can always provide that in the record after the fact.

13 VICE CHAIR HART: Maybe it is helpful that we've  
14 already -- that you have given the testimony already and that  
15 we have -- well, I guess we have OP here and maybe they can  
16 shed some light on this as well. Thank you.

17 Sorry, one other question. And so was this the  
18 same -- this was the same owner for the entire length of the  
19 project.

20 MS. MOLDENHAUER: The original investment entity  
21 that owned the project had -- the current applicant was a  
22 member of that entity.

23 VICE CHAIR HART: I understand.

24 MS. MOLDENHAUER: But it was -- he's --

25 VICE CHAIR HART: I understand that.

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1 (Simultaneous speaking)

2 MS. MOLDENHAUER: -- control in regards and was  
3 not aware of kind of what was happening. Kind of boots on  
4 the ground at the time of construction. But yes, it is the  
5 same entity.

6 VICE CHAIR HART: Okay. And so what was this  
7 building built at if they didn't have the original permit  
8 set? Like how did they use -- what did they base the  
9 construction on if they didn't really have that? It seems  
10 like there was some description of the architect had the  
11 permit set so we really weren't sure what we were kind of  
12 constructing. I was just curious as to how do you do that  
13 if you don't know what's been approved.

14 MS. MOLDENHAUER: So, the original architect on  
15 the project obviously had the plans. And the project was  
16 built based on those plans in all aspects except for the top  
17 floor in which they built beyond the scope of the original  
18 permit set.

19 What happened is that architect left and was no  
20 longer involved in the process as we filed this BZA  
21 application and was no longer involved and so we never had  
22 a copy of the original permit set and only obtained that in  
23 the middle of the filing.

24 VICE CHAIR HART: So because this -- and I  
25 appreciate the answers. There were just some kind of

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1 questions that I was trying to figure out the sequence.

2           So, I understand that the current ownership was  
3 a part of the ownership that previously -- I don't know, I  
4 think this is probably -- it's good enough for me to be able  
5 to describe it. And that the architect that was originally  
6 built the project built it more than what was allowed under  
7 zoning even though the zoning was allowing more than what was  
8 allowed under zoning.

9           And so it just seems like the issues were  
10 compounding on one another. So I just wanted to make sure  
11 I understood that correctly.

12           MS. MOLDENHAUER: Yes. We've been completely  
13 transparent about this. And the ANC, we met with them and  
14 we walked through just the facts. And unfortunately the  
15 facts sometimes are good facts and sometimes the facts are  
16 just what they are.

17           And so yes. The top floor originally was  
18 permitted and the permit set -- I have a copy here. So, it  
19 might be easier just to show you. Of course I'm not pulling  
20 it up. Sorry, it's not coming up.

21           VICE CHAIR HART: That's okay.

22           MS. MOLDENHAUER: The original permit set that was  
23 approved showed the top mezzanine or top third floor level  
24 as a stair and as a landing. It though clearly on the permit  
25 set plans identified that level as not contributing to FAR

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1 which is just wrong. It should have contributed to FAR.

2 When the construction occurred the construction  
3 occurred beyond the scope of even that top floor landing and  
4 they built a larger bathroom and they built a bedroom area  
5 or an area.

6 We are now proposing to demolish what currently  
7 exists today and to bring it back into the scope of what was  
8 permitted even though what was permitted was beyond the  
9 scope.

10 And that obviously, that history and that reliance  
11 on that at least original permit is our unique condition.

12 VICE CHAIR HART: I appreciate you stepping  
13 through that. That was -- I thought I understood it and this  
14 has been -- has provided me with a more clear understanding  
15 of what transpired through the process. So I appreciate it.  
16 Thank you.

17 MEMBER JOHN: So if I could just follow up. So  
18 it won't be a bathroom and a bedroom there now. It will just  
19 be the mezzanine or a landing? What will be there now? As  
20 proposed.

21 MS. MOLDENHAUER: As proposed obviously if this  
22 board approves you would then get a revised permit based on  
23 a BZA order and deconstruct what is there.

24 And it would just simply be a stair and a landing  
25 out to an outdoor patio.

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1           MEMBER JOHN: Okay. Instead of an enclosed space  
2 with a bedroom and a bathroom.

3           MS. MOLDENHAUER: Correct.

4           MEMBER JOHN: Okay, thank you.

5           BZA CHAIR HILL: Okay. Commissioner Clock, what  
6 would you like to do? I mean I'm sorry, are you presenting?  
7 I wasn't clear as to why you were here.

8           MR. CLOCK: Yes, I wanted to kind of read  
9 something I had prepared if I could.

10          BZA CHAIR HILL: Sure, of course.

11          MR. CLOCK: Thank you, Chair. So, basically I  
12 wanted to summarize the recommendations that we gave to you  
13 on form 129.

14                 We do support the changes that the developer has  
15 made by removing the additional bedroom and bathroom that  
16 were added by a rogue contractor at one point. So I'm happy  
17 that that's no longer going to be there.

18                 But we also wanted to bring to your attention that  
19 we have been deceived on a few occasions which is why -- kind  
20 of a bigger issue we have.

21                 On January 2nd at the ANC zoning committee meeting  
22 we were provided with plans that were supposed to be as built  
23 and they were not. They were the ones that were submitted  
24 to the city which did not include the extra bedroom and  
25 bathroom.

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1           So after in that meeting searching on the websites  
2 to find real estate for sale we noticed that there was an  
3 extra bedroom and bathroom there which is why we kind of  
4 followed up with that.

5           Also, on a 22 March 2016 letter from the architect  
6 it was stated that the penthouse had been reduced in size but  
7 that had definitely not been the case come 2019. So they had  
8 already said they were going to reduce the penthouse level  
9 to a mezzanine and a walkway passthrough but that was not the  
10 case then.

11           So I just wanted to say that we weren't very happy  
12 being deceived. We do hard work and try to get to the bottom  
13 of these things.

14           So I guess we're happy that the developer was  
15 willing to work with us and reduce the FAR by removing the  
16 extra penthouse level.

17           But we just wanted to make sure that this is  
18 nothing that comes in -- we're concerned as for your board's  
19 sake and as far as the ANC commission that if -- our  
20 authority could be undermined if we were to allow any plans  
21 to deviate from the submitted plans to the city.

22           So I understand the submitted plans did not  
23 include the extra bedroom and bathroom on that penthouse  
24 level at all. But it was built that way and perchance that  
25 someone didn't notice it.

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1           So I'm a little concerned with that and I'm hoping  
2 we don't set any precedents. I'm happy that the developer  
3 has decided to remove the extra bedroom and bathroom. But  
4 just I'm a little concerned that this might happen more often  
5 and hoping that we don't see this in the future coming up  
6 more often.

7           So we do support the plans as they've been  
8 modified, but we did have some trouble getting to where we  
9 are today. But we are happy with the decision to remove that  
10 extra space at this time.

11           BZA CHAIR HILL: Okay. All right, Commissioner.  
12 Well, thanks for staying to give your testimony.

13           Does the board have any questions for the  
14 commissioner? Does the applicant have any questions for the  
15 commissioner?

16           MS. MOLDENHAUER: No, but I would like to clarify  
17 some points when I have a moment in my closing.

18           BZA CHAIR HILL: Okay. Do you have any questions  
19 by the way of the applicant?

20           MR. CLOCK: No, I don't.

21           BZA CHAIR HILL: Okay. All right. I'm going to  
22 turn to the Office of Planning.

23           MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman  
24 and members of the BZA. Maxine Brown-Roberts from the Office  
25 of Planning.

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1 I am going to stand on the record. We support the  
2 variance relief that was requested. We think it's a small  
3 deviation from the permitted FAR and both the applicant and  
4 us in a report has demonstrated or outlined the conditions  
5 that we believe was the exceptional situation resulting in  
6 a practical difficulty.

7 And that the small amount of additional FAR would  
8 not be a detriment to the public good or to the zoning  
9 regulations.

