

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 3, 2019

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:30 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 MEMBERS PRESENT:

PETER SHAPIRO, Zoning Commissioner
MICHAEL TURNBULL, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
BRANDICE ELLIOT
ANNE FOTHERGILL
STEPHEN J. MORDFIN
CRYSTAL MYERS
KAREN THOMAS

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

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10:30 a.m.

MR. MOY: Okay. I believe, Mr. Chairman, that would be Application Number 19985 of District Properties.com. And this has been amended to -- for an area variance from the side yard requirement in Subtitle D Section 206.2, to construct a new detached principal dwelling unit in an R-2 zone. This is at 419 57th Street NE, Square 5228, Lot 14.

CHAIRPERSON HILL: Okay. Is the applicant here? If you'd come forward, please? That's all right, you can sit there for a second. We'll figure this out. That's all right. Okay. If you can please introduce yourselves for the record?

MR. DAVIS: Adam Davis, District Properties.

CHAIRPERSON HILL: Great.

MR. DANIELS: Marvin Daniels.

CHAIRPERSON HILL: Daniels, correct?

MR. DANIELS: Yes.

CHAIRPERSON HILL: And Mr. Daniels, you're a member of the public, correct?

MR. DANIELS: Yes, that's correct.

CHAIRPERSON HILL: Okay. Mr. Daniels, you can just sit there. We'll see what happens here, okay, but I remember you the last time also, right. So Mr. Davis, so what's happened since the last time?

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1 MR. DAVIS: Okay. Well, we have -- we were made
2 some recommendations by the Board to -- to explore the matter
3 of right option which we have done and uploaded. We still
4 want to pursue the side yard variance. We -- the Board asked
5 us to look at a construction management plan. I asked my
6 ownership about it. He said that's -- that's kind of hard
7 to make without getting the permit and then scheduling with
8 other contractors and all that, so it's hard to make a plan
9 without that. So we -- so since then, we have -- we -- we
10 have explored the matter of right option and -- and showed
11 that to the general public.

12 CHAIRPERSON HILL: And what did they have to say?

13 MR. DAVIS: Well, OP, the Office of Planning,
14 would prefer to have three feet of side yard on both sides
15 to try not to disturb any neighbor, but the public would --
16 and specifically, Mr. Daniels and his mother, who own the
17 yellow house, they would prefer to have the house as far away
18 from their house and as much side yard as possible.

19 CHAIRPERSON HILL: Okay. Does anybody have any
20 questions for the applicant?

21 VICE CHAIRPERSON HART: So you are -- this is for
22 Mr. Davis. You've provided us with a matter of right just
23 so -- to show us what that is, not that you want to do that?

24 MR. DAVIS: Yes. That's what the -- the Board
25 requested that we look at that, so yes, that's what we're

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1 showing. Yes.

2 VICE CHAIRPERSON HART: Okay -- okay. Thank you.

3 MEMBER WHITE: I just want to be clear. So the
4 matter of right option that you presented to the neighbor,
5 they were in support of it or they were not or they wanted
6 it to be modified a bit?

7 MR. DAVIS: The public and the ANC, they don't
8 want a house there period, and so we're -- we would prefer,
9 at District Properties, to -- to have a side yard on both
10 sides to not try to -- to try not to disturb either side.
11 Whether -- the public is really not in support of a house
12 there period, and so we showed them and they're still, of
13 course, not in support of, you know, any type of house there.
14 So we were trying to show them matter of right option is
15 having more side yard. And so does that answer your
16 question?

17 MEMBER WHITE: Kind of, yes. Yes, I'm just trying
18 to a sense of what we're looking at today for decision, but
19 I'll -- I'll turn that back over to the Chair to kind of move
20 forward on that.

21 MR. DAVIS: Okay. Yes. We -- we had just -- we
22 were referred to -- to go for side yard variance for both
23 sides. That's what our preference is. We're thinking that
24 the matter of right option would -- would go with the public.
25 They -- they really weren't in support of that either and so

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1 we're going to stick with the side -- we're going to -- we're
2 going to ask the Board for a side yard variance, three feet
3 on each side.

4 MEMBER WHITE: Okay. Thank you.

5 CHAIRPERSON HILL: Okay. Mr. Davis, again, the --
6 the neighbor, I forget, that's on the other side, not the --
7 not the side that Mr. Daniels is on, what was the comments
8 that they had?

9 MR. DAVIS: No -- they had no comments.

10 CHAIRPERSON HILL: Either way?

11 MR. DAVIS: Either way. We -- they didn't come
12 to any of the -- the meetings that -- any of the neighborhood
13 meetings, and there's a -- a driveway between their house and
14 the property line, and so we -- we never got any feedback
15 from them.

16 CHAIRPERSON HILL: Any feedback, they didn't give
17 you any feedback at all, but you did reach out to them?

18 MR. DAVIS: Well, we did but we didn't get any
19 feedback from them.

20 CHAIRPERSON HILL: Okay. All right. Okay --
21 okay. I'm going to turn to the Office of Planning? Does
22 anybody got anything else for Mr. Davis?

23 (No response.)

24 CHAIRPERSON HILL: Okay. Going to turn to the
25 Office of Planning.

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1 MS. MYERS: Crystal Myers for the Office of
2 Planning. The Office of Planning continues to recommend
3 approval of the variance relief for this case. And the main
4 reason why, we -- we were the -- we did point out the matter
5 of right option, but we actually were more in preference or
6 supportive of the variance relief, because it would -- it
7 would result in neither -- neither neighbor being impacted
8 whereas the relief -- or if it was a matter of right, at
9 least one neighbor would be impacted, because the wall would
10 be on the property line. And in order to maintain their
11 property, they would have to disturb or be on the -- impact
12 the -- the neighbor on that side. So we actually were in
13 relief of the 3-foot side yards on their own property, which
14 is not uncommon. We've had various examples of 3-foot side
15 yards in the district, so we continue to support this case.

16 CHAIRPERSON HILL: Okay. The -- the -- when you
17 say again -- and this is just for other cases that we hear.
18 When you say "disturb," what do you mean by disturb?

19 MS. MYERS: In order to get on that side of their
20 wall in order to maintain it in any way, they would have to
21 be on the neighbor's property, because these are not attached
22 houses. The other two on the other side, they are, I
23 believe, single-family houses that are detached, at least on
24 that side. So in order to maintain their property wall on
25 the property line, they would be on the neighbor's property.

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1 CHAIRPERSON HILL: And how does that work,
2 actually? Do they have to have an -- an agreement or
3 something like --

4 MS. MYERS: I don't -- I couldn't give you an
5 answer on that.

6 CHAIRPERSON HILL: Okay.

7 MS. MYERS: I mean, you know, the side -- the side
8 yard regulations changed recently which now allow for it to
9 be considered acceptable to be -- even if they're -- you're
10 not attached to the property next door, you are still
11 considered --

12 CHAIRPERSON HILL: Semi-detached.

13 MS. MYERS: Yes.

14 CHAIRPERSON HILL: Right?

15 MS. MYERS: Even though you're not attaching to
16 a property. So in this case, I'm not sure -- you know, it
17 would be an impact but I don't know if there would be an
18 easement requirement or anything.

19 CHAIRPERSON HILL: Okay -- okay. Does the Board
20 have any questions for the Office of Planning?

21 COMMISSIONER TURNBULL: Yeah, but doesn't that
22 happen, the interface with anybody in a row house, the party
23 wall system? I mean you have to work it out with your
24 neighbor, you got repairs to be made at your -- your roof,
25 your coping on the top of the roof or whatever. I mean your

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1 chimney or whatever, you have to work out those things on any
2 row house. I don't -- wherever you have a party wall
3 throughout the city, you're going to have that issue. It's
4 not unusual.

5 MS. MYERS: It's interesting because it's not
6 really a party wall. There's no attachment.

7 COMMISSIONER TURNBULL: There's no attachment.

8 MS. MYERS: There's no attachment so when they,
9 up to their property line, the next door neighbor has their
10 yard. And I'm thinking one side, it's a driveway as well,
11 so they're not sharing a wall with that neighbor.

12 COMMISSIONER TURNBULL: Yes.

13 COMMISSIONER TURNBULL: But I'm just saying I
14 think we have instances of similar things happening
15 throughout the city. I think those are issues that you could
16 deal with, neighbors can work things out.

17 MS. MYERS: Hopefully so. We're not disagreeing
18 that you can hopefully have a decent relationship with the
19 neighbor and be able to do some maintenance on your property,
20 even if it means getting on your neighbor's property.

21 COMMISSIONER TURNBULL: Right.

22 MS. MYERS: But we're saying that being able to
23 do a 3-foot side yard on each side, those are reasonable
24 things --

25 COMMISSIONER TURNBULL: Sure.

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1 MS. MYERS: -- especially since they have
2 the -- the -- the situation of the two neighbors already have
3 existing side yards --

4 COMMISSIONER TURNBULL: Yes.

5 MS. MYERS: -- that allow for plenty of light and
6 air, privacy.

7 COMMISSIONER TURNBULL: No. I understand. Thank
8 you.

9 VICE CHAIRPERSON HART: While I do understand
10 that, the -- the part that is somewhat perplexing is that the
11 zoning regulations, the matter of right is what is allowed.
12 They do not need to come to us for approval for the matter
13 of right option. So you're arguing that the variance that
14 they are seeking is less impactful -- or not less impactful
15 but it is preferable than the matter of right option, which
16 is an odd place to be. You understand what I'm saying. It's
17 just -- it -- the -- the zoning regulations say these are the
18 rules and this is what you should do, and the applicant
19 provided something that actually showed that, but it seems
20 as though, in this instance, that is less -- that is not
21 preferable than the -- than a variance that's being -- or --
22 than the option that -- that requires a variance. And that
23 just seems odd to me.

24 MS. MYERS: I mean the -- the lot is unusual in
25 the sense that it is smaller than the typical size for that

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1 zone, so it is a bit of an outlier in that sense. If this
2 zone -- if you had the normal dimensions for this zone, you
3 would be able to provide the -- the normal size yards. But
4 you have a right, since it is a record lot, to develop a
5 house, and the matter of right option would be the semi-
6 detached option. However, you can still do, like I said, a
7 reasonable house with a 3-foot side yard, so less impact.
8 So we're kind of in an interesting situation --

9 VICE CHAIRPERSON HART: Yes.

10 MS. MYERS: -- where the lot is substandard --

11 VICE CHAIRPERSON HART: No -- no. I --

12 MS. MYERS: -- and it comes --

13 VICE CHAIRPERSON HART: -- I understood that. I
14 was just saying that it just seems like -- it does seem a
15 little odd, and I -- and I understand your explanation, and
16 I understood how you were going through it. I just -- it
17 just kind of struck me as huh, we are, you know, saying the
18 matter of right is one thing and then the what they're
19 proposing, which would require them to -- to seek zoning
20 relief, in some ways, is preferable to that, than the matter
21 of right. So I'll just leave it there but thank you very
22 much for your -- for your response.

23 CHAIRPERSON HILL: Okay. Anyone else for the
24 Office of Planning?

25 (No response.)

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1 CHAIRPERSON HILL: Does the applicant have any
2 questions for the Office of Planning?

3 MR. DAVIS: No, thank you.

4 CHAIRPERSON HILL: Okay. I do have one question,
5 Mr. Davis. So like you did -- there -- we did get a letter
6 from the ANC, and you've seen the letter from the ANC?

7 MR. DAVIS: Yes, I have.

8 CHAIRPERSON HILL: Can you explain to me what
9 they're saying? What happened at the ANC meeting?

10 MR. DAVIS: Well, basically, they're just not in
11 support of this house. The community, the -- they're --

12 CHAIRPERSON HILL: So the ANC is not in support,
13 that's all -- that's what happened, because there were
14 letters --

15 (Off the record comments.)

16 VICE CHAIRPERSON HART: Yes -- no, I think I
17 understand. They're basically saying that they voted -- they
18 voted 7-0 contingent on the applicant presenting the plan,
19 so this is before the applicant had presented to the
20 Northeast Boundary Civic Association. Once that -- once they
21 presented to the Civic Association later in May, the Civic
22 Association decided not to support it. So, because their
23 condition wasn't -- because the ANC condition wasn't met,
24 then they cannot support the application. They did vote in
25 support of it, but only under one condition. That condition

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1 wasn't met so then they said, well, we can't --

2 CHAIRPERSON HILL: The condition that the
3 Northeast Boundary sets?

4 VICE CHAIRPERSON HART: And yes.

5 CHAIRPERSON HILL: Understanding that the
6 condition was that the Northeast Boundary Civic Association
7 --

8 VICE CHAIRPERSON HART: Yes.

9 CHAIRPERSON HILL: -- approved, and so I was just
10 confused.

11 VICE CHAIRPERSON HART: Yes. And --

12 CHAIRPERSON HILL: So they put it on them, right?

13 VICE CHAIRPERSON HART: Yes. So -- yes.

14 CHAIRPERSON HILL: Okay. All right. Okay. So --
15 all right, there we go with that, Mr. Davis. So is there
16 anyone here who wishes to speak in support?

17 (No response.)

18 CHAIRPERSON HILL: Is there anyone here who wishes
19 to speak in opposition? Mr. Daniels? So, Mr. Daniels, as
20 you remember the last time, you got three minutes as a member
21 of the public to go ahead and provide your testimony. The
22 clock's up there on the ceiling. Mr. Moy, if you could put
23 three minutes up for me. And you can begin whenever you
24 like.

25 MR. DANIELS: Thanks, Chairman. Well, first of

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1 all, Mr. Davis, when we had the last meeting, it was a couple
2 of weeks ago, Mr. Davis informed the community at this
3 meeting that, in fact, that they were going to go with the
4 right of way proposal, and they were going to eliminate the
5 variance request. So we come here before the Board today and
6 he change -- he moves the goal post. He says he's going to
7 do the opposite in which -- in what he told the community,
8 which was, in fact, more favorable of that if -- if this was
9 going to allow -- if this project was going to allow to be
10 taking place by you guys. But he comes here today and says
11 -- and says the exact opposite of what, again, of what he
12 told the community and during the meeting, which I -- I don't
13 understand. We talked earlier before the meeting started and
14 that's not the information that he told me, so that's very
15 concerning.

16 And second of all, what I'm trying to figure out
17 more so than anything is that if this project is allowed to
18 go forward, the Board asked for three things from District
19 Properties. He didn't share that during the meeting with the
20 ANC, and I don't know if you have those things as of today,
21 but there was like a project management plan. There was
22 things of -- it's like an insurance rider type of thing, like
23 if any damages was to take place to the existing properties.
24 And there was one other thing that -- that's kind of alluding
25 me right now, but I know that there was three things that the

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1 Board was looking for. He has not provided that nor is he --
2 has he discussed it. So I'm just kind of like curious to
3 know outside of, you know, him changing what he told the
4 community, I'm just curious to know about those other three
5 things as well.

6 CHAIRPERSON HILL: Okay. Yes. And Mr. Daniels,
7 by the way, you're -- you're very -- it's very good of you
8 to be here on your mother's behalf.

9 MR. DANIELS: Yes, sir.

10 CHAIRPERSON HILL: And then also, you know, you
11 were very reasonable to talk with the last time, and you're
12 continuing to be reasonable today to talk today.

13 MR. DANIELS: Thank you.

14 CHAIRPERSON HILL: I mean, again, what I think,
15 you know, from the Office of Planning in terms of what -- so
16 the matter of right option -- the matter of right option,
17 again, was that they could -- if you wouldn't mind turning
18 off your microphone. I'm sorry. I'm just getting feedback
19 up here. The matter of right option was that it's going to
20 get pushed all the way over to the other side, which is
21 farther away from your mother's house so, therefore, you
22 yourself would be in more -- more in favor of that; right?
23 So that was what they could do without having to be here at
24 all. And so the Office of Planning, their analysis is that
25 it's better for the community and both property owners that

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1 there's a little bit of a side yard on either side so that
2 they can go ahead and service the wall or service, you know,
3 the -- the property. And so basically, again, you're going
4 to -- there -- it's going to be whatever, five feet -- no,
5 a little bit closer to your mother's house, right, if -- if
6 they -- they're back to the beginning as to what they were
7 here for. And I guess the -- what I'm hearing from Mr. Davis
8 again is that like the ANC is opposed to either one. So, you
9 know, he doesn't -- the ANC did not give their support for
10 the matter of right option as well, correct, Mr. Davis? I
11 mean -- yes, Mr. Davis.

12 MR. DAVIS: Correct.

13 CHAIRPERSON HILL: Okay. Great. So -- okay. So
14 that's where we are with that one. And as far as -- yes, and
15 then I am going to ask you some questions. As far as the
16 construction management plan, your statement here today is
17 that the ownership has said that the construction management
18 plan is more difficult to do because why at this point,
19 because you don't know when you're going to be doing things
20 and all that stuff?

21 MR. DAVIS: Yes, we usually don't formulate that
22 until after the -- until we get a permit.

23 CHAIRPERSON HILL: Right. And in terms of like
24 looking into it, this is kind of even beyond the scope of the
25 Board, but in terms of a rider, in terms of the insurance and

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1 things like that, did you guys look into that?

2 MR. DAVIS: That's above my --

3 CHAIRPERSON HILL: Okay, so you don't know. All
4 right. Does the Board have any questions for Mr. Daniels?

5 MEMBER WHITE: One question. What was the opinion
6 of the neighbor on the other side of the project?

7 MR. DAVIS: That neighbor didn't come to any of
8 the meetings, so yeah, we have Mr. Daniels and Ms. Daniels'
9 opinion, but we don't have their opinion. So --

10 MEMBER WHITE: They know that the project is
11 taking place, or -- they were given notice, in other words?

12 MR. DAVIS: They were given notice, yes.

13 MEMBER WHITE: Okay.

14 CHAIRPERSON HILL: All right. Okay. Let's see.
15 Mr. Daniels, so again, you are just in favor of the matter
16 of right option, or your mother is in favor of the matter of
17 right option, because it's just going to be farther away from
18 her house, correct?

19 MR. DANIELS: Yes, that's correct. And that's
20 what we, again, that's what, sorry -

21 CHAIRPERSON HILL: Sure. I mean, you guys would
22 rather there's not a house there at all. It's okay. That's
23 what we got from the first testimony.

24 MR. DANIELS: Yes, I understand, Chairman. But,
25 I mean, the problem that I'm having as of right now, as of

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1 today, this is like a punch I didn't see coming. Because
2 this, again -- what was explained to the community is not
3 being --

4 CHAIRPERSON HILL: No, I got it. And Mr. Daniels,
5 I just think they're back here for what the beginning was,
6 what they were originally going to do, and again, we're
7 talking about a few feet of difference in terms of how --
8 I'm just saying, I don't think they -- anyway, but I hear
9 what you're saying. Does anybody have any more questions for
10 Mr. Daniels?

11 MR. DANIELS: One last thing I'd like to
12 interject.

13 CHAIRPERSON HILL: Sure.

14 MR. DANIELS: It's the fact that not only has
15 this, you know, their plans changed, they haven't met any of
16 the requirements of the Board from the last time we were
17 here.

18 CHAIRPERSON HILL: Well, we'll talk about those
19 things, Mr. Daniels. We'll talk about it. Like, we don't
20 really have a lot of purview in terms of construction
21 management plans, in terms of making them conditions, but we
22 do like to see them if we're in fact going to work with
23 people. And so we'll see what we get with them. But Mr.
24 Daniels, thank you so much. So you can go ahead and sit back
25 down. Thank you.

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1 MR. DANIELS: Thank you.

2 CHAIRPERSON HILL: Does anybody have anything else
3 for Mr. Davis? Okay.

4 Mr. Davis, do you have anything else you'd like
5 to add at the end?

6 MR. DAVIS: It wasn't our plan to, like, confuse
7 or deceive the community. It was intended as this was an
8 option that was presented by the Board, so I apologize to the
9 community if they feel -- it was not my intent to deceive
10 anybody or anything like that. It's just that that's the
11 communication that I got from my ownership, that we should
12 pursue what the Office of Planning --

13 CHAIRPERSON HILL: Would approve, what they
14 thought you should do.

15 MR. DAVIS: Yes.

16 CHAIRPERSON HILL: Okay. Mr. Daniels, I guess
17 that we will see you a lot more, and we continue to see you
18 quite a bit. The one thing is, I guess, I don't know what's
19 going to happen here in terms of the discussion, in terms of
20 the deliberations, but I do know that it would be nice if you
21 could talk to your ownership group.

22 As far as a construction management plan or
23 something like that, you do know what you're going to do.
24 You might not know when exactly it is, but there is something
25 that you guys could have provided us in terms of, this is

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1 what our plan is. Again, the next time this happens with us,
2 so we have some kind of idea as to what you think you might
3 be able to do to ease the concerns of the community or
4 whatever it is that we might be trying to find out in terms
5 of construction management.

6 In terms of also like insurance riders, just at
7 least get some kind of an answer from your management group,
8 again, because that's something that we do ask about
9 oftentimes. But again, to Mr. Daniels' part again, that's
10 not something that's really within our purview in terms of
11 making conditions. We just like to see some of that, or we
12 ask sometimes about that to try to see if there's any things
13 that we can make work out better with people.

14 So, do you have any -- go ahead Ms. John.

15 MEMBER JOHN: So, just a couple comments. You
16 know, Mr. Davis, I'm really very disappointed that you're
17 here without any information on that construction management
18 plan. And considering that the neighbors have been very
19 upset about this project, I would think that the developer
20 would have talked to the neighbors about a construction
21 management plan without the Board having to interject. So
22 that would be my two cents on that.

23 And I agree with the Chairman that the developer,
24 he's done these houses all over that area and knows exactly
25 what is going to happen. And he has a neighborhood that's

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1 very upset with this building, and neighbors who are
2 concerned about their property. And even though the Board
3 cannot order the developer to meet with the neighbors, I'm
4 sure the neighbors know now that a construction plan is
5 something that it is in their interest to make sure that he
6 does something about.

7 And I don't think the neighbors should have to go
8 get an attorney to force him to go construction management
9 plan. So that's how I see that. And that's my two cents,
10 Mr. Chairman.

11 CHAIRPERSON HILL: No, and I appreciate that.
12 Does anybody else have anything else they'd like to share
13 with the Applicant?

14 COMMISSIONER TURNBULL: Yeah, Mr. Chairman, I would
15 agree with Ms. Johns. I don't think I've ever sat on a case
16 where a permit was a prerequisite for starting --
17 establishing a construction management plan. I've been on
18 a lot of zoning cases where they were proposed to the
19 community and to the neighbors as a whole, what they would
20 do and how they would interface and who was going to be the
21 phone call -- what name to call or whatever.

22 And they're never really part of the zoning order,
23 they're always referenced as that they exist, and that's
24 about as far as we ever go. But I don't think we've ever had
25 a prerequisite that you have to have a building permit.

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1 Those construction management plans were established well in
2 advance. They're fairly straightforward and perfunctory as
3 to what's going to happen on the job and what you're going
4 to do, how you can avoid issues, and how to communicate with
5 the neighbors and if there are issues, who's the point of
6 contact from your firm.

7 I mean, those things are fairly basic. So I would
8 agree with Ms. Johns. That could have been established quite
9 easily.

10 MEMBER WHITE: I think I'll kind of echo my
11 colleagues a little bit. I am having kind of a bad taste
12 about the way that the developer is communicating with the
13 community because as you indicated, we deal with developers
14 that have construction management plans and get into
15 arrangements with neighbors, that have insurance riders that
16 protect the neighbors in case there's damage or, you know,
17 just in terms of some guidelines and guardrails in respect
18 to how the construction process will take place and what
19 you'll be responsible for if there's abundance of trash, or
20 damage, or things of that nature.

21 So I know that the developer's not here formally,
22 but I get the sense that District Properties is going to
23 continue to be here quite often so I would hope that they
24 will make arrangements to have some real conversations with
25 the neighbors about the project and to protect them in terms

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1 of giving them something in writing that shows them what
2 they're responsible for as well as contact numbers in case
3 there's some problems during the construction process.

4 And that doesn't say what I'm going to do today
5 in terms of the vote, but that's just the regular course of
6 business that developers should be undertaking when they're
7 doing business in residential communities, such as this.
8 Thanks.

9 CHAIRPERSON HILL: Okay. I'm going to circle
10 around back to you, Mr. Davis, just one more time, because
11 you guys are here a lot. So, I mean, again, it's kind of
12 easy to, like, I don't even feel like I'm yelling at you
13 because you're going to now go tell somebody else, right?
14 So, but when you go tell somebody else, it feels like we're
15 having the same lip service. You know, like the construction
16 -- now that the architects are now kind of chimed in, you
17 guys could have come up with something. Right? Instead you
18 came up with nothing, you came here with nothing.

19 And so you guys are going to keep coming here with
20 all these projects, and now I'm going to remember that the
21 last time we asked you for something you came back with
22 nothing. Okay? And so -- that's not to you, Mr. Davis, this
23 is just letting you know that there was a lot of community
24 opposition, they're upset, you know, and something as simple
25 as, again, a construction management plan that you -- as

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1 Commissioner Turnbull has mentioned, the project has gone on
2 over and over again so you know what's going to happen. You
3 know generally when it's going to happen and how you can
4 maybe appease the neighbors so that they feel a little bit
5 better about something that they don't want to begin with.
6 But that's still not what we're looking at, we're looking at
7 the regulations, but it just doesn't seem to be starting to
8 sit right with the Board. So just to kind of pass that along
9 to your ownership group.

10 MR. DAVIS: So I understand what you're saying that
11 we should -- so are you all suggesting that bring one to the
12 BZA hearing as well as to the community, or -

13 CHAIRPERSON HILL: We're just saying that we asked
14 for some things and the answer we got back from you is that
15 you couldn't do a construction management plan now, because
16 you didn't know when things were going to happen. You didn't
17 think that it would be -- I guess I'll give you the benefit
18 of the doubt, the ownership didn't think it would be accurate
19 enough so therefore wasn't worth doing. And what I'm saying
20 and what the Board seems to be saying is that you could have
21 made an attempt to do something to try to make the neighbors
22 feel better about what was going on.

23 And when I say -- you know, give them a sense of
24 this is how the process is going to go, this is what might
25 happen, and then it still might not have gotten you anywhere

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1 with the neighbors, but at least we the Board would see that
2 you made an attempt. Okay? That's all.

3 All right. Anybody got anything else? All right.
4 Mr. Davis, you have anything else you'd like to add?

5 MR. DEVINE: No thanks.

6 CHAIRPERSON HILL: All right. Is the Board ready
7 to deliberate? Would someone like to begin?

8 VICE CHAIRPERSON HART: Sure.

9 CHAIRPERSON HILL: I'm closing the hearing, once
10 again, just before closing the hearing, okay, thanks.

11 VICE CHAIRPERSON HART: Yeah. So, for the case,
12 I understand that the Applicant is here before us for a
13 variance to allow a two-story detached principal dwelling on
14 an unimproved lot in the R-2 Zone. They are looking to
15 provide three-foot side yards on both sides of the dwelling,
16 where a minimum of eight feet is required.

17 I do understand that the lot is 25 feet wide, and
18 that the minimum required is 40 feet, and it's 140 feet deep.
19 So, one of the things that I, as I was thinking about this
20 case and listening to the Applicant talk about it and also
21 listening to the next-door neighbor and listening to the
22 Office of Planning -- or, reading the Office of Planning
23 report, and I guess it came up today as well, and there was
24 something that was kind of -- somewhat of an issue with me
25 that I couldn't quite grapple with.

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1 I think that what has bothered me about the case
2 is that this is a -- the Applicant is seeking a variance
3 because they're noting that it's because the width of the
4 lot, which is 25 feet. However, the Applicant has also
5 provided -- at our request provided a matter-of-right option
6 which shows a 17-foot-wide house with one eight-foot side
7 yard, which is allowed under the Zoning Regulations.

8 And because it is very evident to me that that is
9 a very real possibility that that can be built, I do not
10 believe that the -- I could support the variance request,
11 particularly because the variance is really saying that I
12 can't do anything else, I have to do this. I have to -- the
13 width of the lot requires me to do something that is outside
14 of what zoning allows, and therefore I am asking and
15 requesting this zoning relief.

16 And where I come down is that I just don't think
17 that the Applicant -- I think that the Applicant has an
18 option that is within zoning that is a relatively easy
19 project to do, that is a matter of right option that they
20 could move forward with, that would provide an eight-foot
21 side yard. The next-door neighbor -- the building would be
22 farther away from the next-door neighbor. Yes, I understand
23 the Office of Planning issue with, there's one side yard that
24 is -- that would be -- I'm sorry.

25 There would be one side of the property that would

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1 be at the property line, but I just think that that's not a
2 -- that doesn't seem like it's unique in the city. It may
3 be that there aren't that many of them, but it just seems
4 like that's something that can be done. You talk to your
5 neighbor and figure out how to deal with that, and be able
6 to access the wall that's on the, I guess it's on the
7 southern wall, which is the one that would be against the
8 property line.

9 So I just don't believe that the Applicant has
10 provided sufficient information for me to be able to support
11 the variance request because I think that there is another
12 option that they can move forward with that is within zoning,
13 and I guess I would just disagree with the Office of Planning
14 in that it seems as though the Zoning Regulations established
15 how this particular property could be -- and properties in
16 this zone could be developed, and it provides an option that
17 is -- it seems like it should be able to work and I just
18 think that there is, that that should be -- that that is an
19 option that the Applicant could move forward with.

20 And I just don't think that I would be able to
21 support it, for those reasons. I just -- I would be in
22 denial of the -- or, would deny the application for variance
23 use.

24 COMMISSIONER TURNBULL: So, Mr. Vice Chair, I just
25 want to clarify. So you're basically saying that it doesn't

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1 meet the first prong of the variance test.

2 VICE CHAIRPERSON HART: Yeah, I think that it's
3 just -- in some ways it's like the second prong, the
4 practical difficulty aspect of it --

5 COMMISSIONER TURNBULL: Oh, okay.

6 VICE CHAIRPERSON HART: -- because really, they're
7 saying that they can't be -- that the property can't be
8 developed without relief, and I'm saying that it actually can
9 be developed and they showed us that it can be developed
10 without relief. And it just seems like if they can do that,
11 while there may be some issues with accessing that south
12 wall, that doesn't seem -- the Zoning Regulations say that
13 that's what you could do for this property. So if you have
14 that option, then why not exercise that option? So why would
15 we be giving variance relief for a property that has an
16 option that is within zoning. So that's the issue that I
17 have.

18 COMMISSIONER TURNBULL: Thank you for clarifying
19 that.

20 VICE CHAIRPERSON HART: No problem.

21 MEMBER JOHN: So, Mr. Chairman, I agree with Vice
22 Chairman Hart, and looking at the renderings in Exhibit 51,
23 I believe his analysis is correct and in this case I have to
24 disagree with the Office of Planning, even though the
25 rationale offered by the Office of Planning makes sense.

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1 Yes, it would be good to have that three-foot side
2 yard to make repairs, but the regulations do allow this
3 development on the lot line and so I think that there is
4 another option. And so the first prong of the variance test
5 cannot be met. And so for those reasons, I would deny the
6 request for variance.

7 MEMBER WHITE: Mr. Chair, thanks. I also agree
8 with Vice Chair Hart and Ms. John on their analysis for this
9 particular application because looking at the matter of right
10 option, and also looking at the variance standards, I also
11 agree that the second prong -- I think that I could make a
12 strong argument that the second prong has not been met here.

13 I think the matter of right option seems to be the
14 better option that would not require any specific variance
15 relief, which requires a high standard be met. But it also
16 is something I think that would be in the public good, in
17 terms of being in the best interest of the neighbor that's
18 presented information to us today. So I would not be in
19 support of the variance relief today.

20 COMMISSIONER TURNBULL: If I could chime back in,
21 I would agree with my colleagues.

22 CHAIRPERSON HILL: Okay. I guess we're -- I'm a
23 little -- I shouldn't say I'm necessarily surprised. I agree
24 with it that, and this is also, I'm saying for the Applicant,
25 the Applicant comes here often with things that we give them

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1 a variance for because there isn't anything they can do with
2 the lot. And so this is something that can be done with the
3 lot. I agree with the Office of Planning that it would be
4 better if they got the three-foot side yard and everything,
5 but I'll agree with you guys. Again, we're going to vote on
6 something I don't want to vote on.

7 So, okay, I'm going to go ahead and make a motion
8 to deny Application Number 19985, as captioned and read by
9 the Secretary, and ask for a second.

10 VICE CHAIRPERSON HART: Second.

11 CHAIRPERSON HILL: Motion made and seconded. All
12 those in favor say aye.

13 (Chorus of aye.)

14 CHAIRPERSON HILL: All those opposed?

15 (No response.)

16 CHAIRPERSON HILL: The motion passes. Mr. Moy?

17 MR. MOY: Staff would record the vote as 5 to 0
18 to 0. This is on the move from Chairman Hill to deny the
19 application for the relief being requested. Second of the
20 motion by Vice Chair Hart, also in support, Ms. John, Ms.
21 White and Zoning Commissioner Michael Turnbull.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you
23 very much. And we're going to take a quick break, everybody,
24 we're going to switch out commissioners. We'll be back in
25 like ten minutes. Thank you.

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1 (Whereupon the above-entitled matter went off the
2 record at 11:07 a.m. and resumed at 11:21 a.m.)

3 CHAIRPERSON HILL: All right, Mr. Moy, let's get
4 started. Thank you.

5 MR. MOY: Thank you, Mr. Chairman. The hearing
6 is back in session. It's about 11:22. We need parties to
7 the table to Case Application No. 20037, of Daniel Riesenfeld
8 and Caren Grown, G-R-O-W-N. This application is captioned
9 and advertised for a special exception under Subtitle F,
10 Section 5201 from the minimum rear yard setback requirements
11 of Title F, Section 305.1, to allow a two-story rear addition
12 to an existing attached principle dwelling in the RA-2 Zone
13 at 2332 19th Street Northwest, Square 2539, Lot 209.

14 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
15 Could you please introduce yourself for the record? You need
16 to push the button.