10 Regarding the special exception we think -- we  
11 support the lot occupancy that goes up to 68 percent and  
12 believe that the applicant has met all the requirements of  
13 5201.1.

14 Regarding the cellar I have not seen the Zoning  
15 Administrator's determinations so I'm just going by the  
16 applicant's word. Thank you, Mr. Chairman.

17 BZA CHAIR HILL: Okay, thanks. Does anybody have  
18 any questions for the Office of Planning?

19 MEMBER WHITE: One question. The existing front  
20 porch remains as part of the plans, correct?

21 MS. BROWN-ROBERTS: Yes.

22 MEMBER WHITE: Okay, thank you.

23 BZA CHAIR HILL: I guess just to clarify for me.  
24 So the exceptional condition is that they did have plans that  
25 were approved and the plans that were approved had the

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1 increased FAR.

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

3 BZA CHAIR HILL: So, right. And this has happened  
4 before I think. It doesn't happen that often, but like you  
5 know --

6 MS. BROWN-ROBERTS: Yes.

7 BZA CHAIR HILL: That's the exceptional condition.

8 MS. BROWN-ROBERTS: Yes.

9 BZA CHAIR HILL: Okay, all right. Does the  
10 applicant have any questions for the Office of Planning?

11 MS. MOLDENHAUER: No, thank you.

12 BZA CHAIR HILL: Does the commissioner have any  
13 questions for the Office of Planning?

14 MR. CLOCK: No, thank you.

15 BZA CHAIR HILL: Okay. Is there anyone here  
16 wishing to speak in support? Is there anyone here wishing  
17 to speak in opposition? Ms. Moldenhauer, you said you wanted  
18 some rebuttal or a conclusion.

19 MS. MOLDENHAUER: I just wanted to clarify for the  
20 record that this is not a penthouse. This is a story and the  
21 story contributes to FAR. It would not comply with penthouse  
22 requirements and if it had been a penthouse it would have  
23 been easier because then it could have been a 0.4 FAR and we  
24 wouldn't be here today.

25 But I just wanted to make sure that it is very

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1 clear that this is not a penthouse. It is also not a  
2 mezzanine. It is a story and it contributes to FAR. And  
3 that we have done everything in our capacity to be as  
4 transparent and provide information as it became apparent to  
5 us. And we obviously believe we satisfy the variance and the  
6 special exception standard and would ask the board to support  
7 both relief. Thank you.

8 BZA CHAIR HILL: Okay, great. Thank you. All  
9 right. The applicant, nobody has any more further questions.  
10 I'm going to go ahead and close the record. Is the board  
11 ready to deliberate? Okay, I can begin.

12 I think that based upon the record and the  
13 testimony of the applicant I understand how they got to this  
14 point. And so I am glad to see that the ANC was able to stay  
15 and give their testimony. Appreciate that very much because  
16 it is always helpful to hear from the ANC firsthand.

17 And so I am going to rest on also the analysis the  
18 Office of Planning has provided as to how we got to this  
19 point in terms of the standards being met and I'm going to  
20 vote to approve. Does anyone have anything they'd like to  
21 add?

22 All right, I'm going to go ahead and make a motion  
23 then to approve application number 19922 as captioned and  
24 read by the secretary and ask for a second.

25 VICE CHAIR HART: Second.

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1 BZA CHAIR HILL: Motion made and seconded. All  
2 those in favor say aye.

3 (Chorus of ayes)

4 BZA CHAIR HILL: All those opposed? Motion  
5 passes, Ms. Rose.

6 MS. ROSE: Staff would record the vote as 5-0-0  
7 with a motion by Mr. Hill, seconded by Mr. Hart with Ms.  
8 John, Ms. White and Mr. Hood in support of the motion to  
9 approve the application.

10 BZA CHAIR HILL: Okay, great. Thank you. Thank  
11 you all very much.

12 MS. ROSE: Next is application number 19962 of  
13 District Properties.com as amended pursuant to 11 DCMR  
14 Subtitle X Chapter 10 for an area variance from the lot  
15 dimension requirements of Subtitle D Section 302.1, the side  
16 yard requirements of Subtitle D Section 206.3 to construct  
17 a new detached principal dwelling unit in the R-2 zone at  
18 premises 917 43rd Place NE square 5096, lot 20.

19 BZA CHAIR HILL: Great. Thank you, Ms. Rose.  
20 Could you please introduce yourself for the record?

21 MR. SECK: Yes, good afternoon, Chairman and  
22 members of the board. My name is Sedina Seck representing  
23 District Properties.

24 BZA CHAIR HILL: Okay, Mr. Seck. I guess there's  
25 a couple of preliminary matters. The affidavit of posting.

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1 So there's a 15-day posting requirement and you're asking for  
2 a waiver from that posting as well as the affidavit of  
3 maintenance. Could you please explain why?

4 MR. SECK: Chairman, this puts me in a bad  
5 position. I am not aware of that request from my office so  
6 that kind of sets me off guard here, that there was an  
7 affidavit of posting. I'm here just to present -- seeking  
8 the relief for the variances, but I'm not aware of that.

9 BZA CHAIR HILL: Okay. Can OAG help me with this  
10 again?

11 MS. NAGELHOUT: It's a requirement that should be  
12 met or the applicant could ask for a waiver if he wanted to  
13 go that way. Or you could put it off and make sure that the  
14 property has been posted.

15 BZA CHAIR HILL: Okay. So, Mr. Seck, have you met  
16 the posting requirement?

17 MR. SECK: I wouldn't be able to answer that. In  
18 my office that's the problem, somebody else takes care of  
19 posting. And if there's any discrepancy they would notify  
20 me before I show up here. I wasn't even aware.

21 BZA CHAIR HILL: I guess the reason why, there's  
22 not an affidavit of posting in the record. And then there's  
23 not an affidavit of maintenance in the record.

24 VICE CHAIR HART: I just saw one, but I'm not sure  
25 which date it was filed. It says March 26.

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1 MS. ROSE: I think it meets the 15 days of  
2 posting. They just didn't submit the affidavit of  
3 maintenance saying that they maintained the posting over the  
4 time.

5 BZA CHAIR HILL: Right, okay.

6 MS. ROSE: So it's something that can be waived.

7 BZA CHAIR HILL: It's something that can be  
8 waived, is that what you said?

9 ZC CHAIR HOOD: Mr. Chairman, since we do have a  
10 picture of it I would agree we could waive it. Had this not  
11 been in the record, this picture, then I would have had a  
12 problem with this. But since it's there.

13 BZA CHAIR HILL: Okay. Well, there's another one  
14 also. It's the same issue on the next case as well.

15 ZC CHAIR HOOD: Do we have a picture?

16 VICE CHAIR HART: Actually I have a question.

17 BZA CHAIR HILL: It's also the same on the third  
18 one as well.

19 VICE CHAIR HART: Just one question. I pulled it  
20 up on our system. I didn't know which date they put it in.  
21 They put it in on the 8th.

22 ZC CHAIR HOOD: The 8th of?

23 VICE CHAIR HART: Of April.

24 MS. ROSE: They filed it on the 8th but it  
25 indicates that it's been posted for the 15 days.

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1 VICE CHAIR HART: Okay, that's what I --

2 MS. ROSE: The sign has been up on the property,  
3 yes.

4 VICE CHAIR HART: Thank you.

5 ZC CHAIR HOOD: I do have a question for the --  
6 I noticed that you have some posting. Who's going to post  
7 that that you've been holding all morning?