17 MR. RIESENFELD: I'm Daniel Riesenfeld, I co-own
18 the property with my wife, Caren Grown.

19 CHAIRPERSON HILL: Okay, Mr. Riesenfeld. So, Mr.
20 Riesenfeld, I don't have a lot of particular questions for
21 you about this. I guess if you just, kind of, want to go
22 over the project a little bit, tell us about what you're
23 trying to do, and also a little bit about how you're meeting
24 the standard for us to grant the relief. I'm just going to
25 put ten minutes on the clock for us because, again, I don't

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1 have a lot of questions about this. And you can begin
2 whenever you like.

3 MR. RIESENFELD: Okay. Thank you. Essentially
4 we propose to replace an existing covered porch with a two-
5 story rear addition. We request a special exception from the
6 15-foot rear yard setback requirement of 13.5 inches. The
7 special exception relief is requested from Section 305.1,
8 Subtitle F.

9 As I understand it, the Board of Zoning Adjustment
10 has jurisdiction to grant this special exception relief,
11 requested pursuant to 5201-1(b).

12 CHAIRPERSON HILL: Okay. Thank you. Does the
13 Board have any questions for the Applicant?

14 VICE CHAIRPERSON HART: And you're saying that your
15 project wouldn't have any effect -- wouldn't unduly impact
16 the next-door neighbors, their light and air, the privacy --
17 you're saying that as well?

18 MR. RIESENFELD: Yes, I am saying that. That's
19 in my burden of proof statement. I didn't want to take up
20 your time, but reading --

21 VICE CHAIRPERSON HART: No, no, that's fine. I
22 just wanted to make sure, that's all.

23 MR. RIESENFELD: Of course. And furthermore, the
24 three neighbors that are impacted by it, the one to the
25 north, the one to the south, and the one to the rear, support

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1 the project and have submitted letters of support.

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

4 MR. MORDFIN: Good morning, Chair, Members of the
5 Board. I'm Stephen Mordfin, and the Office of Planning is
6 in support of this application, finding that it conforms to
7 the criteria to grant a special exception to reduce the rear
8 yard, and therefore recommends approval. Thank you.

9 CHAIRPERSON HILL: Does the Board have any
10 questions for the Office of Planning? Does the Applicant
11 have any questions for the Office of Planning?

12 MR. RIESENFELD: No, I don't.

13 CHAIRPERSON HILL: Is there anybody here wants to
14 speak in support? Is there anyone here who wants to speak
15 in opposition? Is there anything you'd like to add at the
16 end?

17 MR. RIESENFELD: Nope.

18 CHAIRPERSON HILL: Okay. I'm going to close the
19 hearing. Is the Board ready to deliberate? Okay. I'm going
20 to start.

21 As I said before at the start, I don't have any
22 real issues with this. I thought that they are meeting the
23 criteria. I would also agree with the Office of Planning's
24 report and analysis as well as DDOT's no objection. In
25 addition to that, also we have ANC 1C support. Which is --

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1 Mr. Guthrie is the Chair, and he also supports it, so that's
2 great. So I'm going to go ahead and vote to approve. Does
3 anyone have anything they'd like to add? All right.

4 I'm going to make a motion to approve Application
5 No. 20037 as captioned and read by the Secretary, and ask for
6 a second?

7 VICE CHAIRPERSON HART: Second.

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

10 (Chorus of aye.)

11 CHAIRPERSON HILL: All those opposed?

12 (No response.)

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

14 MR. MOY: The staff would record the vote as 5 to
15 0 to 0. This is on the motion of Chairman Hill to approve
16 the application for relief requested. Seconding the motion,
17 Vice Chairperson Hart. Also in support, Ms. John, Ms. White
18 and Zoning Commissioner Peter Shapiro. I think that's five,
19 right?

20 CHAIRPERSON HILL: Yes. Great. Thank you, Mr.
21 Moy. Thank you very much.

22 MR. RIESENFELD: Thank you.

23 CHAIRPERSON HILL: Would you mind just turning the
24 mic? Thank you so much. Appreciate it.

25 MR. MOY: I believe the next application is No.

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1 20041, of Stephen and Blair Raber. If you could come to the
2 table? This is caption advertised for special exception
3 under Subtitle D, Section 5201, from the minimum rear yard
4 setback requirements of Subtitle D, Section 5004.1,
5 nonconforming structure requirements of Title C, Section
6 202.2, pursuant to Subtitle Title F, Chapter 10, for area
7 variance from the maximum height and number of stories for
8 an accessory building under Subtitle D, Section 5002.1 to
9 construct a pergola and a roof deck on an existing accessory
10 structure, R-3 zone, at 2119 S Street Northwest, Square 2532,
11 Lot 8.

12 CHAIRPERSON HILL: Okay, great, thank you. Would
13 you please introduce yourselves for the record?

14 MR. BLACKWELL: Good morning. My name is Channing
15 Blackwell.

16 CHAIRPERSON HILL: Mr. Blackwell, where do you
17 live?

18 MR. BLACKWELL: In Gainesville, Virginia.

19 CHAIRPERSON HILL: Are you -- you're the
20 Applicant?

21 MR. BLACKWELL: The representative of the
22 Applicant. I'm the engineer.

23 CHAIRPERSON HILL: Okay. All right, so Mr.
24 Blackwell, I guess there are some questions in terms of --
25 you are aware that the Office of Planning is still in denial

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1 to this -- or, they don't agree with you or burden of proof
2 in terms of how you believe you're meeting the criteria for
3 us to grant this application. Also, I don't see an ANC - I'm
4 just trying to mention some things you might want to, kind
5 of, address as you're walking us through your burden of
6 proof, and also why you think that this should be granted.

7 So I'm going to go -- just highlighting those two
8 points, I'm going to put 15 minutes on the clock, Mr. Moy,
9 if I could, so I know where we are. And again, Mr.
10 Blackwell, just what your role here now is trying to tell us
11 why you're meeting the criteria or the standards for us to
12 grant this application. And you can go ahead and begin
13 whenever you like.

14 MR. BLACKWELL: Thank you, Chairman. It is true
15 that we have a two-story, what is defined as an accessory
16 structure. The original accessory structure home was built
17 in 1908. We had staff go down just to confirm that. So the
18 two-story rear part of the home was not built as a two-story,
19 let's say, in the 1980s, but was part of the original
20 structure so providing burden, relief of this burden -- the
21 current homeowners, the Rabers, purchased the property as-is
22 and didn't self-create this issue.

23 The second story, the adjacent properties do have
24 a one-story. Theirs is true a second-story, so the pergola
25 would be on top of that. Currently the roof system is

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1 structurally compromised and so the deck does need to be
2 taken up and the roof replaced, repaired, a new deck put in,
3 with the decking and family use, shade is an issue.

4 The pergola is a lightweight structure, so from
5 a structural engineering point of view, I'd much rather have
6 the pergola protecting the family with shade and sun and so
7 forth, than umbrellas, which can weigh up to a thousand
8 pounds. So from a structural point of view, I'd much rather
9 have a lightweight pergola up there. It is facing to the
10 alley and not to the street, so it would not be a distraction
11 from street frontage.

12 Regarding the ANC, they decided to pass forward
13 to you all without comment. Any -- I did that in two
14 minutes.

15 CHAIRPERSON HILL: Yeah, that's okay. We're going
16 to turn now to the Office of Planning. I was kind of looking
17 for you to speak a little bit more to how you're meeting the
18 variance standard for us to grant this.

19 MR. BLACKWELL: With the -- currently it's in non-
20 conformance, so really anything we do atop that two story is
21 -- there's really nothing we can do. The Rabers bought the
22 property and they're kind of stuck. The surrounding
23 neighbors have that enjoyment, have the pergolas, have the
24 decks, and the Rabers are in this unique situation. They
25 bought something, they look around to their neighbors, the

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1 neighbors have the pergolas, and so they buy a home and it's
2 not something they can do because of this unique non-
3 conforming.

4 So I think to some extent, the thought would be
5 you would be granting to something that the Rabers did not
6 create upon themselves. I guess that would be my one thought
7 regarding that.

8 CHAIRPERSON HILL: Okay. Does the Board have any
9 questions for the Applicant?

10 COMMISSIONER SHAPIRO: Mr. Chair?

11 CHAIRPERSON HILL: Yes, please.

12 COMMISSIONER SHAPIRO: When was the last time
13 there was communication with the ANC? I'm just trying to get
14 a sense of the sequence of the conversations that have
15 occurred.

16 MR. BLACKWELL: About -- we received an email
17 about three weeks ago.

18 COMMISSIONER SHAPIRO: Okay, but when was it that
19 you were before them?

20 MR. BLACKWELL: They decided not to hear -- for
21 us to go before them. They decided to pass through to you
22 all.

23 COMMISSIONER SHAPIRO: So you never -- the
24 Applicant or you never spoke to the ANC?

25 MR. BLACKWELL: Yes. Via email, but not in front,

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1 correct.

2 COMMISSIONER SHAPIRO: Thank you. Thank you, Mr.
3 Chair.

4 MEMBER WHITE: I'm just curious. Why did they
5 decide to pass?

6 MR. BLACKWELL: To your wisdom, I'm not sure. I
7 don't know.

8 MEMBER WHITE: Okay.

9 VICE CHAIRPERSON HART: Could you speak a little
10 bit more about the -- you said that it is, and I don't know
11 what exactly your word was for it, but that the structure was
12 preferable than putting up an umbrella, or putting up
13 multiple umbrellas? I don't know --

14 MR. BLACKWELL: Yes. So when you have these very
15 large store, when you walk in these stores you see the great
16 gathering, let's say a store, they have these very, very
17 large umbrellas and the counterweight of that wind load
18 coming in or whatever, you have a really heavy load to
19 counterweight that wind to want to move that umbrella. And
20 so it's quite a bit of load onto the structure.

21 Where a pergola -- we're able to tie that pergola
22 into the house structure itself, and that's built of vinyl,
23 very lightweight, instead of a canvas, heavy with a
24 counterweight on the roof. So from a structural point of
25 view, as an engineer, I would much rather have for safety --

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1 and it blends in with the rest of the neighborhood. The rest
2 of the neighborhood doesn't have these large umbrellas that
3 are 10 feet in diameter. They have more of a kind of
4 lightweight design. So in keeping with that, it allows us
5 to take all that load into the house, and again, the load
6 itself is very, very light because it's vinyl.

7 VICE CHAIRPERSON HART: And you'd have -- what's
8 vinyl?

9 MR. BLACKWELL: The pergola. So your umbrellas
10 are canvas which are heavy, the counterweight is heavy that
11 sits on the ground. That's your umbrella system. The
12 pergola is just a little -- they're four columns if you will,
13 and there are slats and all of that is kind of a very, very
14 lightweight structure, a vinyl structure.

15 VICE CHAIRPERSON HART: So these -- there wouldn't
16 be wood underneath them?

17 MR. BLACKWELL: No. They're a vinyl.

18 VICE CHAIRPERSON HART: They're hollow?

19 MR. BLACKWELL: Yes, sir.

20 VICE CHAIRPERSON HART: Okay. And so this is more
21 of a preference, you're saying?

22 MR. BLACKWELL: From an engineering point of view.

23 VICE CHAIRPERSON HART: I mean, you can put it up
24 -- they have umbrellas everywhere. It's done, it's not like
25 it's kind of this mysterious thing that can't be done on a

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1 roof. It's just that there's a preference to -- what I'm
2 hearing is there's a preference to having something that is
3 similar to what the neighbors have as opposed to, it's the
4 only option to do.

5 MR. BLACKWELL: Correct. I would agree that it
6 is similar to the neighbors. As a structural engineer, I
7 would always rather err on less weight on a roof system than
8 more.

9 CHAIRPERSON HILL: Okay. Anyone else?

10 MEMBER JOHN: Can you describe what we're seeing
11 in the photographs of Exhibit 41, the rooftop? Is that the
12 first one of the rooftop of the property as it exists now?

13 MR. BLACKWELL: Yes, ma'am. That is existing
14 conditions.

15 MEMBER JOHN: Okay. And View 4, is that also the
16 rooftop?

17 MR. BLACKWELL: Yes.

18 MEMBER JOHN: And you're proposing to replace that
19 deck, or repair it.

20 MR. BLACKWELL: Repair the roof underneath that
21 deck and then replace in kind that deck, yes, ma'am.

22 MEMBER JOHN: Okay. And View 5, that's the
23 property as well?

24 MR. BLACKWELL: Yes. View 5, you'll see the
25 chairs that are covered and then you can see across the

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1 alleyway, the neighbors with their deck.

2 MEMBER JOHN: Okay.

3 MR. BLACKWELL: So our pergola, if you see that
4 post right by the -- so the height of our pergola would be,
5 obviously, below the neighbor in the rear with the deck.

6 MEMBER JOHN: Okay. Thank you.

7 MR. BLACKWELL: Yes, ma'am.

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

10 MS. MYERS: Hello. Crystal Myers from the Office
11 of Planning. The Office of Planning is recommending denial
12 of this case -- of both variance reliefs, as well as the
13 special exception.

14 The reason why is because we do not believe that
15 the Applicant had made their argument for an exceptional
16 situation resulting in a practical difficulty. The existing
17 accessory structure is already over the height requirement --
18 or, the height limit, but it is 24.67 and is an existing
19 situation. They could replace their deck without coming for
20 relief if they just did an in-kind replacement.

21 So the need for a new deck because the existing
22 one is already in poor condition is not an argument that we
23 could support because the pergola is not necessary for that
24 and allowing for an additional amount of height, going from
25 24.67 to 35 feet would be pretty substantial. It would be

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1 height as well as story -- it would leap to three-story, and
2 it would further the non-conformance on the site.

3 Another point I could point out is that there
4 are no other pergolas on this part of the alley. The other
5 accessory structures are about one story. There are numerous
6 stories examples of rooftop decks on them -- I shouldn't say
7 numerous, I should say there are many examples of rooftop
8 decks on top of the one-story accessory structures, which is
9 within the zoning requirements. But this structure is two
10 stories. So they would not be able to do a pergola, but as
11 I said there are no other pergolas we can see in this section
12 of the alley anyway. But if it were one story, they could
13 probably do the pergola if it was only another ten-foot
14 pergola.

15 Another thing I would point out is that this is
16 one of the largest accessory structures. If you go down this
17 alley, it significantly stands out in comparison to all the
18 others.

19 There is a rooftop deck of their neighbor next
20 door, and like I said there are plenty of examples of decks
21 and pretty significant balconies in the area, but those are
22 often on the main houses. But again, you can do a deck on
23 an accessory structure. The issue is the additional height,
24 but I know in the end, any of the pictures that were shown,
25 even site visit OP did, you can see interesting structures

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1 on the main houses. But on their accessory structures, they
2 all just have a one-story structure with a deck, or no deck.
3 And that was the extent of what we could see on their sites.

4 So I just want to remind the Board that there's
5 a difference between the main house height requirements as
6 well as the accessory structure height requirements, and a
7 lot of the examples that the Applicant has pointed out are
8 on the main houses. So with that, I conclude the Office of
9 Planning report as recommending denial at this time.

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

12 VICE CHAIRPERSON HART: Just one quick question.
13 So you're calling the pergola a story?

14 MS. MYERS: Yes. Actually, DCRA is calling it a
15 story.

16 VICE CHAIRPERSON HART: That's fine, I just wanted
17 to make sure that I understood that correctly.

18 MS. MYERS: Yes, we're consistent with DCRA's
19 interpretation of it.

20 VICE CHAIRPERSON HART: And that's just because
21 it has a roof?

22 MS. MYERS: Because the pergola's panels are
23 closer than, I believe, 24 inches, that's why it's considered
24 a story. If it were wider separation, then they would just
25 be considered needing height relief but not story relief, but

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1 they would still need that height variance relief. But the
2 story is because it is the way it is designed, the panels are
3 a little too close together to consider it otherwise than
4 story.

5 VICE CHAIRPERSON HART: Which panels did you say?

6 MS. MYERS: The pergola's panels, the -- I guess
7 the roof of it. The Zoning Administrator says that they have
8 to be separated by -- if they are separated less than 24
9 inches from the center they are considered a solid roof
10 element. Therefore the pergola is determined to be a new
11 story.

12 VICE CHAIRPERSON HART: Can you say that again?

13 MS. MYERS: Sure. I'm reading from their letter.

14 VICE CHAIRPERSON HART: No, no, that's fine. What
15 I'm trying to get is 24 inches from what?

16 MS. MYERS: Center. So, zoning administration has
17 determined that when the rafters of a pergola are separated
18 a distance less than 24 inches from center, as is here in
19 this case, they shall be considered a solid roof element.
20 Therefore the pergola is determined to be a new story.

21 And that's also why they needed the rear relief
22 as well, because now that you consider this a story there's
23 additional relief needed. But the rear relief was special
24 exception relief. But if it were not considered a story, it
25 would still need variance relief from the height, so there

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1 is still that issue.

2 VICE CHAIRPERSON HART: Okay. Thank you.

3 MEMBER WHITE: Just one question. So, did you
4 suggest some alternative recommendations to the Applicant?
5 I hear the Applicant talking about engineering concerns and
6 structural concerns but was there another option that OP
7 recommended?

8 MS. MYERS: Yes. We recommended two other
9 options. One was an in-kind replacement of the deck, which
10 our understanding would mean there would be no need for BZA
11 relief. The second option was to remove the pergola. And
12 it would not be an in-kind replacement of the deck but it
13 would be a new type of deck that would perhaps only need the
14 one-to-one penthouse setbacks, which would be a special
15 exception relief. And so we thought that would be perhaps
16 more appropriate if they didn't want to do an in-kind
17 replacement, but our issue was with the pergola.

18 CHAIRPERSON HILL: Okay. Just real quick from me.
19 This reminds me of like, meaningful connection stuff. So is
20 there a -- if they had engineered the pergola differently,
21 would it not be considered a story? I'm sorry, I got lost
22 a little bit in, kind of, like, your inches of spacing and
23 all that, so if they spaced it differently, if they made it
24 wider gaps within the wood frame or whatever, would it then
25 not be considered a pergola and therefore not considered a

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1 story?

2 MS. MYERS: To be clear, they're asking for two
3 variances, and our issue was that we don't believe that they
4 have -- their variance argument is sufficient. So they're
5 asking for two variances, they're asking for a variance from
6 story relief and they're asking for a variance for height
7 relief. So even if they were to redesign to no longer be
8 considered a story, they would still need the height relief,
9 which is still a significant variance.

10 CHAIRPERSON HILL: I got you. Okay. Thank you.
11 Does the Applicant have any questions for the Office of
12 Planning?

13 MR. BLACKWELL: No.

14 CHAIRPERSON HILL: Okay. Thank you. Is there
15 anyone here wishing to speak in support? Please come forward.

16 MR. DUBOVSKY: Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: No problem. If you'd just give
18 us your name and home address, and we can start it there.

19 MR. DILLON: John Dillon, 2109 S Street Northwest.

20 CHAIRPERSON HILL: Okay, great, Mr. Dillon. So
21 there is going -- you're going to get, actually, sir, if you
22 can just turn off your microphone there, because if more than
23 one's on I get feedback up here.

24 And I don't see Mr. Moy here, he must have, so I'm
25 going to go ahead and keep track of your three minutes and

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1 you can begin whenever you like.

2 MR. DILLON: Thank you, Chairman. I can't speak
3 to the restrictions that govern structural amendments to
4 properties in the District. I don't have any knowledge on
5 that subject, but I can speak to the character and the
6 history that I've had with the Rabers. Fantastic neighbors,
7 they set the tone on the block for what the standards should
8 be and what needs to be done in order to keep a beautiful
9 block beautiful.

10 Everybody looks to them, they're always at the
11 forefront of gardening, engineering, you know? The outside
12 of the house looks beautiful, the inside of the house looks
13 beautiful. Any time there's an issue in the neighborhood
14 they host all the neighbors, they're very transparent, they
15 know everybody they could know on the street.

16 As the president of the condominium association
17 immediately to the east of the Rabers and representing 14 of
18 the other neighbors, I know that they've been transparent
19 with the neighborhood and the people that would be
20 immediately affected by any construction or any amendments
21 to their property. The signs and the notices were posted
22 immediately, they've been up for close to month now, from
23 what I can recall.

24 I haven't spoken to anybody on the block that
25 would be averse to them championing this project. I consider

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1 myself to be fairly well-connected with most of the neighbors
2 on both sides of the street. Haven't heard anything to
3 suggest that anybody would be opposed and haven't seen
4 anything in seven-plus years that I've been a homeowner on
5 the street, less than 20 yards from their house, that would
6 suggest anything other than impeccable judgement in every
7 decision that they've made over the last seven or eight
8 years. And they're tremendously instrumental in making sure
9 that the block remains as beautiful as it can be and reaches
10 its potential with regards to any amendments or any updates
11 to the properties on the block.

12 CHAIRPERSON HILL: Okay. Thank you. Mr. Dillon.
13 Does the Board have any questions for the witness? Okay, Mr.
14 Dillon, thank you very much. Is there anyone here wishing
15 to speak in opposition? All right. Mr. Blackwell, is there
16 anything else you'd like to at the end? You need to push the
17 mike, I'm sorry.

18 MR. BLACKWELL: That's okay. Just to follow up,
19 it's my understanding if the Rabers had purchased a property
20 with just a one-story carriage house, then the pergola
21 wouldn't be an issue. The Rabers have purchased a house, I'm
22 going to assume, that has a two story. Wanting to enjoy that
23 second story -- or, second story roof or rooftop, we find
24 ourselves here today. So this is somewhat unique, if I
25 might, and it's not self-created, and from a structural point

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1 of view I think favors the integrity of the home for their
2 family. So that would be my closing thought.

3 CHAIRPERSON HILL: Okay, thank you, Mr. Blackwell.

4 MR. BLACKWELL: Thank you.

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

8 I'm disappointed. I don't have any problems with
9 the pergola, I think the pergola looks nice, I would just
10 again agree with the Office of Planning that I don't think
11 they're necessarily meeting the variance standard.

12 Also, I mean, I'm sure it's very nice of someone
13 to be here at this time and actually support their neighbors,
14 because they're here taking the day off to do that and I'm
15 sure they sound like they're upstanding members of the
16 community. Unfortunately for me, in terms of them meeting
17 the variance standard, it's a very high bar, it's a big test
18 for us in terms of, like, it means that they can't do
19 something with their property. They need this in order to
20 be able to do something with the property, and as we even
21 talked about in the previous case that Ms. Myers lost on, was
22 that they can do something with it. So they just can't have
23 a pergola, it's just more of they would like to have one.
24 And so, unfortunately, I won't be able to grant the variance
25 for them to be able to get that. Does anyone else have

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1 anything they'd like to add?

2 COMMISSIONER SHAPIRO: I concur, Mr. Chair.

3 CHAIRPERSON HILL: Okay. Great. Thank you. Then
4 I'm going to go ahead and make a motion to deny application
5 number 20041 as captioned and read by the Secretary, and ask
6 for a second.

7 MEMBER JOHN: Second.

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

10 (Chorus of aye.)

11 CHAIRPERSON HILL: All those opposed?

12 (No response.)

13 CHAIRPERSON HILL: Motion passes. Mr. Moy?

14 MR. MOY: The staff would record the vote as 5
15 to 0 to 0. This is on the motion of Chairman Hill to deny
16 the application for relief being requested. Seconding the
17 motion, Ms. John. Also in support, Ms. White and Vice Chair
18 Hart and Zoning Commissioner Peter Shapiro.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,
20 Mr. Blackwell.

21 MR. MOY: All right, if we can have parties to the
22 table to case Application No. 20048. This is of Joseph Rose,
23 caption advertised as area variance from the lot occupancy
24 requirements, Subtitle E, Section 304.1. This would
25 construct a two-story rear addition to an existing flat, RF-1

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1 Zone at 940 S Street Northwest, Square 363, Lot 71.

2 CHAIRPERSON HILL: Okay. If you could please
3 introduce yourselves for the record.

4 MR. ROSE: Joe Rose, at 940 S Street Northwest.

5 MR. MILLER: Jim Martin, architect. Address is
6 938 S Street.

7 CHAIRPERSON HILL: Okay. Mr. Martin, I assume
8 you're going to be presenting to us? Oh, Mr. Rose? Okay.
9 So, Mr. Rose, a little bit similar to the last case in that
10 you kind of are coming forward to us with the argument thus
11 far hasn't been made in terms of the Office of Planning
12 agreeing with you. That's not to say that we wouldn't
13 necessarily agree with it, but I'm just saying that's
14 something you might want to speak to during your
15 presentation. I'll start with that.

16 And then I'm going to go ahead and put 15 minutes
17 on the clock, Mr. Moy, so I know where we are, and then I'm
18 going to let Mr. Hart ask his question.

19 VICE CHAIRPERSON HART: Yeah, just one question.
20 There's a postponement request?

21 CHAIRPERSON HILL: Oh, well then I'm lost.

22 VICE CHAIRPERSON HART: Yeah, so I just thought
23 we might want to deal with that first.

24 CHAIRPERSON HILL: Thank you very much. So I
25 don't need my 15 minutes, is that what you're trying to say?

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1 So, Mr. Rose, you're asking for a postponement?

2 MR. ROSE: Yes. We asked for a postponement, I
3 think it was last week, and we were told that we were too
4 close to the hearing date. And so I was basically going to
5 make a short testimony to -- if you can see your way clear
6 to approve it today or otherwise give us time to have my ANC
7 Chairman Alex Padro, as well as a letter of support from my
8 Councilman.

9 CHAIRPERSON HILL: Okay. I think a postponement
10 request would be good in terms of I don't think we have to
11 hear this today then. Do you know when you think you'd like
12 this postponed until?

13 MR. ROSE: We were told until September 18th.

14 CHAIRPERSON HILL: Mr. Moy, is that date still
15 looking good?

16 MR. MOY: I have penciled in for September 18, 11
17 cases. This would be the 12th case.

18 CHAIRPERSON HILL: Okay. All right. So, Mr.
19 Rose, we are going to actually postpone you to the 18th, and
20 then -- but I would mention to you actually that it's great
21 that Alex Padro, your commissioner is going to come forward,
22 give you some support, as well as hopefully some support from
23 the Council members. I think again what you're going to be
24 up against is, again, really, is convincing the Board that
25 you're meeting the variance standard, right?

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1 And so I would suggest also going back to the
2 Office of Planning and speaking with the Office of Planning
3 in terms of what they think may be different things that you
4 might be able to do and also -- or, how they think maybe you
5 are actually meeting the variance standard. I'm actually
6 going to turn to the Office of Planning, if you wouldn't
7 mind, to just kind of give us a little bit of a report as to
8 where they are right now.

9 MS. FOTHERGILL: Good morning.

10 CHAIRPERSON HILL: Good morning.

11 MS. FOTHERGILL: I'm Anne Fothergill with the
12 Office of Planning. Do you want the Office of Planning
13 report or do you want to talk about the postponement?

14 CHAIRPERSON HILL: I kind of want the OP report.

15 MS. FOTHERGILL: Okay. So as you mentioned, OP
16 has not recommended approval of this variance. We found that
17 the project did not meet the first prong of the variance
18 test, that there was an exceptional condition of the property
19 that led to practical difficulty.

20 And there actually has been some discussion --
21 this was a referral from the Zoning Administrator's office,
22 and they're having some discussion about whether or not it
23 could possibly come at 70 percent and be a special exception,
24 and we had noted in our report that we thought it does meet
25 the criteria for the special exception at 70 percent.

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1 Unfortunately, I think it stands at 72.7 percent,
2 and that is on the ground floor only, and that is because
3 there is an existing carport. The second floor, where
4 they're also proposing an addition, comes in at 53.2 percent
5 so that is in compliance with lot occupancy. It's just the
6 ground floor, because there's a carport which pushes them
7 over that 70 percent line, and we did not find an exceptional
8 condition of the property that could meet that first prong
9 of the variance test and so we were not able to recommend
10 approval.

11 CHAIRPERSON HILL: Okay. So, Mr. Rose, if there's
12 a way that you can get to a special exception, I'm just going
13 to throw that out for you there, that might be something that
14 you might want to take a look at. Let's see. Does the Board
15 have any questions for the Office of Planning since we
16 actually got to talk to them? Does the Applicant have any
17 questions for the Office of Planning since we started to talk
18 to them?

19 MR. ROSE: I do. If you could please explain,
20 there was a question as to the lot coverage, whether it was
21 actually 70 percent or 72 percent.

22 MS. FOTHERGILL: Sure. My understanding in
23 talking to your architect is they consulted with DCRA and
24 went through the numbers and determined, in fact, I believe
25 the number is correct, that DCRA found, which is 72.3

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1 percent. So that was not an Office of Planning
2 determination, it was a DCRA determination in conjunction
3 with your architect, I believe.

4 MR. ROSE: Okay. And could I also ask you, why
5 isn't my lot situation with the two houses next to me, which
6 are significantly over the lot coverage, and I'm just asking
7 to have some more air and light to get to the same size lot
8 coverage as my neighbor to the west. You know --

9 CHAIRPERSON HILL: Mr. Rose, I'm going to
10 interrupt you just one second. Since you did ask for a
11 postponement, it does sound like a conversation as opposed
12 to necessity a question, so why don't you go ahead and, you
13 know, if Ms. Fothergill would be willing to talk to you for
14 a minute right after this, you might be able to get a little
15 bit more clarity.

16 But I'm just pointing out to you again, that you
17 can -- we do know Commissioner Padro, we do know the ANC, we
18 do have to go -- you've seen now what we do in terms of our
19 deliberations and the prongs which we go through to determine
20 whether a variance, whether we think we can behind a variance
21 or not. So just kind of throwing that out for you to kind
22 of take a look at, and we'll see you then on September 18th.
23 Thank you.

24 Okay, we just lost our Zoning Commissioner. So
25 we're going to wait a minute. All right, apparently we're

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1 going to take a five-minute break.

2 (Whereupon, the above-entitled matter went off the
3 record at 11:58 p.m. and resumed at 12:01 p.m.)

4 CHAIRPERSON HILL: All right, Mr. Moy, let's get
5 started back again here, and if you could please call our
6 next case?

7 MR. MOY: Thank you, Mr. Chairman, with pleasure.
8 So can we have applicants' parties to the table to
9 Application Number 20050 of Patrice Webb, caption advertised
10 for area variances from the lot occupancy requirements,
11 Subtitle F, Section 304.1, and from minimum rear yard
12 requirements, Subtitle F, Section 305.1, to allow a two-story
13 rear deck addition to an existing attached principal dwelling
14 unit, RA-2 Zone. This is at 1424 Florida Avenue, N.W.,
15 Square 202, Lot 806.

16 CHAIRPERSON HILL: Okay, great. Thank you. If you
17 could please introduce yourselves for the record?

18 MS. WEBB: Patrice Webb, homeowner at 1424 Florida
19 Avenue, N.W.

20 MR. ALVES: Steven Alves, contractor at 413 Elm
21 Street, N.W.

22 CHAIRPERSON HILL: Could you spell your last name
23 for me, sir?

24 MR. ALVES: A-L-V-E-S.

25 CHAIRPERSON HILL: Okay, great. Did you all get

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1 sworn in earlier? Okay, Mr. Alves, if you could just stand?
2 If anybody else is here that hasn't been sworn in, if you
3 could please stand and get sworn in by the Secretary to my
4 left? You don't have to go anywhere.

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

9 (Witnesses sworn.)

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

11 CHAIRPERSON HILL: Okay, Ms. Webb, are you
12 presenting or is Mr. Alves?

13 MS. WEBB: I can do it.

14 CHAIRPERSON HILL: Okay, great. So Ms. Webb, I
15 don't really have a lot of questions or comments, I suppose.
16 If you could just go ahead and kind of run through the
17 project and what you're trying to do, and then also how you
18 think you're meeting with the standard for us to grant the
19 variance?

20 And so if you go ahead, I'm going to put 15
21 minutes on the clock, and the clocks are up on either side
22 there on the ceiling, and you can begin whenever you like.

23 MS. WEBB: Okay, thank you, Mr. Chairman. So
24 basically I want to build a deck onto the back of my house.
25 The way that the lot is designed, it's at an angle on Florida

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1 Avenue, so it's not completely even. What I'm asking for is
2 relief from the regulations that require, I think it's 13
3 feet, and then also I think it's five feet from the end of
4 my property to the beginning of the city property. There's
5 just not enough space back there to do all of that.

6 My immediate neighbor has, which his image is in
7 one of the photos, has basically the same thing except it's
8 one story, and I'm asking for two stories. That's pretty
9 much it in a nutshell.

10 CHAIRPERSON HILL: Okay, do you know -- I didn't
11 see anything from the ANC. Do you know what you have with
12 your ANC?

13 MS. WEBB: I believe that position is vacant
14 because I've been emailing and calling and haven't -- I know
15 that communication went, but the direct representative from
16 --

17 CHAIRPERSON HILL: Your SMD you're saying is
18 vacant?

19 MS. WEBB: Correct.

20 CHAIRPERSON HILL: So you didn't reach out to
21 anybody else other than your SMD?

22 MS. WEBB: I did not.

23 CHAIRPERSON HILL: Okay, but it's been posted and
24 everything. You've posted this?

25 MS. WEBB: Yes.

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1 CHAIRPERSON HILL: Okay, all right, does anybody
2 have any questions for the applicant? Okay, does anybody
3 have -- oh, I'm sorry. We'll go ahead and turn to the Office
4 of Planning.

5 MS. ELLIOTT: Good afternoon, Mr. Chair and
6 members of the board. I'm Brandice Elliott, representing the
7 Office of Planning. The Office of Planning is recommending
8 approval of the relief that's been requested.

9 DCRA did provide a memorandum indicating that
10 variance relief from both lot occupancy and rear yard was
11 required, but we did have some follow-up conversations with
12 DCRA and they've confirmed that the lot occupancy would be
13 by a variance because it exceeds 70 percent, and then the
14 rear yard would be by special exception as permitted by
15 Section 5201.

16 So we did note that in our report that we believe
17 that the requested relief differs a little bit from what's
18 in the memorandum from DCRA, but we had subsequent
19 discussions with them confirming that that was the correct
20 route to go.

21 And in addition, just to quickly go over OP's
22 analysis regarding the exceptional situation that results in
23 a practical difficulty, there are no minimum lot size
24 requirements in the RA-2 Zone, but what we did do was an
25 analysis of all of the lots in the square, and we found that

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1 this one is significantly smaller than the average sized lot
2 in the square.