8 MR. SECK: Yes. The lady Sarah. She's a  
9 coordinator for the BZA case.

10 ZC CHAIR HOOD: Oh, so you're going to take it to  
11 her.

12 MR. SECK: To her, right. She texted me actually  
13 when I was here that this sign was ready and I was taking it.  
14 This is for another --

15 BZA CHAIR HILL: That's for another matter.  
16 Right, that's for something else.

17 MR. SECK: Yes.

18 BZA CHAIR HILL: But do you know if there's  
19 anything then in the record for the other two properties?

20 MR. SECK: As far as posting?

21 BZA CHAIR HILL: Yes. You don't know. Okay. All  
22 right, well let's do this one thing at a time then first.

23 So, Chairman Hood, you are comfortable with  
24 waiving the --

25 ZC CHAIR HOOD: I was until I -- I'm now looking

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1 at -- I thought maybe that was something that was added  
2 later. I may have missed it. It was the last exhibit. If  
3 all three of them have the same problem then that to me that  
4 proposes that we have a problem. Because these are infills  
5 and those are -- especially in Ward 7 even though there's no  
6 one here. Well, anyway, I don't --

7 BZA CHAIR HILL: No, that's fine. I mean, the  
8 posting, that's the -- Mr. Seck, you've been before us plenty  
9 of times, right? I mean, you know, the posting is how people  
10 know that you're going to be here. And so we need to have  
11 proof that you've posted it for the requirement and then you  
12 have to put an affidavit in there that says you've maintained  
13 it for that time limit so that people can be here.

14 And so I guess I'm kind of also a little bit at  
15 a loss now in that I'm not clear and Mr. Seck, it's kind of  
16 you not to lie even though you are under oath.

17 But like you know, you can't vouch for whether or  
18 not these things have been posted.

19 MR. SECK: I can find out from my office if you  
20 allow me, if you want to maybe take another case if there is  
21 any --

22 BZA CHAIR HILL: You're the last case. That's  
23 okay. I'm just trying to think.

24 ZC CHAIR HOOD: So, Mr. Chairman, we do have a  
25 commissioner here for the next two I believe. And maybe when

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1 we get to those we can -- maybe we should do this one at the  
2 end. I would like to maybe have his involvement. He may be  
3 able to not necessarily vouch, but he may be able to give us  
4 a little more discovery on this affidavit issue.

5 BZA CHAIR HILL: Sure. So, before we do that  
6 let's also just -- okay. All right. Because what I'm just  
7 trying to figure out is what we were going to do anyway.  
8 Like I mean they're here, he's here. We've reviewed  
9 everything. And so I'm just trying to think whether or not  
10 we hear the case and then we find out whether or not it was  
11 posted properly and then we can come back and have a decision  
12 or not.

13 So, if it's just the posting. So there's a  
14 commissioner here you're saying.

15 ZC CHAIR HOOD: For the other two.

16 BZA CHAIR HILL: Okay.

17 ZC CHAIR HOOD: For the other one, the one in Ward  
18 5 which I think would help us give a temperament to this.

19 BZA CHAIR HILL: Okay, I understand what you're  
20 saying. So is there a commissioner here from the ANC? If  
21 you could raise your -- okay. Are you here for the next case  
22 or the case after the next case? All right.

23 So, we will table this for a minute, Ms. Rose, if  
24 you could and call the next case, 19967. And then we're  
25 going to have to reintroduce ourselves again and then we'll

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1 come back to 19962 and figure that out, okay? Ms. John.

2 MEMBER JOHN: Mr. Chairman, the only thing I was  
3 going to say was that there's an affidavit of posting in the  
4 record. For the first one. And for the second. They were  
5 entered in the record on the 8th of April.

6 MS. ROSE: There are three issues. One, has the  
7 property been posted for the full 15 days. That's the first  
8 question.

9 The second question is whether the affidavit of  
10 posting was filed in a timely manner. And that's when  
11 they're looking at April 8th saying it was late.

12 The third matter is whether the affidavit of  
13 maintenance has been submitted to demonstrate that the  
14 property has been posted and they've checked it every five  
15 days. Those are the three issues involving this.

16 But this application has an affidavit of posting  
17 saying that the posting has been placed on the property for  
18 the 15 days. You know, 15 days before the hearing.

19 But the only question is whether it's been  
20 maintained. That's the main question.

21 BZA CHAIR HILL: Okay, all right. Okay, all  
22 right, so I'm losing here. I'm losing control. So, let's  
23 do this. Chairman Hood made a suggestion. We're going to  
24 go with it because there's a commissioner here for the next  
25 one. And then we'll come back and figure that out. So Ms.

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1 Rose, can you go ahead and call the next case?

2 MS. ROSE: Yes. Application 19967 of District  
3 Properties.com as amended pursuant to 11 DCMR Subtitle X  
4 Chapter 10 for area variances from the lot dimension  
5 requirements of Subtitle D Section 302.1 and the side yard  
6 requirements of Subtitle D Section 206.3 to construct a new  
7 detached principal dwelling unit in the R-1-B zone at the  
8 premises 2429 Girard Place NE parcel 155/9.

9 BZA CHAIR HILL: Okay. If you could please  
10 introduce yourselves for the record.

11 MR. SECK: Yes, Sedina Seck representing District  
12 Properties.

13 MR. MONTAGUE: Jeremiah Montague, Jr.,  
14 commissioner for 5C, ANC 5C-07.

15 BZA CHAIR HILL: All right, Commissioner. Thanks  
16 for hanging around. Sorry we didn't realize -- I didn't  
17 realize you were here. I've seen you before so I should have  
18 recognized you.

19 Okay. So, Mr. Seck, I'm going to go ahead -- well  
20 again, there's this same thing that I'm confused about. So  
21 was this property posted? Yes, it was posted. I'm looking  
22 at the secretary. Because I don't have a record in front of  
23 me so I'm sorry, that's why.

24 And so -- and then was this posted according to --  
25 for 15 days and checked every 5 days?

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1           MR. SECK: Chairman, I would not be able to say  
2 yes or no on that. But normally the procedure in the past  
3 as you said I've been here before. We take it to the person  
4 who coordinates all of this, give it to gentleman to post it,  
5 send a picture.

6           And also these gentlemen do maintain the property  
7 for grass cutting, et cetera. And if the sign fell they  
8 would report it, but I have been to the property --

9           BZA CHAIR HILL: Okay, okay. All right. On this  
10 particular case it appears there are things in the record and  
11 so I'm satisfied that it's been posted properly and it's been  
12 maintained properly. Does the board have any issues with  
13 that? Okay, seeing none. Sorry.

14          VICE CHAIR HART: I think the issue is that each  
15 of these have an affidavit of posting, but none of -- well,  
16 two of them have not had the affidavit of maintenance. So  
17 that's I think the issue that we have is that we don't have  
18 the -- that it's been maintained for the two weeks that it's  
19 been up.

20          BZA CHAIR HILL: Okay. So then we still would  
21 need an affidavit of maintenance into the record. And then  
22 we're going to need that for all of them, Mr. Seck. And so  
23 we're not going to be able to decide this today regardless  
24 of what happens it looks like.

25          MR. MONTAGUE: Chairman, may I ask a question?

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1 BZA CHAIR HILL: Sure, of course.

2 MR. MONTAGUE: As far as 2429 Girard, the one that  
3 we're talking about right now, I remember seeing just because  
4 I happened to walk past it last week the --

5 BZA CHAIR HILL: Placard.

6 MR. MONTAGUE: -- placard. But I didn't see it  
7 before then. And I would have noticed. And adjacent  
8 property owners would have blown my phone up saying that it  
9 was there.

10 So I can't tell you exactly. I mean I have a  
11 picture of it because I always record these things of the day  
12 that I saw it. I don't think it's been there 15 days. I'm  
13 just saying my personal experience is that it hasn't been  
14 there --

15 BZA CHAIR HILL: Okay, that's fine. So then I  
16 don't know what we're doing here.

17 ZC CHAIR HOOD: Let me just say this. That's why  
18 I wanted to go to 5 and I misspoke because the other two are  
19 in 7 which nobody's here. So not saying that it's the only  
20 way that we advertise, but we do have a process in place.

21 And by the applicant not being able to validate  
22 it and then Commissioner Montague telling us -- and I know  
23 he walks around, believe me. Telling me that he believes  
24 it's been there for a week.