3 The average sized lot is about 1,400 square feet,
4 whereas this lot is just under 700 square feet, so we found
5 that that was substantial enough to result in the exceptional
6 situation resulting in the practical difficulty, but OP is
7 recommending approval of both areas of relief and I'm happy
8 to answer any questions you have.

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

11 MEMBER WHITE: Just one. Are there any negative
12 impacts to any of the immediate neighbors, the adjacent
13 neighbors? I couldn't see anything, but I just wanted to
14 make sure that aspect of the variance standard was satisfied.

15 MS. ELLIOTT: Sure. In OP's analysis, we did not
16 find that there would be a detrimental impact to the public
17 good. The deck structure is open, so in terms of shadowing,
18 it's going to have less impact than, say, a solid addition
19 would, and also there are similar structures in the alleyway,
20 so it doesn't really affect the existing character of the
21 alleyway and you don't see it from Florida Avenue, so --

22 MEMBER WHITE: Thank you.

23 CHAIRPERSON HILL: This is kind of a follow up to
24 that actually. I mean, it is a tiny house on a tiny lot, and
25 so if it were -- I was curious just if it were not a deck and

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1 it was just a bump-out or, like, you know, they were trying
2 to fill all the way to the property line, do you know if the
3 Office of Planning, you know, would you guys have been in
4 favor of that?

5 MS. ELLIOTT: We would review those plans and get
6 back to you.

7 CHAIRPERSON HILL: Probably the same, okay, right,
8 okay, great. There's the light in there, right. Okay,
9 that's right. I didn't think I was going to get an answer.
10 Okay, do you have any questions for the Office of Planning?
11 Does the applicant have any questions for the Office of
12 Planning?

13 MS. WEBB: No. Thank you.

14 CHAIRPERSON HILL: Okay, is there anyone here who
15 wishes to speak in support? Is there anyone here who wishes
16 to speak in opposition? Okay Ms. Webb, do you have anything
17 else you'd like to add at the end?

18 MS. WEBB: There are about 14 letters that I also
19 submitted in support from my neighbors. I just want to make
20 sure --

21 CHAIRPERSON HILL: Okay, great. No, we did see
22 that, and that's good that you've done all of your homework.
23 Okay, I'm going to go ahead and close the hearing. Is the
24 board ready to deliberate? Does somebody else want to talk?

25 VICE CHAIRPERSON HART: Sure, so this project is

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1 an application for a rear deck on the second and third floors
2 of the building. This is a fairly small project, and since
3 the lot size is very small at 698 square feet, where the
4 average lot size on the square is 1,400, a little over 1,400
5 square feet, they're really about half the size of the rest
6 of the lots -- square feet of the lots on the square. They
7 do need a variance because of this kind of condition where
8 they are a much smaller lot.

9 I would be -- I think that the deck that they're
10 proposing are small changes to the project or to their
11 building. They would need a variance relief, and because the
12 lots are so small, that even a small deck like this would
13 require that.

14 And I do believe that because of their site that
15 Ms. Webb has talked about, that I would be in support of
16 their application. I agree with the Office of Planning
17 report that states that they meet the variance standard.

18 And I guess with regard -- and I also would be in
19 approval or in support of the special exception for the rear
20 yard requirement as well. I just think that they've
21 definitely proven that they are a fairly small site that
22 would require this relief, and I didn't have much else to say
23 other than that.

24 CHAIRPERSON HILL: All right, motion?

25 VICE CHAIRPERSON HART: And I'll make a motion to

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1 approve. Oh, actually, I'm not sure what the -- okay, so the
2 motion is to approve application number 20050 of Patrice
3 Webb, which was read and captioned by the Secretary. Is
4 there --

5 COMMISSIONER SHAPIRO: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All
7 those in favor, say, "Aye."

8 (Chorus of aye.)

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

11 MR. MOY: The staff would record the vote as five
12 to zero to zero. This is on the motion of Vice Chair Hart
13 to approve the application for the relief requested,
14 seconding the motion is Zoning Commissioner Peter Shapiro,
15 also in support, Ms. John, Ms. White, and Chairman Hill. The
16 motion carries, sir.

17 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
18 Thank you very much. All right, Mr. Moy?

19 MR. MOY: Thank you, Mr. Chairman. So if we can
20 have the parties to the table to case application number
21 20052 of Louise Herson?

22 The caption advertised for special exceptions
23 under Subtitle E, Section 5201, and from the lot occupancy
24 requirements, Subtitle E, Section 304.1, rear yard
25 requirements, Subtitle E, Section 306.1, and from the

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1 nonconforming structure requirements, Subtitle C, Section
2 202.2, to construct a two-story rear addition to an existing,
3 attached principal dwelling unit, RF-3 Zone. This is at 703
4 4th Street, S.E., Square 823, Lot 32.

5 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
6 Moy. If you could please introduce yourself for the record?

7 MS. FOWLER: Hi, I'm Jennifer Fowler. I'm the
8 architect.

9 CHAIRPERSON HILL: Okay.

10 MS. FOWLER: And it's 708. He said 703. I just
11 want to clarify.

12 CHAIRPERSON HILL: 708.

13 MS. FOWLER: 708 4th Street.

14 CHAIRPERSON HILL: Okay. That's what we have, 708
15 4th Street.

16 MR. MOY: Did she say 708?

17 CHAIRPERSON HILL: 708.

18 MR. MOY: Okay, I may have been thinking that.
19 Maybe I --

20 CHAIRPERSON HILL: It's 708 4th Street.

21 MS. FOWLER: You said 703.

22 CHAIRPERSON HILL: Okay, okay, all right, great,
23 okay, perfect. Thank you. All right, okay, Ms. Fowler,
24 you're here with such a big project today that I don't know
25 what's going to happen.

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1 Okay, I don't have a lot of questions. If you
2 could please, Mr. Moy, just put 15 minutes on the clock? Ms.
3 Fowler, if you could tell us a little bit about your project
4 and how you're meeting the standard for which we could grant
5 this project? And you can begin whenever you like.

6 MS. FOWLER: Okay. Thank you. This is a very
7 small rowhouse on Capitol Hill. It's only a 12-foot wide
8 property, less than 11 feet wide on the inside. It's a
9 landlocked property and the rear is not visible from any
10 public way.

11 What we're proposing is to fill in an existing
12 dogleg as many of the neighbors have already on this block.
13 There are a number of identical houses that were built
14 together that have all been infilled.

15 We're basically filling in between her kind of
16 dogleg wall and the neighbor's wall that's been built along
17 the property line. So the neighbor at 706 has already built
18 a face online wall, so we're basically connecting to that
19 face online wall with our own addition.

20 The proposed addition will not go past the rear
21 of the property. We're staying flush with the back wall, so
22 we'll not be casting any additional shadows on any of the
23 adjacent neighbors.

24 Additionally, there should be a kind of reduction,
25 or actually an increase in privacy for neighbors as we're

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1 kind of removing some dogleg windows and kind of
2 consolidating the windows on the rear of the house. So
3 again, there should be absolutely no impact to the neighbors
4 with this very small project we're proposing.

5 We do have support letters from both 706 and 710
6 4th Street, S.E., and Historic Preservation is on board with
7 the project. They're reviewing it at staff level. That's
8 really it. Thank you very much.

9 CHAIRPERSON HILL: Okay, great, thank you. Does
10 the board have any questions for the applicant? Okay, I'll
11 turn to the Office of Planning.

12 MR. COCHRAN: Thanks, Mr. Chair. OP is also
13 recommending approval. There are just a couple of things
14 we'd note that weren't in our report. The ANC and the
15 architect at the Capitol Office have also recommended
16 approval.

17 CHAIRPERSON HILL: Okay, does anyone have any
18 questions for the Office of Planning? I'm curious. I have
19 a quick question. So could they have gone back 10 feet by
20 right? No?

21 MR. COCHRAN: I don't want to answer that since
22 this wasn't actually my case.

23 CHAIRPERSON HILL: Okay, there you go. All right,
24 I'm batting 1,000 today. All right, let's see, Ms. Fowler,
25 so did you think about doing that, I mean, going back 10

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1 feet?

2 MS. FOWLER: Well, we're already into the rear.
3 So we're at 16 feet, seven inches rear yard, so kind of any
4 additional --

5 CHAIRPERSON HILL: Right, the rear yard relief.

6 MS. FOWLER: Right, so, yeah, and really she just
7 needed --

8 CHAIRPERSON HILL: You wouldn't get enough.

9 MS. FOWLER: All she needed was to expand the
10 kitchen and get a little bit bigger bedroom.

11 CHAIRPERSON HILL: Okay.

12 MS. FOWLER: So we weren't really looking to --
13 and she also didn't want to lose her yard space.

14 CHAIRPERSON HILL: Got it, to the program fit.
15 Okay, all right, is there anybody here who wishes to speak
16 in support? Is there anyone here who wishes to speak in
17 opposition? Ms. Fowler, at the end, anything you'd like to
18 add?

19 MS. FOWLER: No, thank you very much.

20 CHAIRPERSON HILL: Okay, I'm going to close the
21 hearing. Is the board ready to deliberate? Okay, I think
22 it's pretty straightforward. I would agree with the analysis
23 that was provided by the Office of Planning, as well as DDOT
24 has no objection, also 6B is in support as well. There's
25 support from either side of the neighbors.

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1 However, I do agree with the burden of proof that
2 the applicant has put forward as to how they're meeting the
3 standard, and I will be voting to approve. Is there anything
4 else anyone would like to add? I'm going to go ahead and
5 make a motion to approve application number 20052 and ask for
6 a second.

7 MEMBER JOHN: Second.

8 CHAIRPERSON HILL: Motion made and seconded. All
9 those in favor, say, "Aye."

10 (Chorus of aye.)

11 CHAIRPERSON HILL: All those opposed? The motion
12 passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as five to
14 zero to zero. This is on the motion of Chairman Hill to
15 approve the application for the relief requested, seconding
16 the motion, Ms. John, also in support, Ms. White, Vice Chair
17 Hart, and Zoning Commissioner Peter Shapiro.

18 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you
19 very much.

20 MR. MOY: All right, Mr. Chairman. If we could
21 have the parties to the table to case application number
22 20056? This is of Children in Safe Hands, LLC.

23 The caption advertised for a special exception
24 under the use provisions of Subtitle U, Section 203.1(g).
25 This would permit a child development center for 40 children,

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1 R-2 Zone. This is at 5216 Astor Place, S.E., Square 5308,
2 Lots 27 and 28.

3 CHAIRPERSON HILL: Okay, if you could please
4 introduce yourselves for the record?

5 MS. DORSEY: Patricia Dorsey.

6 CHAIRPERSON HILL: I'm sorry. You've got to kind
7 of lean into the microphone a little bit.

8 MS. DORSEY: Patricia Dorsey.

9 MR. DORSEY: Thomas Dorsey with Children in Safe
10 Hands, LLC, and we're the petitioners.

11 CHAIRPERSON HILL: Okay, great. Mr. Dorsey or Ms.
12 Dorsey, who is going to be testifying to us first? Okay, Mr.
13 Dorsey, okay, great.

14 All right, Mr. Dorsey, I guess if you can go ahead
15 and just tell us a little bit about what you're trying to do,
16 and again, how you think you're meeting the criteria for us
17 to grant the relief that's being requested?

18 I'm going to put 15 minutes on the clock, Mr. Moy,
19 just so we know where we are, and Mr. Dorsey, you can begin
20 whenever you like.

21 MR. DORSEY: Okay, we own the property at 5216
22 Astor Place, S.E. It's a -- the property is two lots. It
23 has a house and a garage. We'd like to turn it into a
24 childcare center for 40 children from the ages of six weeks
25 to five years. We propose the hours of operation to be 7:00

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1 a.m. to 7:00 p.m.

2 We feel that this center is needed in the
3 community and we have the community's support. We've
4 received 51 signatures from neighbors. We have the support
5 of the ANC and support of many organizations within the
6 community.

7 CHAIRPERSON HILL: Okay, Mr. Dorsey, there's, I
8 guess, some -- DDOT doesn't have any objection, but it has
9 a recommendation. It recommends that the applicant provide
10 a formal curbside management plan to facilitate drop off and
11 pick up in coordination with DDOT's Safe Routes to School
12 Program. Do you know about this?

13 MR. DORSEY: Yes, I've read their report. I also
14 read about the curb cut. The curb cut was put in by DDOT.
15 They redid the street about 10 years ago and they removed my
16 curb cut, which was smaller, and they put in one that I
17 believe would have to have been correct at the time of its
18 installation, so I would think maybe there have been some
19 changes in the requirements.

20 CHAIRPERSON HILL: Okay, I was actually -- I'm
21 sorry, Mr. Dorsey. I was speaking more to the whole thing
22 about a formal curbside management plan to facilitate the
23 drop off and pick up of, you know, people that might be
24 coming there. Do you know about that?

25 MR. DORSEY: Yes, I've read about it. We believe

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1 that most of the children will come from the area and would
2 be walking. I've also offered that we have space on the
3 property to allow pull-in and back-out, and they said that
4 they're not necessarily in agreement with that, but we do
5 have enough site to offer a turn-in radius if they will
6 accept it, but we're willing to work with them and come up
7 with whatever kind of plan is necessary --

8 CHAIRPERSON HILL: Okay.

9 MR. DORSEY: -- to meet the requirements.

10 CHAIRPERSON HILL: So you are agreeing that you
11 will work with DDOT --

12 MR. DORSEY: Yes.

13 CHAIRPERSON HILL: -- to facilitate a drop
14 off/pick up in coordination with DDOT's Safe Routes to School
15 Program?

16 MR. DORSEY: Yes.

17 CHAIRPERSON HILL: You will work with them?

18 MR. DORSEY: Yes.

19 CHAIRPERSON HILL: Okay. Okay, does the board
20 have any questions for the applicant?

21 MEMBER JOHN: Yes, Mr. Chairman. So can you tell
22 me what's the relationship with TD Creations, LLC, Custom
23 Drafting and Design Services? Do you represent those
24 companies as well?

25 MR. DORSEY: Yes, TD Creations, LLC is a -- I'm

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1 a designer. I'm an architectural designer, so I used my own
2 services --

3 MEMBER JOHN: Okay.

4 MR. DORSEY: -- to create the plans.

5 MEMBER JOHN: So your --

6 MR. DORSEY: And --

7 MEMBER JOHN: Go ahead.

8 MR. DORSEY: And Children in Safe Hands, LLC is
9 an organization that my wife and I started a couple of years
10 ago.

11 MEMBER JOHN: Okay, that clarifies it. Thank you.

12 CHAIRPERSON HILL: Okay, anyone else?

13 MEMBER WHITE: Yes, I just had a question about
14 total enrollment for the center. I wanted some clarification
15 on that. I believe you said it would be 40 kids?

16 MR. DORSEY: Forty children and 12 staff.

17 MEMBER WHITE: And 12 staff. And I also
18 understand that there is a process by which you have to go
19 through for licensing?

20 MR. DORSEY: Yes.

21 MEMBER WHITE: But I just wanted to kind of get
22 some input from you regarding how you're addressing safety
23 concerns, you know, with respect to having 40 kids in the
24 house and how you're addressing it. What approach are you
25 taking to make sure that it's done properly?

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1 MR. DORSEY: Okay, I'm going to start it and then
2 let my wife answer that. So we propose to put 16 children
3 in the garage based on the square footage, and then 12
4 children on the first floor and 12 children on the basement,
5 so that's the --that would give the 40 children.

6 Now, my wife has been in the childcare business
7 for 35 years and she's -- so she's trying to open up in her
8 own city her own center, so she can speak to that more so
9 than I can.

10 MS. DORSEY: So we would have the proper staffing
11 to support the ratio of 4-1 for the infants and then based
12 on the ages of the other children, so that's where the 12
13 staff members would come in.

14 MEMBER WHITE: So you would go through the
15 additional certification process for the city? I believe
16 it's OSSE who does it?

17 MS. DORSEY: Yes, we will be mandated by OSSE --

18 MEMBER WHITE: Okay.

19 MS. DORSEY: -- and licensed under them.

20 MEMBER WHITE: Okay. Thank you.

21 COMMISSIONER SHAPIRO: Mr. Chair, if I may?

22 CHAIRPERSON HILL: Please.

23 COMMISSIONER SHAPIRO: So on this enrollment
24 question, I'm just curious, is it your understanding that
25 when you say that the maximum enrollment is 40 children, does

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1 that mean that you will -- is that the total number of
2 children enrolled in the center in total, or is that the most
3 students that you would ever have on site at one time -- not
4 students, the most young people on site at one time?

5 MR. DORSEY: That would be the most we could have
6 on site at one time.

7 COMMISSIONER SHAPIRO: So you don't see the 40 as
8 a maximum enrollment? It's just a maximum on site?

9 MS. DORSEY: Yes.

10 COMMISSIONER SHAPIRO: Okay. Do you have a maximum
11 enrollment number in your head? Have you talked with the
12 Office of Planning about that?

13 MR. DORSEY: We haven't.

14 COMMISSIONER SHAPIRO: Okay. Thank you. Thank
15 you, Mr. Chair.

16 CHAIRPERSON HILL: Okay, anyone else for the
17 applicant? Okay, I'll turn to the Office of Planning.

18 MR. COCHRAN: Thank you, Mr. Chair. OP is
19 recommending approval with three conditions that are noted
20 on page one of our report: that the facility shall serve no
21 more than 40 children, that the ages of the served children
22 shall be no greater than six years old, and that there shall
23 be no more than 12 staff persons on site at any time. And
24 then there might be that fourth condition if you're making
25 that one for the cooperation with DDOT on the Safe Routes.

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1 That concludes our report.

2 CHAIRPERSON HILL: Okay, does anybody have any
3 questions for the Office of Planning?

4 COMMISSIONER SHAPIRO: I do, Mr. Chair.

5 CHAIRPERSON HILL: Sure, please.

6 COMMISSIONER SHAPIRO: So what -- OSSE does the --
7 and I'm stepping into my ignorance a bit here, but OSSE does
8 the licensing for this, right?

9 MR. COCHRAN: That's correct.

10 COMMISSIONER SHAPIRO: So what criteria do you use
11 as the Office of Planning to determine, to set these -- why
12 do you wade into these setting of conditions around this when
13 OSSE does the licensing, and what's your reaction to this
14 issue of the maximum enrollment of 40 being at any one time
15 versus total? Was that your understanding, or do you set a
16 different standard for this? Which condition are you
17 suggesting we impose?

18 MR. COCHRAN: That the building have no more than
19 40 children at any one time. The zoning regulations tend to
20 deal with physical conditions on a site. You could have 120
21 people enrolled, but no more than 40 could be on site at any
22 one time. That's what we care about.

23 As far as some of the other conditions, anything
24 having to do with health and the safety within the building,
25 OSSE controls that, and if they are stricter than the zoning

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1 regulations, then that's what has to be followed. If the
2 zoning regulations are stricter than OSSE, then that's what
3 has to be followed. Either way we look at it, the children
4 are protected by either OSSE or zoning regulations.

5 COMMISSIONER SHAPIRO: I appreciate that, and
6 further, one of your conditions is that the maximum age for
7 enrollment is six years. What is -- why that and what
8 adverse impact would be mitigated by that condition? Why
9 that age?

10 MR. COCHRAN: One of the things that the applicant
11 said in their statement was that they don't need that much
12 of an exterior play area because the children are young,
13 small, and will be able to have recreation indoors. That's
14 where we were coming from with saying the maximum age should
15 be six. Also it's something that the applicant said would
16 be the case, so we thought, okay, let's hold you to that.

17 COMMISSIONER SHAPIRO: Thank you for that. That
18 was very clear. So I'm again a little fuzzy around -- I just
19 may need some education on this, and perhaps it has less to
20 do with this one application -- but I'm a little bit fuzzy
21 about what's pertinent to us versus what will just be
22 addressed through the licensing process.

23 I mean, I hear you on this one, and it feels like
24 the gray area leans toward it because it's a question of how
25 much play area needs to be --

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1 MR. COCHRAN: I guess I have to go back to the
2 general. What's pertinent to the BZA is the zoning
3 regulations, and that's it.

4 COMMISSIONER SHAPIRO: And these feel -- right,
5 these just feel less like pieces of zoning regulations, but
6 I hear you. It's related to the built environment, and
7 that's where you come into this.

8 MR. COCHRAN: That's correct.

9 COMMISSIONER SHAPIRO: Okay, I'll leave myself with
10 my confusion, Mr. Chair, and thank you.

11 CHAIRPERSON HILL: That's all right. Okay, anyone
12 else for the Office of Planning?

13 VICE CHAIRPERSON HART: Just one question, and this
14 is with regard to the kind of cumulative effects, other
15 facilities that are, I guess, nearby. There is -- it seems
16 like there is a young adult treatment facility nearby, but
17 OP is not -- well, just describe how you --

18 MR. COCHRAN: There is a young adult facility next
19 door for people returning from various difficulties for no
20 more than, I believe, it's 28 days. It's simply not part of
21 the zoning regulations that we evaluate against that. I
22 looked at the 1,000-foot rule, and those facilities -- that
23 next door facility is a health facility. The zoning
24 regulations don't have us looking at whether there are other
25 health-related facilities within 1,000 feet. It's much more

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1 limited, and that's what we looked at.

2 VICE CHAIRPERSON HART: Okay, so you're just seeing
3 it in a different -- you see it as a different light. I
4 don't want to say use because it's not really a different --
5 I guess it may be a different use. One is a childcare. The
6 other one is a health facility, which you're seeing as not
7 being described in the zoning regs -- described in this
8 section of the zoning regs?

9 MR. COCHRAN: It's not just in this section. If
10 you look under uses, the building next door is in a different
11 use category than what the applicant is proposing.

12 VICE CHAIRPERSON HART: No, I understand that, and
13 so outside of that, you don't see any other kind of
14 cumulative effects, impacts that this may have with any other
15 facility within that --

16 MR. COCHRAN: We could not find any other
17 facilities against which this facility has to be compared
18 within that 1,000 square feet.

19 VICE CHAIRPERSON HART: Thank you.

20 CHAIRPERSON HILL: Okay, does the applicant have
21 any questions for the Office of Planning? You need to speak
22 into the microphone, sorry.

23 MR. DORSEY: No, I don't.

24 CHAIRPERSON HILL: Okay, Mr. Dorsey and Ms.
25 Dorsey, did you guys get sworn in earlier?

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1 MR. DORSEY: Yes, we did.

2 CHAIRPERSON HILL: Okay, great, great. All right,
3 is there anyone here wishing to speak in support? Is there
4 anyone here wishing to speak in opposition? Okay, does the
5 board have any final questions for the applicant?

6 MEMBER WHITE: Just one question on the last point
7 they were making about this youth facility that's next door?

8 MR. DORSEY: It's two doors up.

9 MEMBER WHITE: Two doors.

10 MR. DORSEY: And I believe they've closed.

11 MEMBER WHITE: So the question was do you have any
12 concerns about this?

13 MR. DORSEY: I --

14 MEMBER WHITE: If it's closed, then it's closed,
15 but I didn't have anything in the record that indicated that.

16 MR. DORSEY: Well, I think they just closed within
17 the last month. I know my neighbor. He's been there for
18 years. And the center hasn't really been successful, and
19 there's been no complaint from the neighbors in the community
20 about the young people that are there, and I'm in constant
21 contact with the residents in the community.

22 MEMBER WHITE: Thank you.

23 CHAIRPERSON HILL: Okay, Mr. Dorsey, just so,
24 because we're probably going to talk about the conditions and
25 we'll see where we get to in terms of the board, but in terms

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1 of the conditions that you know from the Office of Planning,
2 they were talking about the maximum. What I think I heard,
3 at least also what the board member mentioned was a maximum
4 on site enrollment of 40 children at one time, as well as the
5 12 staff, correct?

6 MR. DORSEY: Yes.

7 CHAIRPERSON HILL: Okay, and you're comfortable
8 with that?

9 MR. DORSEY: Yes.

10 CHAIRPERSON HILL: As well as then the maximum age
11 of six years old?

12 MR. DORSEY: Yes.

13 CHAIRPERSON HILL: Okay, all right, oh, yeah, and
14 then you're going to work with -- I don't know whether we
15 need to necessarily make it a condition or not, but you're
16 going to work with DDOT on the --

17 MR. DORSEY: Drop-off plan.

18 CHAIRPERSON HILL: Thank you, the drop-off plan.
19 It was the Safe Routes to School Program that I was trying
20 to remember the name of, but you'll work with them, correct?

21 MR. DORSEY: Yes.

22 CHAIRPERSON HILL: Okay, all right, I'm going to
23 go ahead and close the record. Is the board ready to
24 deliberate? Okay, I actually would be in support of this
25 application. I think that again they've met the criteria as

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1 the Office of Planning has provided their analysis, and I
2 would be in agreement with the Office of Planning's analysis.
3 I know that there seems to be some discussion now that I'm
4 going to kind of open it up with the board in terms of the
5 conditions.

6 The only one -- I mean, we've had conditions
7 before with the maximum on site enrollment of people as well
8 as the maximum number of staff, and I can see how that would
9 be something that would possibly, you know, have adverse
10 impact in terms of how many people are there.

11 I'm a little bit uncertain in terms of where I
12 stand in terms of the maximum age of six years, like if it's
13 like -- I just don't really know how I feel about that one,
14 but I am in support of the application and will look to my
15 colleagues to help me with their thoughts on the conditions.

16 MEMBER WHITE: Yes, Mr. Chair, I'm in support of
17 the application as well, and I did have some hesitancy with
18 the conditions, but I'm willing to support condition one and
19 three, you know, the condition with respect to the number of
20 children as well as the number of staff on site.

21 The maximum age, I had a hard time making an
22 argument in terms of how that's tied to controlling the
23 adverse impacts, so that's my feedback.

24 COMMISSIONER SHAPIRO: Mr. Chair, I'm -- again,
25 this is less about this project, and the applicant is fine

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1 with any of these conditions apparently. I'm just more
2 wondering whether this really is in our purview, and I feel
3 like it may be something worth taking up, and perhaps we take
4 it up at the Zoning Commission to get some clarity around --
5 I don't want these kinds of conditions to feel arbitrary, so
6 I don't -- it's not completely clear to me whether we're
7 stepping on OSSE's turf here or not. Regardless of what we
8 do, there's still going to be a licensing process.

9 And to Mr. Cochran's point, you know, the stronger
10 of the two is what will rule, which yeah, that's true, but
11 I don't quite see -- it's not completely clear to me why
12 these are zoning issues.

13 So I'm happy to have Mr. Cochran weigh in, but
14 we're not, but -- right, I want to hear what -- right, so
15 that's where at. So I'm of two minds around this. I'm more
16 inclined to not impose these conditions, but it's certainly
17 not something I'm going to fall on the sword on. I'm curious
18 where my fellow board members are.

19 VICE CHAIRPERSON HART: Yeah, I think we've
20 provided conditions like this. Just to kind of put it on the
21 record, I am also in support of the application for the, you
22 know, reasons that have been described so far.

23 We have put conditions on sites, and I understand
24 the reluctance that you may have in that, you know, why 40?
25 Why not, you know, 20? Why not 60? What is the magic number

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1 that we're looking at? You know, I think there is somewhat
2 of an indirect connection to, you know, traffic and all of
3 that, but -- and I think that that may be a little bit, that
4 could be a little bit arbitrary. I think that that may be
5 somewhat of a concern that I would have.

6 So I'm with you on the, you know, does 40 -- does
7 it make sense to give that number when it doesn't seem to be
8 based on anything other than the -- what the applicant is
9 requesting, and so is there some way of saying, well, is OSSE
10 the one that's really, you know, the one that's kind of
11 deciding that, or at least more capable of determining that,
12 and should we actually include it at all?

13 I don't think I have a strong a feeling as
14 probably you do as well either way on it, that we should have
15 definitely these particular numbers as opposed to some other
16 numbers, so I think we're all somewhat understanding that
17 the, you know, that there is this condition that OP has put
18 in, but not actually being based on a, okay, well, 40 is
19 helping to, you know, have fewer cars come here, whereas 50
20 would be allowing more cars to come here.

21 You know, and so it is, I think, a hard one to
22 nail down, but that's my thought. It doesn't help you much
23 because it doesn't bring you farther, but you at least know
24 that I'm struggling with this as well.

25 MEMBER WHITE: I just wanted to add that I believe

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1 the applicant testified that there is also a plan to have
2 kind of like a four to one ratio with staff versus kids, so
3 from that perspective, I can understand why you may want to
4 have a limit on the kids and the staff in order to make sure
5 that you have enough staff monitoring a certain number of
6 kids, so that was just my extra two cents.

7 VICE CHAIRPERSON HART: Yeah, I mean, typically
8 you have, for infants -- basically there are age groups. So
9 certain age groups, having children, you had to deal with
10 the, you know, the smaller the child, the smaller the ratio.
11 So it does go -- they do go hand in hand.

12 And as the children get larger or get older, they
13 grow, they have, they don't require more staff. They require
14 fewer staff. So you could have eight kids per staff if you
15 have, you know a two or three-year-old. I mean, it just goes
16 up.

17 And so I think I had heard this, that they said
18 it was four infants per staff, but that's, you know, be that
19 as it may, that's just a way of limiting because you have a
20 certain number of people that can be actually in the
21 building.

22 They'll have, you know, a Certificate of Occupancy
23 that says they can have X number of kids, but that's all
24 connected to, you know, emergency and fire and egress, you
25 know, occupancy issues that have to deal with that. So I

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1 just, you know, it just does doesn't seem like it's like a,
2 okay, this is that number that we need to, you know, tie it
3 to.

4 MEMBER JOHN: So Mr. Chairman, I think that the
5 OSSE process will determine age, number of participants, and
6 there is no discussion about any traffic impacts in OP's
7 report from having this many participants on the site.

8 So I am not inclined to agree with the conditions
9 just because I think that now there would be two agencies
10 weighing in, and I know we've done this in the past, but I
11 believe in those cases, there was a lot of discussion about
12 parking, and traffic, and neighborhood opposition, and so on,
13 and here we have, I believe, over 50 neighbors supporting the
14 need for this childcare facility.

15 And at this point, I would just, you know, leave
16 it to us to set the standards for operation because it seems
17 to be we're weighing into operational issues now by setting,
18 you know, the age of the students and the number of students,
19 and I forget what the other condition was, staff.

20 And with respect to staff, there's parking, I'm
21 sorry, I believe he said there is parking required and
22 they're meeting the parking conditions, so I would support
23 the application without the conditions on this particular
24 application.

25 CHAIRPERSON HILL: Okay, I saw that the Office of

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1 Planning had something that they wanted to say or mention.
2 Is that correct? So then before I do that, I'm going to just
3 a couple of things. First of all, we are going to take lunch
4 after this case, so that's how that is going to work for just
5 the people who are here. We're probably going to be back
6 1:45 possibly, and so kind of just letting everybody know.
7 That's number one.

8 Number two, in terms of the condition thing, I'm
9 still kind of on the -- we have had conditions that we have
10 done in terms of mitigating adverse impact with how many
11 people are on site, how many staff people, how many students.

12 I was just kind of not in support of necessarily
13 the age thing because I was just kind of a little confused
14 as to, you know, six years, one month or something. I don't
15 know how that kind of got into play.

16 Now, I saw that the Office of Planning had raised
17 their hand. I'm going to reopen the record, and so the
18 Office of Planning, you had something you wanted to comment
19 on?

20 MR. COCHRAN: Thank you, Mr. Chair, yes. I think
21 one thing that may help to clarify how you look at this is
22 to think of the OSSE rules as protecting the children and the
23 zoning regulations as protecting the neighborhood.

24 These -- the recommended conditions are
25 recommended by OP as a protection for the neighborhood. If

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1 there aren't numbers specified, then --

2 First off, this is a special exception, so it's
3 something that, although not something typically in an R-2
4 Zone, it's something that's allowed as long as they meet the
5 criteria, but sometimes with those criteria go conditions so
6 that the neighborhood has an idea of what the size of the
7 facility will be, what the impact is going to be.

8 You had 51 people voting for it, and they
9 undoubtedly want the facility there. There have been other
10 instances of similar facilities where there was more of a
11 split in the neighborhood, and so there was a need to put in
12 conditions to say, "Look, there will be only this many people
13 regardless of what OSSE says."

14 That's going to limit the traffic. That's going
15 to limit the noise. That's what the six years old -- after
16 six years old, they start playing outdoors, according to the
17 applicant, and that generates greater noise. I don't think
18 we're going to -- we won't argue strongly that six years is
19 the magic number.

20 But just generally about conditions, it does seem
21 to be appropriate to put some in. Otherwise, the
22 neighborhood can't evaluate a special exception because they
23 don't know what it's really going to be.

24 CHAIRPERSON HILL: Okay, well, Mr. Hart might have
25 some comments about parenting in a minute. So, does the

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1 board have any questions for the additional testimony from
2 the Office of Planning?

3 COMMISSIONER SHAPIRO: That was very helpful to
4 hear.

5 CHAIRPERSON HILL: Okay.

6 COMMISSIONER SHAPIRO: It helps reframe it for me
7 a little bit.

8 CHAIRPERSON HILL: Okay, hold on a second. You
9 had your microphone on?

10 VICE CHAIRPERSON HART: Yeah, because I was going
11 to say something.

12 CHAIRPERSON HILL: Oh, okay.

13 VICE CHAIRPERSON HART: Because you opened the
14 door for me. No, no, actually the only thing I would say is
15 that I know that OP just, you know, gave us some further
16 information.

17 In Subtitle U 203.1(g)(3), it says that the BZA
18 may require special treatment in the way of design, screening
19 of buildings, planting and parking areas, signs, or other
20 requirements as it deems necessary to protect adjacent and
21 nearby properties, so maybe that's how you're seeing that
22 this is kind of fitting in.

23 It's somewhat of a stretch because I think it kind
24 of fits in the other requirements, and it does seem to focus
25 it more on special treatment in the way of design, so it just

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1 seems like it's kind of more focused on the physical building
2 as opposed to, you know, what we've been talking about, which
3 are kind of limiting the number of kids, teachers, and what's
4 the other one, and age, thank you.

5 So I understand what you're saying and I guess
6 that's where I would kind of put that as the other
7 requirements as BZA deems necessary, so --

8 CHAIRPERSON HILL: Okay, Mr. Dorsey, we're
9 currently passing this. We're just kind of talking about the
10 conditions and everything, but is there something you wanted
11 to add? You can just go ahead and put -- sure.