25 I'm starting to have an issue with even

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1 proceeding. I think that we need to do our due diligence.  
2 That's just where I am.

3 BZA CHAIR HILL: Okay. Okay. So, well I think  
4 that -- let's see, what should we do. I'll let the board  
5 kind of figure this out I guess.

6 I mean, we can postpone this again until after we  
7 are ensured that the property has been posted and has been  
8 properly posted. So that's one thing.

9 Again, as Chairman Hood, you mentioned, there are  
10 -- there's letters that get sent out every 200 feet. There's  
11 other ways that this hearing is advertised.

12 However, since the commissioner is here I would  
13 go ahead and say that we will hear this case and then maybe  
14 we would -- I hate to do this necessarily, maybe we'd come  
15 back for a continued hearing even on this case so that if we  
16 find out -- so that it can be properly posted and then also  
17 we have an affidavit of maintenance.

18 And then we could have a continued hearing on this  
19 case and we'll just hear the other ones. Because the other  
20 ones, if we don't seem satisfied that it's been properly  
21 posted and there's a possibility that somebody would have  
22 been here if it were properly posted then we're just going  
23 to have to do that later then. So that would be my thoughts.

24 ZC CHAIR HOOD: I like that outline, Mr. Chairman,  
25 and I know you were thinking out loud and I agree with you.

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1 BZA CHAIR HILL: Okay, all right. So Mr. Seck,  
2 we're going to go ahead and hear 19967, okay, which is what  
3 you're here for which we've already called this.

4 Then the other two cases we're going to reschedule  
5 because we're going to wait until we get an affidavit --  
6 maintenance, affidavit of maintenance for the posting. Okay?

7 ZC CHAIR HOOD: She can do what the process is,  
8 whoever the lady is. The assurances they give to this board  
9 when we reschedule those other two, or in the continued  
10 hearing of this one.

11 BZA CHAIR HILL: Okay. All right. So Mr. Seck,  
12 you can go ahead and present on this one to us, 19967, and  
13 then the commissioner will have an opportunity to also speak  
14 on that as well as ask any questions of you that he might  
15 have from your testimony.

16 And I'm going to put 15 minutes on the clock, Ms.  
17 Rose, just so I know where I am. And you can begin whenever  
18 you like.

19 MR. SECK: Thank you, Mr. Chairman and board  
20 members. This property at 2429 Girard Place NE we're  
21 proposing -- we are seeking a variance, three reliefs,  
22 basically a lot area, lot width and side yard.

23 The requirement in R-1-B is 5,000 square feet.  
24 We're at 3,750 square feet. The lot width is 50. We are 25.  
25 And the side yard is 8 standard in R-1-B. We are proposing

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1 3 feet.

2 The narrowness of this lot which is 25 by 150 and  
3 not backing into an alley, basically to be able to build a  
4 house that is habitable we propose to have a width of the  
5 building of 19 feet just leaving us with 6 feet -- 3 feet  
6 side yard on each side.

7 And in the neighborhood which I walked and also  
8 mentioned during the ANC meeting the two or three houses  
9 beside it on the right are basically in conformity, we would  
10 be in conformity with those even though they are older  
11 houses. They have smaller side yard, about 3 feet or maybe  
12 even less.

13 And the width of the buildings are pretty much  
14 similar within that range of 18 to 19 feet.

15 We're proposing a two-story plus basement and we  
16 wouldn't see any negative impact it would have in the  
17 neighborhood and to our opinion it will basically develop  
18 this infill lot and be in good sequence or conformity with  
19 the adjacent houses both on the left and on the right.

20 And we're here to seek that relief and hope even  
21 though the commissioner here present will reiterate it they  
22 denied the case. They did not support it. Would like the  
23 board to analyze it and hopefully approve it. Thank you.

24 BZA CHAIR HILL: Okay. Does the board have any  
25 questions for the applicant?

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1           ZC CHAIR HOOD: Did they say why they didn't  
2 support it?

3           MR. SECK: Yes, Commissioner Hood. There were a  
4 few questions. One, a gentleman in the neighborhood did say  
5 that there is a new rule from DC Fire Marshals that you  
6 cannot build a house and leave 3 feet because it's not enough  
7 to get through for any emergencies.

8           And I don't see that rule. We do apply through  
9 DCRA. It goes through the process of reviews. And I can  
10 argue with him, but he was very positive about what he was  
11 saying and he opposed it.

12           Some neighbors also did say that when you do  
13 excavate in the past some people who were doing construction,  
14 it kind of opens up the doors for rodents to get into their  
15 houses, et cetera, and not properly maintaining their  
16 property. And I reassured them that we would not act as  
17 such.

18           We will have proper management of the project, of  
19 the site.

20           And the commissioner did -- when I mentioned that  
21 we would be in conformity with the other houses. It's not  
22 like it's going to totally change the picture at least for  
23 that block he said well, you don't -- that's from basically  
24 -- those were approved from long back and we just don't want  
25 a house built there. This is what I heard from that day.

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1 I've been at the executive meeting as well as the  
2 ANC meeting.

3 ZC CHAIR HOOD: You probably hear this across the  
4 city with District Properties. You really hear it in Ward  
5 7 and have been hearing it for years.

6 MR. SECK: Yes.

7 ZC CHAIR HOOD: So let me ask you this. And I  
8 know this is not necessarily part to the BZA germane process  
9 but it is to the Zoning Commission process so I'm going to  
10 exercise some of that.

11 What assurances did you give them about the  
12 rodents? What did you -- sometimes it's about making some  
13 concessions and offers to make sure that the two houses or  
14 whoever's houses on the side doesn't get the rodents, or did  
15 you tell them you would exterminate? What assurance did you  
16 give them other than we will just make sure it doesn't happen  
17 and that's not really any assurance.

18 MR. SECK: You're correct. To be specific on the  
19 answer for that to the residents I didn't go in detail as  
20 such. But definitely I can implement a system. What we do  
21 is basically there would be erosion sediment control and  
22 basically to maintain -- to contain the trashes, having trash  
23 cans as well as dumpsters at all times, make sure there's no  
24 pile up of material outside where rodent have tendency to  
25 hide and then develop and spread around.

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1 I could consider definitely the fact which  
2 commissioner here can probably pass it on to have termite  
3 companies put in some boxes during the process.

4 ZC CHAIR HOOD: I don't know what all could be  
5 worked out. It depends on how it goes here if the  
6 requirements are met.

7 I think there's some safety nets that need to be  
8 discussed. I mean, I'm just throwing it out there as a hint.  
9 Nobody has to accept it, but I'm just throwing it out there  
10 from past practice. Sometimes that helps soften some of the  
11 changes that may happen. But I'll wait to hear from the  
12 commissioner. Thank you, Mr. Chairman.

13 BZA CHAIR HILL: Okay. Did you have a question?  
14 Please.

15 VICE CHAIR HART: Mr. Seck, if you could can you  
16 go through why it is that you are -- that this is an  
17 exceptional condition? What are the prongs of the variance  
18 test for why we should be approving your request?

19 MR. SECK: Okay. Just to be a little bit on the  
20 side I was expecting a little technical question from Mr.  
21 Hart. And I try my best to answer it.

22 Basically the lot size being 25 feet and the  
23 ruling with zoning to have the houses aligned, we could not  
24 do any more narrow houses in the front as per our design to  
25 come up with a larger side yard to meet the 8 feet. Eight

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1 feet is sixteen total and we can't do on the party line to  
2 leave on side. Sixteen out of twenty-five will leave  
3 basically nine foot in the front.

4 That would be very narrow even if you do a narrow  
5 house and then build it out to the back it still will impact  
6 the side yard to a certain point.

7 That's basically -- it's a design issue that we  
8 couldn't overcome. We work with the Office of Planning.  
9 They made some suggestions, even adding up a full porch which  
10 we did.