12 MR. DORSEY: I want to kind of clarify a few
13 things that may help the board in their decision. It's
14 important -- a count becomes important when we file through
15 DCRA, so we asked for 40 children and 12 staff. That allows
16 us to meet the DCRA requirements. So if you leave that open,
17 then we can't -- if you leave it open to OSSE, it would
18 affect us applying for a building permit to do the count, so
19 that's where the count comes in.

20 As far as the age, you could leave that open and
21 it wouldn't affect us applying for a building permit, but a
22 count, they would hold us to the requirements that are set
23 by you as a board. So if you left it open -- right now, we
24 could have nine children without coming to the board, and if
25 you left it open, we would be stuck with nine children, so

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1 that's where we come up with count.

2 CHAIRPERSON HILL: I understand. Okay, Mr.
3 Dorsey. Mr. Dorsey, the Office of Planning did provide some
4 more testimony. Did you have any further questions for the
5 Office of Planning.

6 MR. DORSEY: The years -- the ages of six weeks
7 to six years, we're open with -- we're okay with that. If
8 it's extended beyond six years, we'd be okay with that. We
9 realize that sometimes children stay a little longer or get
10 older, but our goal is to serve children up to six years, but
11 to leave it open, it wouldn't affect us one way or another.

12 CHAIRPERSON HILL: Okay, all right, Mr. Dorsey.
13 All right, okay, so does anybody got anything else? I'm
14 going to close the record again. Okay, I'm closing the
15 record again.

16 Okay, so, all right, I'm back to where I was. So
17 I'm happy -- or not happy is the right word. I will agree
18 with the conditions that were set forth by the Office of
19 Planning in terms of the 40 students on site at one time as
20 well as the 12 staff members.

21 I think that that does go in line with what I feel
22 comfortable with in terms of things we have done in the past
23 to mitigate adverse impacts to the community, and so I would
24 be in favor of those conditions and not be in favor of the
25 six year condition, and so --

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1 And however, I do think that, as I mentioned
2 before, that they've met the criteria, as also has the Office
3 of Planning, and that they're going to work with DDOT on the
4 Safe Hands. I'll read it again when we get to that point,
5 but does anybody have anything else they'd like to add?

6 COMMISSIONER SHAPIRO: The only thing I'd like to
7 add is that I think this does merit some -- I don't think,
8 for what it's worth, I don't think it matters a lot on this
9 case, and so I'm fine to follow your lead on this, Mr. Chair.

10 But I do think that this merits further discussion
11 because even what the applicant said around -- and maybe he
12 has a misunderstanding about what he really has to have or
13 not has to have as he goes forward with the permitting
14 process, but maybe he's right and maybe there is some reason
15 why we have to be a little bit more attentive to setting a
16 number.

17 And I think what I heard from the applicant
18 doesn't jive with what I heard from Mr. Cochran, but isn't
19 completely contradictory, so there's a bit of murkiness here
20 that I'd like to get clarified, but I'm inclined to follow
21 your lead because I don't need to tie it to this case in this
22 situation so much.

23 CHAIRPERSON HILL: Okay, well, if you were on the
24 Zoning Commission, maybe you'd have some influence. Then you
25 could kind of --

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1 COMMISSIONER SHAPIRO: I know people.

2 CHAIRPERSON HILL: You may know somebody on the
3 Zoning Commission who could do something about that.

4 All right, I'm going to go ahead and make a motion
5 to approve application number 20056 as captioned and read by
6 the Secretary, including two conditions that the Office of
7 Planning had recommended, which was the maximum on site of
8 40 children at one time, as well as no more than 12 staff on
9 site at any one time, as well as -- yeah, that's all in terms
10 of the conditions, and ask for a second?

11 PARTICIPANT: Second.

12 CHAIRPERSON HILL: Motion made and seconded. All
13 those --

14 COMMISSIONER SHAPIRO: Under discussion, Mr. Chair
15 -- I'm sorry to --

16 CHAIRPERSON HILL: Sure, no, that's all right.

17 COMMISSIONER SHAPIRO: I just think about our
18 process again.

19 CHAIRPERSON HILL: Sure.

20 COMMISSIONER SHAPIRO: The one condition that Mr.
21 Cochran sort of dived into -- dove into and gave some clarity
22 around, and that the applicant even picked up on was the age,
23 and that there's a reason why it makes -- so there's some
24 data behind that age condition.

25 So I'm just a little curious about why we take

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1 that one out when there is a justification specifically for
2 that one, and there really wasn't a justification for the 40
3 and the 12?

4 CHAIRPERSON HILL: Well, I suppose we're not going
5 to have discussion and keep us from lunch some more, that
6 like the -- I think that the number -- I mean, for me
7 personally, the number of people, I thought was something
8 that would be kind of like easy to understand, whereas this
9 six years, it was like again, you're five years and whatever,
10 and on your sixth birthday, you're kicked out, or you're six
11 years and a day, because these are conditions now.

12 COMMISSIONER SHAPIRO: You get too noisy at that
13 age.

14 CHAIRPERSON HILL: Right, exactly, apparently
15 that's so. I mean, you know, your children get kicked out
16 of the house at six years old? I don't know. All right, so
17 that's where I am on that one.

18 COMMISSIONER SHAPIRO: Okay. Thank you, Mr.
19 Chair.

20 CHAIRPERSON HILL: But you said under condition --
21 you used a fancy word, under something, so you're under
22 duress. You're still, you're in support?

23 COMMISSIONER SHAPIRO: Well, I just said under
24 discussion.

25 CHAIRPERSON HILL: Oh, under discussion. You

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1 didn't say duress.

2 COMMISSIONER SHAPIRO: I just wanted to stop you
3 before you called for the vote.

4 CHAIRPERSON HILL: Oh, got you, okay. Anybody
5 else?

6 COMMISSIONER SHAPIRO: I'm still in support.

7 CHAIRPERSON HILL: Okay, anybody else? Okay, I
8 already made the motion. I don't have to do it again.
9 Seconded?

10 MEMBER WHITE: Second.

11 CHAIRPERSON HILL: The motion has been made and
12 seconded. All those in favor, say, "Aye."

13 (Chorus of aye.)

14 CHAIRPERSON HILL: All those opposed? The motion
15 passes, Mr. Moy.

16 MR. MOY: The staff would record the vote as five
17 to zero to zero. This is on the motion of Chairman Hill to
18 approve the application, including the two conditions as
19 cited in his motion, seconding the motion, Ms. White, also
20 in support, Ms. John, Vice Chair Hart, and Zoning
21 Commissioner Peter Shapiro.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
23 Moy. Thank you all very much and good luck to you.

24 All right, you guys, we're going to take lunch,
25 maybe 1:45 or maybe even closer to 2:00 at this point, but

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1 we'll see what happens. Thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 12:52 p.m. and resumed at 2:00 p.m.)

4 CHAIRPERSON HILL: All right, Mr. Moy, whenever
5 you're ready.

6 MR. MOY: Thank you, Mr. Chairman. For the
7 record, the board is back in session and the time is at or
8 about 2:00 p.m. The board would like to call parties to the
9 table to case application number 20057 of Richard Gbolahan.

10 And this application was captioned and advertised
11 for special exception relief under the use provisions of
12 Subtitle U, or rather -- let me restate that.

13 This is application number 20057 of Richard
14 Gbolahan, captioned and advertised for special exceptions
15 from the general penthouse requirements, Subtitle C, Section
16 1500.4, Subtitle C, Section 1504 from the penthouse enclosure
17 requirements of Subtitle C, Section 1500.10 and the penthouse
18 setback requirements, Subtitle C, Section 1502.1(c), I'm
19 going to say (1)(a), to construct a new three-story flat with
20 a cellar level, roof deck, and a rooftop access penthouse,
21 RF-1 Zone. This is at 1662 Montello Avenue, N.E., Square
22 4054, Lot 15.

23 CHAIRPERSON HILL: Great, thank you, Mr. Moy.
24 Could you please introduce yourself for the record?

25 MR. GBOLAHAN: My name is Richard Gbolahan. The

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1 G is silent.

2 CHAIRPERSON HILL: Could you spell your last name,
3 please?

4 MR. GBOLAHAN: G-B-O-L-A-H-A-N.

5 CHAIRPERSON HILL: How do you say it again?

6 MR. GBOLAHAN: Gbolahan.

7 CHAIRPERSON HILL: Gbolahan?

8 MR. GBOLAHAN: Yes.

9 CHAIRPERSON HILL: Gbolahan. Have you been here
10 before, sir?

11 MR. GBOLAHAN: Yeah.

12 CHAIRPERSON HILL: Oh, okay, you look familiar.
13 I hope you were successful last time.

14 MR. GBOLAHAN: Yes.

15 CHAIRPERSON HILL: Let's see, so Mr. Gbolahan, if
16 you could go ahead and walk us through what you're trying to
17 do, and then also if you could tell us a little bit about how
18 you're meeting the criteria for us to grant the relief you're
19 requesting? I'm going to go ahead and put 15 minutes on the
20 clock just so I know where we are.

21 Unless the ANC report has come in, if you could
22 speak to why there is no ANC report? Oh, well, there is an
23 ANC report then, okay. Then I will take a look at that while
24 you're going through your testimony, and you can begin
25 whenever you like.

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1 MR. GBOLAHAN: Yeah, I'm trying to build a two
2 flat on 1662 Montello Avenue, N.E. The size of the lot is
3 1,500 square feet. It's three levels and a cellar, and I'm
4 here requesting for the bay window and the penthouse. The
5 bay window is two feet in the front, and to add more rooms
6 to the apartment.

7 And again, the penthouse, beside my lot, there is
8 a vacant lot, so the penthouse isn't visible, but by my left,
9 there is a house. The penthouse is not visible, but if it's
10 at the back of the alley, the penthouse is very, very
11 visible. That is all.

12 CHAIRPERSON HILL: Okay, all right, Mr. Gbolahan.
13 Does the applicant have any -- I'm sorry. Does the board
14 have any questions at this time for the applicant? Okay, I'm
15 going to turn to the Office of Planning.

16 MS. THOMAS: Good afternoon, Mr. Chair. The
17 Office of Planning has nothing further to add with respect
18 to what's in our report. The applicant is seeking penthouse
19 relief from the setback requirements and from the slope
20 requirements of the penthouse, and we would recommend
21 approval of that based on the lot width.

22 Anywhere that the penthouse is placed on the roof
23 would require relief, so we will stand on the record of our
24 report with respect to that. I am not sure of what Mr.
25 Gbolahan speaks of when he says the front setback.

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1 CHAIRPERSON HILL: I think he was mentioning a bay
2 window, but I don't know.

3 MS. THOMAS: Yeah, a bay window, I did not see
4 that relief in the memo from the Zoning Administrator.

5 CHAIRPERSON HILL: So do you know, Mr. Gbolahan,
6 if you need relief for that bay window, or maybe you just --
7 where are you getting this information from?

8 MR. GBOLAHAN: Number two is special exception
9 pursuant to C to permit that does not provide the minimum 8.5
10 foot setback from the side wall. Oh, I misspoke.

11 CHAIRPERSON HILL: Okay, that's all right. It's
12 better that you did. Okay, all right, so okay, we're on the
13 same page. So do you have any questions, Mr. Gbolahan, for
14 the Office of Planning?

15 MR. GBOLAHAN: No, sir.

16 CHAIRPERSON HILL: Okay, does anybody -- does the
17 board have any questions for the Office of Planning?

18 MEMBER WHITE: I just had one question. Can you
19 clarify what the proposed penthouse slope relief is? I see
20 greater than 20 percent. Is there supposed to be an exact
21 number in your report? But I think I see greater than 20
22 percent.

23 MS. THOMAS: That's how the regulations state it.
24 The plans didn't show what percent it was at, and we are just
25 assuming that when he goes to the Zoning Administrator, if

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1 it's greater than 20 percent, he would have relief from that,
2 but the plans don't show a specific slope measurement.

3 MEMBER WHITE: Thank you.

4 CHAIRPERSON HILL: Okay. All right, is there
5 anyone here who wishes to speak in support? Is there anyone
6 here who wishes to speak in opposition? Mr. Gbolahan, is
7 there anything you'd like to add at the end?

8 MR. GBOLAHAN: No, sir.

9 CHAIRPERSON HILL: Okay, your friends kind of
10 giggled back there. I think should like, you know. I think
11 you're doing very well. So all right, is there anything else
12 we need to talk about or add, no? All right, Mr. Gbolahan,
13 I'm going to close the hearing. Is the board ready to
14 deliberate?

15 Okay, I'm happy to go first. I would agree with
16 the Office of Planning's recommendation and their analysis
17 in terms of the relief that's being requested. The ANC has
18 provided a report in terms of their support for the
19 application, also there --

20 Yeah, DDOT also had no objection to it, but I
21 would also agree again with the analysis of the Office of
22 Planning in that the penthouse would need relief no matter
23 where it was going to be put in terms of on the roof there,
24 so I would be in favor of the application. Does anyone have
25 anything else they'd like to add?

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1 VICE CHAIRPERSON HART: Only that the ANC voted.

2 Did you say that? Okay, sorry.

3 CHAIRPERSON HILL: That's okay.

4 VICE CHAIRPERSON HART: That's it.

5 CHAIRPERSON HILL: All right, yes? Of course, you
6 may need to push the microphone up, sorry.

7 MEMBER JOHN: Is there an affidavit of
8 maintenance? I saw the posting, but -- oh, yes, there is,
9 okay, got it. Thank you.

10 CHAIRPERSON HILL: Okay, great. All right, then
11 I'm going to go ahead and make motion to approve application
12 number 20057 as captioned and read by the Secretary and ask
13 for a second?

14 VICE CHAIRPERSON HART: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All
16 those in favor, say, "Aye."

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed? The motion
19 passes, Mr. Moy.

20 MR. MOY: The staff would record the vote as five
21 to zero to zero. This is on the motion of Chairman Hill to
22 approve the application for the relief requested, seconding
23 the motion, Vice Chair Hart, also in support, Ms. John, Ms.
24 White, and Zoning Commissioner Peter Shapiro.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,

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1 Mr. Gbolahan.

2 MR. MOY: Okay, if we could have parties to the
3 table to case application number 20042 of Raycon, Inc. This
4 is an application that was captioned and advertised for a
5 special exception under Subtitle G, Section 1200 from the
6 minimum closed court requirements, Subtitle G 202.1, and from
7 the lot occupancy requirements of Subtitle G, Section 604.1,
8 to construct a rear addition to the second through fourth
9 stories and a rooftop penthouse to an existing four-story
10 mixed use commercial building, MU-18 Zone. This is at 1637-
11 1641 R Street, N.W., Square 178, Lot 97.

12 CHAIRPERSON HILL: Okay, thank you. If you could
13 please introduce yourself for the record?

14 MR. SABA: My name is Raymond Saba.

15 CHAIRPERSON HILL: Could you spell that please,
16 sir?

17 MR. SABA: Saba, S-A-B-A.

18 CHAIRPERSON HILL: Okay, great. Thank you.

19 MS. MOLDENHAUER: Good afternoon, Meridith
20 Moldenhauer from the law firm of Cozen O'Connor on behalf of
21 the applicant.

22 CHAIRPERSON HILL: Okay, great, Ms. Moldenhauer,
23 I assume you're going to be presenting to us?

24 MS. MOLDENHAUER: Yes.

25 CHAIRPERSON HILL: Sorry to keep a former chair

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1 waiting for so long.

2 MS. MOLDENHAUER: Oh, we're happy to be here,
3 especially before the July 4th holiday.

4 CHAIRPERSON HILL: That's right.

5 MS. MOLDENHAUER: I thank all of the board for
6 having a full board tonight.

7 CHAIRPERSON HILL: That's right. Okay, we're
8 going to go ahead and put 15 minutes on the clock for you.
9 If you could just kind of walk us through what you're trying
10 to do with your client as well as how you're meeting the
11 criteria for us to grant the relief requested? And I think
12 that's it. I guess maybe you can comment a little bit about
13 the ANC, and maybe we'll talk about that as well as we kind
14 of go through this, but you can begin whenever you like.

15 MS. MOLDENHAUER: Sure, I'll just walk us through.
16 I know that Mr. Saba is here to also answer any questions,
17 but just for time, as you can see that this is actually, you
18 know, three different buildings that are part of actually two
19 lots that have already been subdivided into one lot in the
20 MU-18 Zone at the corner of 17th and R Street.

21 You can see here the buildings that exist today.
22 The proposal here is to take an existing project that is all
23 commercial and to create 18 dwelling units as well as
24 commercial on the first floor, to fill in a portion of the
25 dogleg court in the rear, and to provide a new fully

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1 compliant penthouse structure.

2 We have had extensive community outreach. The
3 applicant engaged in positive dialogue with all of their
4 neighbors, as well as ANC 2B and OP. We've presented to the
5 subcommittee. We have three letters of support from abutting
6 property owners, and have gotten ANC's full support on June
7 12, 2019. OP is also supportive of the relief, as well as
8 no objection from DDOT.

9 Here is just some quick images. The image on your
10 right that you can see is kind of the existing property that
11 we are trying to kind of create more of a uniform wall for
12 residential design. The first floor of the property will
13 remain commercial or retail.