11 I believe they are in support of this project.

12 VICE CHAIR HART: I've read through the OP report.  
13 I guess the question that I'm also kind of getting to is that  
14 there are other lots that are of the same size in this  
15 square, along the street.

16 And so usually what you have is there is some  
17 unique condition that's here and I was just trying to  
18 understand that unique condition.

19 And I understand that you have a narrow lot and  
20 it would be difficult to build on. That's not the part that  
21 I'm not getting. I'm just saying that there are other lots  
22 that are of the same width as yours that could make the same  
23 argument.

24 And so then it becomes well, what's unique if this  
25 is, you know. And I just was trying to understand that. So

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1 I'll ask the question of the Office of Planning as well.

2 BZA CHAIR HILL: Okay. All right, so  
3 Commissioner, first of all do you have any questions for Mr.  
4 Seck?

5 MR. MONTAGUE: Not really a question. I just  
6 wanted to explain how we got to where we are.

7 BZA CHAIR HILL: Sure.

8 MR. MONTAGUE: This property was sold -- the  
9 original property was sold in November 2018 with the owner  
10 becoming deceased and passed over to the heirs.

11 There were three parcels, parcel 7, parcel 8 and  
12 parcel 9. The decedent's property was on parcel 8 which is  
13 in the center of the two.

14 So my understanding according to the formal record  
15 is that it was part of a multi-party purchase. So three  
16 parties got together and the parcels got separated for  
17 whatever reason.

18 Separate and distinct from this is the issue that  
19 we're having with 2431 right now. And that is where the  
20 original owner of the three lived. And that basically has  
21 gone through the whole stop work, illegal construction.

22 But in addition they destroyed parcel number 7  
23 which is to the east leaving District Properties who actually  
24 controls 7 and 9.

25 So the concern in the neighborhood is that if we

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1 allow this to occur in 9 they're going to come back. Because  
2 the owner originally contacted neighbors and said I intend  
3 to build a house on 7, okay.

4 And that's what started -- why the hornet's nest  
5 blew up.

6 But these houses in general date back to 1905 and  
7 the original -- they're I guess decedents of the original  
8 Clark Mills property which goes back to 1840, 1845.

9 So when these properties were re-surveyed in 1909,  
10 1913, 1923 as part of the expansion of the grid of highways  
11 out to the county.

12 So they originally set up the 25 foot, or 25 or  
13 26 foot lots with the intention of limiting the sizes of  
14 houses that may occur on that street.

15 Over time between the 1923 and the 1946 re-survey  
16 the owners bought one or more properties and when they built  
17 them they built the houses over one or two parcels. It was  
18 to prevent houses being built.

19 So when Ms. Taylor purchased the property whenever  
20 she did she bought all three parcels and that was to keep  
21 houses from being built on either side of it. So preserving  
22 the open space.

23 So, District Properties proposes to put a 19 foot  
24 house even though they've modified their drawings since they  
25 met before the ANC which they stepped the house back a little

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1 bit.

2           It still is a house that's basically wedged into  
3 an unintended space. So I guess the argument, well, I bought  
4 the property and I have the right to build on whatever I want  
5 as long as I can get it in there, but the zoning regulations  
6 don't necessarily allow for it hence we're asking -- he's  
7 asking for a special exception.

8           BZA CHAIR HILL: Okay. Does anybody have any  
9 questions for the commissioner? I guess I've got a quick  
10 question, Commissioner.

11           Commissioner, I mean the thing that I'm -- thanks  
12 for your testimony and the historical facts of everything and  
13 how you guys got to this.

14           I guess what I'm confused by in terms of even this  
15 type of property as well is that the ANC, like what do they  
16 expect to happen with it? They just expect nothing to  
17 happen?

18           MR. MONTAGUE: The general consensus of the  
19 neighborhood, the surrounding people going back again  
20 historically that area was protected somewhat when they  
21 extended the highway system out. So there was no intention  
22 to have a great density of houses.

23           And I guess in general the community supports that  
24 the existing density is what it should be and shouldn't be --  
25 have additional houses added into.

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1           We had two houses that were added at the corner  
2 of Belair and Girard and this came before the Zoning  
3 Commission two years ago, maybe three, where there was a  
4 multi-story house that was being built.

5           And it required a variance in order to build it  
6 in that space.

7           The house, the finished house was still larger  
8 than what the Zoning Commission had agreed to, but we lived  
9 with it.

10           And when the other two houses were built on the  
11 opposite side of the street they were built over the existing  
12 foundations of the -- there were two side by side houses  
13 there. So one house was built over one of them and the other  
14 one was actually moved to conform to the 2016 zoning  
15 requirement.

16           So therefore that house was made to conform and  
17 it was not a problem.

18           It's an unusual area within that part of the city.  
19 And so the intention of the neighborhood and the residents  
20 is to preserve as much open space as possible.

21           BZA CHAIR HILL: Okay. Just quick question for  
22 Mr. Seck or even the commissioner if he knows. So, did you  
23 guys have -- Mr. Seck, did you get feedback -- I was curious  
24 as to the people that have lot number 8 and lot number I  
25 guess is it 60, the two adjoining lots.

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1 MR. SECK: Well, the -- when you look at the map  
2 the lot number basically -- 7.

3 BZA CHAIR HILL: Well, there's 7, 8 and 9 and then  
4 there's 60.

5 MR. SECK: Right, 9 is what we're talking about  
6 and then 8 is an existing, that's the one he referred to  
7 which has the stop work order. And we also own --

8 BZA CHAIR HILL: Oh, you own 8 also.

9 MR. SECK: No, 7. Eight is an existing house.

10 BZA CHAIR HILL: So what do the people -- have you  
11 had any feedback from anybody in lot 8 or lot 60?

12 MR. SECK: No. Lot 8 I personally went and  
13 knocked on the door. But that's not a lot, it's an existing  
14 house.

15 BZA CHAIR HILL: I'm just asking whether or not --  
16 what they thought of the plans, what they thought of your  
17 proposal.

18 MR. SECK: No, we didn't hear back from them.  
19 When we sent out these letters we didn't --

20 BZA CHAIR HILL: You didn't hear back from 8.

21 MR. SECK: No, and I went to the door lock --  
22 knocked.

23 BZA CHAIR HILL: And you didn't hear back from 60.

24 MR. SECK: Sixty, no.

25 BZA CHAIR HILL: And you just went and knocked on

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1 the door again.

2 MR. SECK: No, I'm sorry, I take this back. I was  
3 talking about 60.

4 BZA CHAIR HILL: Okay.

5 MR. SECK: That I knocked on the door. Eight is  
6 under construction with a stop work order. And the owner of  
7 the company has tried to reach out to them, but they were not  
8 interested in basically selling.

9 BZA CHAIR HILL: Okay. So did you have any  
10 feedback from even the one that's under construction. You  
11 haven't heard any feedback from them.

12 MR. SECK: No.

13 BZA CHAIR HILL: You tried to let them know what  
14 you're trying to do and you haven't heard anything from them.

15 MR. SECK: Correct.

16 BZA CHAIR HILL: Okay. And then again I'm kind  
17 of confused, I'm sorry. So 60, did you hear anything from  
18 them?

19 MR. SECK: No, 60 either.

20 BZA CHAIR HILL: Okay. You just knocked on the  
21 door.

22 MR. SECK: Right. And they were notified too with  
23 the letters, but at the ANC meeting or the executive I didn't  
24 see them.

25 BZA CHAIR HILL: Okay. And Commissioner, just one

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1 last question for you and then Chairman Hood, please. But  
2 you guys, they did meet with the property, District  
3 Properties did meet with the ANC and they agreed to pull it  
4 back a little bit is what you said.

5 MR. MONTAGUE: Oh, no, no, no, no. They didn't  
6 agree to pull it back.

7 What happened was preparing for this I happened  
8 to go into the record and see that there were new  
9 architectural drawings submitted. There was no notice to us  
10 that these drawings had changed.

11 So in the later exhibits in the full record, the  
12 full log, that's how I discovered that new drawings had been  
13 provided.

14 BZA CHAIR HILL: Okay. I was just trying to see  
15 -- so Commissioner, so what I thought you had said was that  
16 the developer was working with the ANC and they pulled it  
17 back a little bit.

18 MR. MONTAGUE: No --

19 BZA CHAIR HILL: So the developer has not worked  
20 with the ANC.

21 MR. MONTAGUE: No, sir.

22 BZA CHAIR HILL: They've gone and did their -- as  
23 you said on the record you guys had your meeting. You voted  
24 against it and that's the only time that the developer has  
25 been with you guys other than when they met with probably

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1 your planning committee or whatever.

2 MR. MONTAGUE: Yes, sir.

3 BZA CHAIR HILL: Okay, all right. Chairman Hood,  
4 you had a question?

5 ZC CHAIR HOOD: Commissioner Montague, unless I  
6 missed it have they met with -- has this been presented to  
7 the full ANC?

8 MR. MONTAGUE: Yes, the full ANC.

9 ZC CHAIR HOOD: Because I'm looking at your  
10 letter. There was a vote taken in the single member district  
11 and as you know to give great weight it has to come from the  
12 full ANC.

13 MR. MONTAGUE: Right.

14 ZC CHAIR HOOD: So, are we going to get a letter  
15 from the full ANC?

16 MR. MONTAGUE: We need to submit a second one  
17 other than the form that we submitted?

18 ZC CHAIR HOOD: Where is the letter?

19 MR. MONTAGUE: We submitted --

20 ZC CHAIR HOOD: That's the form.

21 VICE CHAIR HART: It's exhibit 28.

22 ZC CHAIR HOOD: Yes, I saw that. That's the form.  
23 Now, where is the letter because the chairperson -- is this  
24 the chairperson's signature?

25 MR. MONTAGUE: Yes. Yes, yes, yes.

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1 ZC CHAIR HOOD: Okay.

2 BZA CHAIR HILL: Your microphone's not on,  
3 Commissioner.

4 MR. MONTAGUE: Sorry. Mine, the chairman's and  
5 the secretary.

6 ZC CHAIR HOOD: Okay. Because I'm looking, I see  
7 what you -- and I'm trying to see how you got to your -- I  
8 read what you wrote in the single member district which was  
9 more helpful to me than the form.

10 I'm just trying to get to what -- other than the  
11 historical pieces the chairman has mentioned from a zoning  
12 perspective help me get there. Why -- because I know infills  
13 are done and actually 5 is not the worst one and 7, and I  
14 know that. Am I correct? Would you agree with me?

15 MR. MONTAGUE: Yes, Commissioner.

16 ZC CHAIR HOOD: Don't agree because I'm up here --

17 MR. MONTAGUE: No, no.

18 ZC CHAIR HOOD: Okay. But yes, so most of them  
19 are in 7. And Ward 7 has an issue with this as well. And  
20 I see that we have a few in Ward 5.

21 So I'm just trying to figure out what is the issue  
22 other than the historical and who bought this and who bought  
23 -- what other than that from a zoning perspective is the  
24 rationale behind the denial?

25 MR. MONTAGUE: Well, if the construction doesn't

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1 conform to the 2016 rules as stated then there's no practical  
2 reason to allow that construction.

3 ZC CHAIR HOOD: Your objection is stick to the  
4 strict application of ZR '16 which then goes against the  
5 authority of the board. I'm just trying to get there. I'm  
6 trying to get there.

7 MR. MONTAGUE: Yes.

8 ZC CHAIR HOOD: So that's what you're saying.  
9 Stick to the strict application. In this case.

10 MR. MONTAGUE: Because we have similar properties  
11 elsewhere in Woodridge where they're actually -- and it will  
12 come before the board soon where they're having a problem  
13 with subdivision and this, that and the other. And the same  
14 problem is popping up.

15 ZC CHAIR HOOD: So from your standpoint the  
16 character, the floodgates are open and this ward will be very  
17 busy from your perspective.

18 MR. MONTAGUE: We are primed for development. So  
19 as they say, they filled up everywhere else and now it's our  
20 time. And when we do it we want it done correctly.

21 ZC CHAIR HOOD: So it goes back to the chairman's.  
22 What would you expect them to do with that spot? Not build,  
23 plant more trees?

24 MR. MONTAGUE: Not build. Well, actually there  
25 is a very large -- one of the things that happened when they

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1 first came onto the property, most of the old trees were cut  
2 down immediately. Just gone.

3 So we got the arborist to come in. The arborist  
4 said some were not well. But where he's planning to put --  
5 not you personally, where the developer is planning to put  
6 the house there is a very large tree sitting dead center of  
7 where that house would be.

8 And so the oldest neighbors have protested loudly  
9 and they're just not physically able to come here, but they  
10 protested loudly about well, he cut down the crepe myrtle,  
11 they're getting ready to cut down that beech tree. I don't  
12 understand, you know, when Ethel lived there and.

13 So, backing away from the personalization of it,  
14 it matters to them and it matters to the folks that just  
15 moved into the neighborhood.

16 There's an abundance of children now that weren't  
17 there earlier. And so there are concerns about we bought  
18 this because there was an open space and -- and now here we  
19 come, we're getting ready to march towards if there's an open  
20 space stick something on it.

21 ZC CHAIR HOOD: Okay, all right. I think I'm  
22 good. Thank you. Thank you, Mr. Chairman.

23 BZA CHAIR HILL: Okay. Mr. Seck, do you have any  
24 questions for the commissioner?

25 MR. SECK: No, Mr. Chairman.

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1           BZA CHAIR HILL: Okay. All right. Okay, I'm  
2 going to turn to the Office of Planning.

3           MR. JESICK: Thank you, Mr. Chairman and members  
4 of the board.

5           The Office of Planning is recommending approval  
6 of this application. We went through the variance test and  
7 found there was an exceptional condition resulting in a  
8 practical difficulty.

9           The exceptional condition is this is an existing  
10 lot. The owner can't expand it to meet the lot width and lot  
11 area standards. Therefore if they didn't get relief they  
12 wouldn't be able to obtain a building permit -- convert it  
13 to a record lot and then obtain a building permit and the lot  
14 would be unusable essentially.

15           We felt that in general the building did match the  
16 character of the existing streetscape although we did provide  
17 some suggestions to the applicant how they might tweak the  
18 design and I think that's reflected in their latest plans at  
19 exhibit 33. So we appreciate the applicant making the  
20 structure more in harmony with the neighboring houses.

21           So overall we are recommending approval of the  
22 project and I'd be happy to take any questions. Thank you.

23           BZA CHAIR HILL: Okay, thank you. Does the board  
24 have any questions for the Office of Planning?

25           ZC CHAIR HOOD: Yes. Mr. Jesick, so the lot width

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1 in your report is 50 and we're talking about -- this lot  
2 width is, what, 25?

3 MR. JESICK: That's correct.

4 ZC CHAIR HOOD: So we are taking away half the lot  
5 width. Now, let me ask you, those windows in those other  
6 homes, are those -- I guess those now -- well, I guess  
7 they've already been at risk. Is that a fair assessment?

8 MR. JESICK: I wouldn't call them at risk.  
9 They're not on the lot line. Those other houses also have  
10 small side yards. So this would be -- the new house would  
11 also have a small side yard on either side.

12 ZC CHAIR HOOD: So you wouldn't call them at risk.

13 MR. JESICK: If they were on the property line I  
14 think they would qualify as at risk windows, but they're not  
15 on the property line.

16 ZC CHAIR HOOD: Okay. All right. Thank you.

17 VICE CHAIR HART: So, Mr. Jesick, I was looking  
18 at page 4 of your report which is the map. And the question  
19 that I had for Mr. Seck was the parcel that we're talking  
20 about looks fairly identical to the other parcels that are  
21 adjacent to it and kind of in a row.

22 How do you see that as not -- they all seem to  
23 have the same look to them. Typically we're trying to find  
24 something that is exceptional to them and I just am not  
25 seeing that. I understand the width is the issue that you're

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1 talking about, but if you're just looking at all of these.

2 MR. JESICK: Well, we see a difference between --  
3 the variance test uses two words, unique and exceptional.  
4 And so a property doesn't necessarily have to be -- I think  
5 the term the courts have used is unreservedly unique. It  
6 could be similar to other lots as long as there is some kind  
7 of exceptional condition associated with it.

8 What we viewed as the exceptional situation here  
9 was that there's no way the lot can expand. It's kind of  
10 bookended on either side by existing development. So the lot  
11 is kind of what it is and without relief it couldn't be  
12 converted to a record lot and therefore no building permits  
13 could be issued for that lot.

14 VICE CHAIR HART: But the lot could be separated  
15 and sold to either neighbor. I mean, I guess the issue that  
16 I'm kind of running into is that it's one thing when you have  
17 an area that has a lot of -- that has adjacent homes that are  
18 attached homes.

19 But if you look at -- and I was kind of doing a  
20 Google street view just to understand that a little bit more.  
21 And these are single family homes that have side yards, some  
22 smaller, some larger side yards.

23 But if you look at the kind of cadence of the  
24 buildings along the street there really wasn't an oh my gosh,  
25 there's a hole there. You know, like there's a missing kind

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1 of building there. It didn't seem like there was a, you  
2 know, that it stood out as being anything other than  
3 somebody's side yard. Like this lot has a little larger side  
4 yard than another lot.

5 And so did you take any of that into  
6 consideration? The existing character of the neighborhood  
7 to understand this as well.

8 MR. JESICK: I guess I kind of had the -- a  
9 different reaction when I looked at it. I thought that there  
10 was a gap there.

11 I mean, like the commissioner mentioned there was  
12 some landscaping there at one point and some of that's been  
13 taken down. So on street view it looks a little more full.

14 To me it felt like there was a missing tooth there  
15 somewhere. So we felt that the new construction would fit  
16 into the rhythm of the street and would not necessarily be  
17 out of character with it.

18 VICE CHAIR HART: And the last question has to do  
19 -- and the reason I asked you to look at this map was is this  
20 supposed to be telling us information about tax record and  
21 parcels? Because I'm confused by it.

22 This is exhibit -- your report, exhibit 31. And  
23 it has parcels listed as yellow, record lots listed as kind  
24 of like an, I don't know, orange beige color, and then tax  
25 lots listed as really orange. And this lot is listed as a

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1 parcel. And I was just trying to -- is this a tax lot or a  
2 parcel? What is this?

3 MR. JESICK: It's a parcel. And the reason we  
4 included the map is because we know that the board doesn't  
5 see this every day. It does crop up from time to time. It's  
6 neither a tax lot or a record lot. It's what's known as a  
7 parcel and the applicant is seeking to convert it to a record  
8 lot so that they can get building permits.

9 VICE CHAIR HART: Thank you for clearing that up.  
10 I'm still a little bit confused by that, but this is DC so  
11 I know that there's some strange things going on with some  
12 of the -- just how properties are categorized.

13 BZA CHAIR HILL: And I forget, I actually should  
14 know this. How do you turn it into a record lot again?

15 MR. JESICK: Well, you would have to apply to the  
16 Surveyor's Office to get a subdivision essentially to convert  
17 this piece of land --

18 BZA CHAIR HILL: Right, the Surveyor's Office.  
19 Okay. All right. Mr. Seck, as far as the design, and this  
20 is even something for your other properties, the windows, are  
21 they lined up with any of the other windows on any of the  
22 other buildings?

23 MR. SECK: I am not sure.

24 BZA CHAIR HILL: Okay. So maybe you can find that  
25 out when you come back here because I'm just curious. And

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1 I'm going to be curious on that one by the way on all your  
2 properties. I'm just curious as to what happens to the  
3 windows and whether they're lining up with windows on either  
4 side of the thing. Let's see.

5 MR. SECK: Can I ask a question?

6 BZA CHAIR HILL: Sure.

7 MR. SECK: When you say lining up, basically the  
8 same pattern basically as the --

9 BZA CHAIR HILL: No. The projects that you come  
10 forward or the ones that you have been coming forward with,  
11 they're the infill projects. And so I was curious as to  
12 whether the building that you've designed, does the window  
13 line up with the window to the property next door and  
14 therefore look directly into that property next door.

15 MR. SECK: Oh, the side windows.

16 BZA CHAIR HILL: Yes, the side.

17 MR. SECK: Okay. I will check into that.

18 ZC CHAIR HOOD: Mr. Chairman, if somebody can  
19 direct me to -- typically what we see as a rendering showing  
20 how that house is going to sit down in there. I didn't see  
21 that. And I don't know if you all actually require that.  
22 But that would be very helpful for me. And if you all don't  
23 require it then we need to put that in the regulations.  
24 Something I need to push for to be in the regulations.  
25 Because we need to actually see what we're sitting up here

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1 approving to see exactly what the community is looking at.

2 So I would request that. I know that's not -- you  
3 all don't have to actually do it, but I'm requesting it. And  
4 if I don't see it then you know, it is what it is and I'll  
5 vote accordingly.

6 MR. SECK: No problem.

7 ZC CHAIR HOOD: Okay. Thank you.

8 BZA CHAIR HILL: Okay.

9 MR. MONTAGUE: May I make one comment?

10 BZA CHAIR HILL: Yes, sure, Mr. Commissioner.

11 MR. MONTAGUE: Commissioner Hart, you were  
12 mentioning about side yards. Some of those side yards are  
13 parcels purchased by one of the other property owners. So  
14 the side yard on that parcel -- it's minuscule.

15 The reason it has a side yard is because they  
16 purchased the adjacent parcel. And so that gives you the  
17 impression that that's all one yard and it's really not. And  
18 they pay two tax bills, one for each parcel that they have.

19 So in the case of this one Ms. Taylor was paying  
20 three bills. She was paying for 7, 8 and 9.

21 VICE CHAIR HART: Yes, no, I appreciate that and  
22 I was just looking at it as okay, well a next door neighbor  
23 could purchase a portion of one lot. They could split a lot  
24 in half and each side get -- each building on either side of  
25 that lot could get a half of that and they could have it as

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1 their side yard.

2           So I understand that there may be -- I was just  
3 looking at the character issue, the character of the  
4 neighborhood and I just noted that as I was kind of going  
5 down various streets it was kind of all -- there weren't  
6 attached dwellings. It was all single family detached  
7 housing.

8           And so I just said yes, and there wasn't a, okay,  
9 well this one's right next to the other one. It wasn't as  
10 though they were kind of stepping down the street in that  
11 they were equally apart from each other. Some were wider  
12 apart and some were others. And I understand what you're  
13 saying, that a homeowner may have had more than one parcel  
14 and they were paying taxes on all of that.

15           But it looks as though their yard may have been  
16 wider even though that was -- other parcels that they were  
17 adding onto their yard to make it look larger than it  
18 necessarily was.

19           MR. MONTAGUE: Exactly.

20           VICE CHAIR HART: I understood that. I was just  
21 trying to understand how -- if the Office of Planning had  
22 actually taken -- how they had looked at that. But I  
23 appreciate your response.

24           MR. MONTAGUE: And the other thing is for  
25 Commissioner Hood. We had a subdivision issue, zoning issue

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1 that came up on 2853 Belair and the rendering that you asked  
2 about was what as they say sealed the deal in the denial  
3 because the representation that the architect had -- and the  
4 owner had given gave you one impression of what that house  
5 would look like in the addition had they subdivided the  
6 property, but when they went -- I and some of the people in  
7 the audience, when they went back and did the Google look and  
8 this, that and the other then they saw -- the advocate's  
9 renderings didn't show it, but Google Earth did.

10           There was a house which would have been like this.  
11 And essentially if we build this house it will be like this.  
12 Yes, it's this far away from the property line, but it's  
13 still -- perceptually it's this.

14           ZC CHAIR HOOD: So I think -- this is not my first  
15 time mentioning that and I just need to remember to ask the  
16 Office of Planning to put that on our list of things that the  
17 commission looks at.

18           So stay tuned. I'm hoping if we get it to the  
19 docket you'll come down and testify in support of the BZA  
20 being able to have those type of renderings. I don't know  
21 if you all want them, but I'd be ready to try to ask for  
22 them.

23           MR. MONTAGUE: They would be helpful.

24           BZA CHAIR HILL: Okay. All right, so Mr. Seck,  
25 you know what we're asking of you, correct?

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1 MR. SECK: Yes. Basically three things. The  
2 affidavit of posting to be done 15 days in advance and also  
3 the affidavit of maintenance regularly for 15 days to make  
4 sure it's posted. And then to see if the windows are lining  
5 up with the adjacent properties.

6 BZA CHAIR HILL: Okay, great. Let's see. You  
7 have purchased this lot, right?

8 MR. SECK: Not me personally. The owner is Mr.  
9 Sikder and he's the owner of the company. He's the manager.

10 BZA CHAIR HILL: Right, okay. No I was just  
11 curious again. So he's purchasing all these and hopefully  
12 this works out, right.

13 But Commissioner, the only problem -- and this  
14 isn't the only problem. I just don't understand what people  
15 are supposed to do with these lots. And so that's kind of --  
16 and you can share that with the ANC. That's kind of what we  
17 -- they're separate lots. There's three separate lots. And  
18 so the variances are here so that people can do what the  
19 zoning allows them to do.

20 If they did it -- if they have the side yards  
21 there you'd have a 9 foot was it Mr. Seck? You said it was  
22 9 foot wide?

23 MR. SECK: The side yard.

24 BZA CHAIR HILL: The house itself would be 9 feet  
25 wide.

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1 MR. SECK: Exactly.

2 BZA CHAIR HILL: Right. And so I just don't know  
3 what people are supposed to do with the lots. You can  
4 respond.

5 MR. MONTAGUE: Mr. Hill, my response to that is  
6 that when you purchased the property you walked in eyes open  
7 knowing what you purchased.

8 I guess the operative assumption would be that oh  
9 well, using that B word that I can't stand I could build what  
10 I want and I'll just go to zoning and get a variance and then  
11 I'm good to go. And everybody else will just have to live  
12 with it.

13 And that's where the community -- and you're going  
14 to hear this more and more and more particularly in Ward 5  
15 where there's going to be a big pushback. And it's already  
16 happening.

17 The fact that you purchased a property, I  
18 understand the monetary aspect of it, but I'm not sure that  
19 you're going to get community buy in and people are going to  
20 just feel run over.

21 BZA CHAIR HILL: Yes, and I'm just kind of talking  
22 through this with you as well so the next time you come down  
23 here we kind of -- you know, he could build a 9 foot wide  
24 house. Right. So then you're still going to have a house  
25 there, it's just 9 feet wide. Okay.

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1 MR. MONTAGUE: And we would live with the 9 feet  
2 wide.

3 BZA CHAIR HILL: And so this is the part that I  
4 sometimes don't understand with the community --

5 MR. MONTAGUE: It sounds silly.

6 BZA CHAIR HILL: No, it's again like we do a lot  
7 of things here where people are trying to build behind their  
8 house. And so they want to build, go back 20 feet as opposed  
9 to 10 or something.

10 So I guess -- anyway, I'm just trying to share  
11 with you as to how I'm trying to talk through what's a person  
12 supposed to do with these lots. Like the city has those  
13 lots. They are there. It's not -- the community doesn't get  
14 a free lot. If you all bought it then that's fine.

15 MR. MONTAGUE: Well, I have an ANC SMD meeting  
16 this afternoon. At 7 o'clock this evening. I will be  
17 bringing this up.

18 BZA CHAIR HILL: Yes.

19 MR. MONTAGUE: Because probably -- had we known  
20 that that lot was for sale and we had thought about it maybe  
21 community members could have pooled their money and purchased  
22 it and stopped this. We wouldn't be here.

23 BZA CHAIR HILL: Yes.

24 ZC CHAIR HOOD: Even with that what would you all  
25 do with the lot? Even with that.

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1 MR. MONTAGUE: Let it sit. It would be green  
2 space.

3 BZA CHAIR HILL: Until -- everybody is going to  
4 leave this planet one day, and then as soon as you all leave  
5 somebody else is going to come in and be like there's green  
6 space over there.

7 So, but the one thing, just Mr. Seck, in terms of  
8 DDOT. So the report notes that there may be a special tree  
9 or heritage tree on the site. And the applicant should  
10 submit for a special tree permit removal and hire an arborist  
11 to confirm the tree size and assess the health of the tree.

12 The presence of a special tree or heritage tree  
13 might require changes to the site plan or additional permits  
14 for tree removal. You're aware of this?

15 MR. SECK: Yes, yes.

16 BZA CHAIR HILL: Okay. All right. Okay, then  
17 let's go ahead and reschedule these I guess. Mr.  
18 Commissioner, you don't have anything else you'd like to add,  
19 correct?

20 MR. MONTAGUE: I'm shutting up.

21 BZA CHAIR HILL: Okay. That's all right. I know  
22 it's a tough thing to do. I mean, I also don't know -- I  
23 don't know what to do either. These lots are there, right.

24 And so -- and Mr. Seck, you're lot 007 as well?

25 MR. SECK: Yes.

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1 BZA CHAIR HILL: He said yes. Is that the placard  
2 for 007 behind you? No. Never mind, that's okay. All  
3 right.

4 Okay, so when can we do this again?

5 MS. ROSE: Mr. Hood is back on the 15th of May,  
6 but that's the soonest he's back. If he could come sooner  
7 then we can do an earlier date.

8 BZA CHAIR HILL: The 15th of May. I mean that's  
9 fine with me. I mean, it's your all's problem. You all  
10 should have posted this thing and then, you know. I don't  
11 know what -- we don't have anything that shows that you guys  
12 posted it properly. You put us in a bad spot.

13 So the 15th of May is a month from now. I don't  
14 know, Chairman, you've got a thought?

15 ZC CHAIR HOOD: The 15th of May sounds real good  
16 for me.

17 BZA CHAIR HILL: Okay. All right. So we'll see  
18 you back here on the 15th of May. And so please get  
19 everything into the record not only for this one, but for the  
20 other two cases as well.

21 MR. SECK: Not only the other two but for all of  
22 them.

23 BZA CHAIR HILL: For all of them, yes, from now  
24 on for all of them.

25 MR. SECK: Stay on top of it like I used to do in

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1 the past. But it's just Ms. Sarah has been coordinating this  
2 and I wasn't even aware of the affidavit that was filed.

3 ZC CHAIR HOOD: So you blame it on Sarah, right?

4 MR. SECK: Well, yes, and she will hear. Yes.

5 MS. ROSE: I'm going to announce the applications  
6 and the dates. Application number 19962 is postponed to May  
7 15. Application number 19967 which is this case is continued  
8 to May 15. And application number 19968 is postponed to May  
9 15.

10 BZA CHAIR HILL: Oh, was that postponement? There  
11 was another one.

12 MS. ROSE: That's the last case.

13 BZA CHAIR HILL: Okay, so that's correct. We're  
14 going to continue this one. Everything is May 15. Okay,  
15 thank you, gentlemen.

16 MR. MONTAGUE: Thank you.

17 BZA CHAIR HILL: Thank you. Ms. Rose, is there  
18 anything else before the board?

19 MS. ROSE: No, sir.

20 BZA CHAIR HILL: All right, then we stand  
21 adjourned.

22 (Whereupon, the above-entitled matter went off the  
23 record at 2:47 p.m.)

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 4-10-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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