14 Initially, we were not showing internal trash
15 location. At the request of the ANC and abutting property
16 owners, we initially showed residential trash, I'm sorry, a
17 commercial trash room -- residential trash room, and then
18 added it to be a both residential and commercial trash.

19 So we expanded it slightly so it could accommodate
20 both, and it's obviously located off of a common rear stairs
21 so that both the residential and commercial can access it,
22 and that was, you know, based on comments from community
23 members, and that one community member that did express
24 concerns, you know, did email and indicate that he was
25 supportive now that we were showing this as part of our plan.

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1 You can see on the second floor, the property,
2 since it was previously commercial, was already nonconforming
3 as to lot occupancy, and when that gets switched over to
4 residential, we are obviously asking for that relief here.

5 You can see the red, the area that we're filling
6 in on the second floor. We're looking to fill in the dogleg
7 on the third floor and the dogleg on the fourth floor, and
8 then these are -- the red is showing the roof below, and then
9 a compliant penthouse on the rooftop.

10 Here are just some images of how the property will
11 be compliant as to height and how that will appear. We then
12 also provided a line of sight in connection with our
13 conversation back and forth with the Office of Planning to
14 show the penthouse, and we are in the process of going to
15 HPRB.

16 We believe that we satisfy the special exception
17 application, that the project would be in harmony with the
18 purpose and intent of the MU-18 Zone. This is a historic
19 four-story building, and creating 18 dwelling units in the
20 heart of the area would obviously be in line with the goals
21 of the District of Columbia and the goals of this zone.

22 There would be no adverse impact on the
23 neighboring properties. Given that this is a rear addition,
24 there is very limited visibility or no visibility from the
25 public except for some small visibility that you can see from

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1 those images. Filling in the dogleg will have, you know, no
2 negative impact to neighboring property owners, and the
3 proposed penthouse is compliant.

4 The closed court requirements here, you know, we
5 are asking for closed court relief as well lot occupancy
6 relief. As I mentioned earlier, the property as it exists
7 today, you can see is already in the 94, 92, 88 percent lot
8 occupancy.

9 So the degree of increase that we're asking for
10 is fairly de minimis, and once we were to convert those
11 anyway to residential, we would have already been
12 nonconforming, and that is still a special exception relief,
13 and we believe that we satisfy the special exception
14 conditions.

15 We, as I said, are going to historic preservation.
16 We're actually going to the ANC tonight, so I get to hang out
17 with you guys during the day and then get to go to the ANC
18 to present this to the historic -- to the subcommittee for
19 our historic application.

20 We believe, and I know commissioners and the board
21 members ask these questions a lot, you know, it may simply
22 just be a reduction if any. Hopefully it's not a reduction,
23 but potentially maybe just a reduction in the penthouse,
24 which obviously is already compliant, so it's really kind of
25 really more of that factor that we're looking at for

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1 flexibility.

2 But we are hopeful that the project is approved
3 by HPRB as proposed, and if the board was not willing to
4 provide flexibility, we will go through the normal process,
5 but we think that here, given the fact that the penthouse
6 relief is not an area of relief that we're requesting, we
7 would ask the board for flexibility.

8 That being said, I and the applicant are here to
9 answer any questions that the board may have.

10 CHAIRPERSON HILL: Great. Thank you. Does the
11 board have any questions for the applicant?

12 VICE CHAIRPERSON HART: Which height do you have
13 for -- what's the height of the penthouse?

14 MS. MOLDENHAUER: Twelve feet.

15 VICE CHAIRPERSON HART: And what do you expect --
16 what is the allowed height for the penthouse?

17 MS. MOLDENHAUER: Twelve feet. We will be
18 building to the permitted height.

19 VICE CHAIRPERSON HART: Okay. The question I was
20 trying to get to was or the point that I was trying to get
21 to was was there a difference between the two so that if it
22 went up and may actually be higher than what we are seeing.
23 But what you're telling me is anything above what it is now
24 would require some zoning relief?

25 MS. MOLDENHAUER: Correct. The plans that we have

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1 -- are showing right now is showing it to the maximum
2 permitted height and if HPRB were to do anything they would,
3 obviously, as us to reduce it, potentially, not increase it.

4 VICE CHAIRPERSON HART: Okay. Okay. And what
5 types of changes would you be expecting on the -- on the
6 facades? Are you just looking at just kind of replacing
7 windows and all of that? I see Mr. Saba --

8 MR. SABA: Yes. The intent is to restore the
9 building to its original facade. So the metal that you see
10 -- the metal on the second floor that is a little bit Moorish
11 this was added maybe 25 years ago. That will be removed.
12 The brick that --

13 VICE CHAIRPERSON HART: Is that what you're
14 talking about?

15 MR. SABA: That is correct, sir.

16 VICE CHAIRPERSON HART: Okay. It's kind of like
17 a -- it's not an awning but it's -- yeah, it's kind of like
18 metal work that they've put on there.

19 MR. SABA: Yes.

20 VICE CHAIRPERSON HART: Okay.

21 MR. SABA: It is pretty poor metal work, I can
22 guarantee that. That will be removed. The paint will be
23 stripped. The brick will be repaired and it will remain
24 natural. It will not be painted.

25 VICE CHAIRPERSON HART: So the existing -- the

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1 yellow is -- the yellow part you see is actually brick
2 underneath?

3 MR. SABA: That is correct, sir.

4 VICE CHAIRPERSON HART: Oh, interesting. Okay.
5 I saw the back was brick but I couldn't --

6 MR. SABA: And including -- including under the
7 vertical pilaster that you see outside. It is painted gray
8 right now or dark gray. Behind it is -- this is polished
9 cement. Behind it is actually the original brick. We will
10 remove that and expose the brick.

11 VICE CHAIRPERSON HART: Yeah. Okay. So it's --
12 okay. So it's -- okay.

13 MR. SABA: The only change I can see on the
14 outside is the two entrances, one to the apartment building
15 and the other is for the trash and commercial. There are six
16 entrances right now. I expect it will be reduced down to
17 five.

18 VICE CHAIRPERSON HART: And what about this
19 element -- kind of tower element there? Is that going to
20 remain as well?

21 MR. SABA: No. This is going to be restored.
22 There are actually windows there and it's really beautiful,
23 and there are several balconies to the building and it is
24 iconic and the court -- fantastic location courtyard wise.
25 So we expect to restore it to what it used to be like.

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1 VICE CHAIRPERSON HART: Thank you very much.

2 MR. SABA: Sure.

3 MEMBER WHITE: Do you have a rendering of what
4 it's going to look like, in the record?

5 MR. SABA: Not --

6 MEMBER WHITE: Your explanation of the
7 descriptions sounds really fascinating. I know that
8 building. So I am just curious what it would look like. So
9 if you don't have it, don't worry about it.

10 MR. SABA: No. The balconies will be accessible
11 to the apartments and there will be some beautiful ironwork
12 as handrails. But there will be no addition to the outside.
13 We will be, literally, restoring it.

14 MEMBER WHITE: What is the ANC's feedback on your
15 proposal?

16 MR. SABA: Okay. I have knocked on almost every
17 door that would open. I spoke to every neighbor on 17th
18 Street. I spoke to almost every neighbor on both sides of
19 our street.

20 Forgive me for using the term, but they are
21 delighted that the rat hotel will no longer be there.

22 MEMBER WHITE: Mm-hmm. So did you take this to
23 the ANC?

24 MR. SABA: Yes, we did, and --

25 MEMBER WHITE: And what was the --

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1 MR. SABA: -- everyone is excited.

2 MEMBER WHITE: No issues or concerns?

3 MR. SABA: The only issue was to remove the trash
4 that is outside. There were 14 trash bins, huge ones,
5 outside. That is being removed and the trash removal will
6 be done on the inside. Yeah.

7 MS. MOLDENHAUER: There's a report at Exhibit 44
8 from the ANC with a unanimous vote in support of the
9 application.

10 MEMBER WHITE: Thank you.

11 COMMISSIONER SHAPIRO: Just on that point, there's
12 a question in the ANC report which I think is probably more
13 of a DCRA issue? but about the concerns about the structural
14 integrity of the party wall. Any comment on that?

15 MS. MOLDENHAUER: It came up in the subcommittee
16 and we -- I just want to make sure and look at the phrasing
17 -- we indicated that, obviously, that would be part of the
18 permitting process and so, you know, it indicates, you know,
19 pending a review by a structural engineer that the party wall
20 will not be compromised.

21 You know, our opinion is, obviously, it's not
22 germane to the BZA relief but that we, obviously, will be
23 required to comply with all structural requirements in a
24 permitting process and that, obviously, you know, if any
25 aspects of the building, you know, cannot be constructed

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1 because it doesn't comply, you know, DCRA will, obviously,
2 enforce that.

3 COMMISSIONER SHAPIRO: Thank you. Thank you, Mr.
4 Chairman. That satisfies me.

5 CHAIRPERSON HILL: Okay. Great. Moving to the
6 Office of Planning.

7 MS. ELLIOTT: Thank you, Mr. Chairman. I am
8 Brandice Elliott with the Office of Planning.

9 I just wanted to address the issue of flexibility
10 regarding the penthouse, and as noted in the OP's report, we
11 have no opposition to the flexibility, provided that it
12 doesn't generate the need for additional relief.

13 But other than that, I'll stand on our report,
14 which recommends approval of the special exception relief for
15 both the closed court and lot occupancy.

16 CHAIRPERSON HILL: Does anyone have any questions
17 for the Office of Planning?

18 MEMBER JOHN: Discuss the closed court request for
19 relief and why you think it's appropriate.

20 MS. ELLIOTT: So there is a court between the
21 subject building and the one next door, which I believe is
22 to the east, and right now it's a wider court.

23 But once the dogleg is filled in on this property,
24 about 10 feet of that court will still remain open on the
25 adjacent property and we feel that that is sufficient to, you

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1 know, continue to provide light and air to that property.

2 CHAIRPERSON HILL: Okay. Thank you. Does the
3 applicant have any questions for the Office of Planning?

4 MS. MOLDENHAUER: No, thank you.

5 CHAIRPERSON HILL: Okay. Is there anyone here who
6 wishes to speak in support? Is there anyone here who wishes
7 to speak in opposition?

8 Just a couple questions. I couldn't figure it out
9 in here as I was just kind of going through it. It's an
10 apartment building?

11 MR. SABA: Presently it is a commercial building.
12 It is a single nightclub.

13 CHAIRPERSON HILL: No. No. No. I actually know
14 -- yeah. I mean, it's going to be an apartment building?
15 You're going to keep it as an apartment building.

16 MR. SABA: Yes.

17 CHAIRPERSON HILL: And, Mr. Saba, how long ago did
18 you buy it?

19 MR. SABA: Last August.

20 CHAIRPERSON HILL: Okay. Yeah, I think -- I think
21 a lot of people know what that thing used to be, right. So
22 yeah. Okay. Okay.

23 All right. Anyone else got anything? Okay. All
24 right. Let's see. That's it. Okay. We will go ahead and
25 close the record.

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1 Is the board ready to deliberate? Okay.

2 Does somebody else want to start deliberating?

3 Okay. All right. I'll start deliberating.

4 So I actually do not have any problems with the
5 project. I was -- I actually found it very interesting
6 because it's a very interesting location and so but I am glad
7 to see that something is going to be done with that building
8 in that way that I am sure the community is very happy to see
9 move forward.

10 I am glad that the ANC -- we did get something
11 from the ANC and I would agree with the analysis that the
12 Office of Planning has provided as well as the burden of
13 proof that the applicant has put forward in terms of how they
14 are meeting the criteria for us to grant the application.

15 I do think they've, again, met the standard and
16 I will be voting in favor. Is there anything else anyone
17 else would like to add?

18 MEMBER JOHN: Yes, Mr. Chairman. I did not have
19 any concerns about this application. I thought that the
20 Office of Planning's analysis was good. I had a question
21 about the closed court relief. But the Office of Planning's
22 explanation satisfied that concern and I would have no
23 trouble supporting the application.

24 VICE CHAIRPERSON HART: So just one -- because we
25 do have a condition for this, I -- well, it is a condition.

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1 That would be a condition. I just think that -- I have been
2 -- normally I am pretty against -- well not against. I have
3 issues with flexibility in that I think that they are -- they
4 may be too general.

5 I think that this one, because the flexibility is
6 really about this possibly being lower than it is, the
7 penthouse in particular being lower than what is being --
8 what is before us, I don't have that much of a concern about
9 it.

10 It is -- the applicant has said that this
11 penthouse is actually at the maximum height now. So if it
12 were to go higher, even an inch higher, it would be outside
13 of -- it would require some zoning relief.

14 So I think that I am fine with the -- with the
15 flexibility that's being requested. So and just regarding
16 the rest of the project, I am in support of the project and
17 I didn't have any issues with it. So --

18 MEMBER WHITE: Mr. Chair, I would also be in
19 support of granting their relief for special exception for
20 minimum closed court requirements as well as lot occupancy
21 requirements.

22 And I also agree with Vice Chair Hart that in this
23 instance, especially with OP support, I think we should allow
24 for some flexibility, given that we are still anticipating
25 getting feedback from HRB.

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1 CHAIRPERSON HILL: Okay. Mr. Saba, do you guys
2 know when you're going to be -- if this were to move forward
3 when you would actually take delivery or when you'd be done?

4 MR. SABA: If everything goes smoothly, a year and
5 a half in construction.

6 CHAIRPERSON HILL: Okay. All right. Okay. I'll
7 go ahead and make a motion then to approve Application Number
8 20042 as caption read by the secretary, allowing flexibility
9 regarding the penthouse with regard to HPRB as long as it
10 does not generate more relief and ask for a second.

11 MEMBER WHITE: Second.

12 CHAIRPERSON HILL: Motion made and seconded.

13 All those in favor say aye.

14 (Chorus of ayes.)

15 CHAIRPERSON HILL: All those opposed?

16 Motion passes. Mr. Moy?

17 MR. MOY: Staff would record the vote as 5-0 on
18 the motion of Chairman Hill to approve the application for
19 the relief requested along with the conditions as cited in
20 his motion.

21 Seconding the motion, Ms. White, also Ms. John,
22 Vice Chair Hart, and Zoning Commissioner Peter Shapiro.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
24 Thank you all very much.

25 MS. MOLDENHAUER: Thank you very much. Happy July

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1 4th, everybody.

2 CHAIRPERSON HILL: You, too. You, too. Bye bye.

3 MR. MOY: The next and, I believe, final
4 application before the board for hearing is Case Application
5 Number 20016. This is Richard Leavy, L-E-A-V-Y, captioned
6 and advertised for area variance from the side yard
7 requirements of Subtitle D Section 206.3. This would
8 construct a new semi-detached principal dwelling in the R-2
9 zone at 1121 48th Street NE Square, 5158 Lot 11.

10 CHAIRPERSON HILL: Thank you, Mr. Moy.

11 Could you please introduce yourselves for the
12 record?

13 MR. BELLO: Mr. Chair, Toye Bello representing the
14 applicant.

15 MR. LEAVY: Hi. My name is Rick Leavy and I am
16 the applicant.

17 MR. ALI: Ramy Ali, Ram Design, the project
18 architect.

19 CHAIRPERSON HILL: Okay. Okay. All right, Mr.
20 Bello. I guess you are going to present to us?

21 MR. BELLO: That's correct.

22 CHAIRPERSON HILL: Okay. So Mr. Bello, I don't
23 have any specific questions as we are starting this out. We
24 will see how it kind of goes as we kind of work through the
25 project.

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1 But if you could, again -- Mr. Ali, if you can
2 just turn your microphone off. If there's more than one mic
3 -- thanks -- it kind of feeds back.

4 If you can just kind of walk us through the
5 project and what your client is trying to do, and then also
6 how you're meeting the burden with which we should grant the
7 relief requested, and there's 15 minutes on the clock on
8 either side and you can begin whenever you like.

9 MR. BELLO: Thank you. The applicant seeks to
10 build a single family dwelling on the subject property. The
11 property is zoned R-2 where a semi-detached structure is
12 required to have 30 feet of width of lot and 3,000 square
13 feet of lot area.

14 This property is slightly over 20 feet wide and
15 just a little over 2,000 square feet. So it's substandard
16 with respect to the minimum lot requirements.

17 However, there is a provision that allows of
18 record lots substandard to be developed as a matter of right.
19 So the relief that we are seeking here is just one of side
20 yard.

21 The side yard provided will be five feet -- three
22 feet. I am sorry. Three feet four in a zone that requires
23 eight feet, and that's the only relief we need. The tests
24 for such relief is one of practical difficulty.

25 Mr. Leavy doesn't own the property -- the vacant

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1 lot adjacent to the property and the other property is on the
2 contract for sale, which has an improvement on it. So
3 there's no way that he can remedy the relief needed by
4 expanding the lot in any direction.

5 CHAIRPERSON HILL: Okay. Mr. Bello, how wide is
6 the proposed project?

7 MR. BELLO: The architect will speak to that.

8 MR. ALI: The lot width is 20' 4" and the proposed
9 structure is 17' -- close to 17'.

10 CHAIRPERSON HILL: Okay. So if you did the
11 proposed -- if you did the required side yards you get --
12 just trying to think how --

13 MR. ALI: Twelve foot --

14 CHAIRPERSON HILL: Twelve foot.

15 MR. ALI: -- outside to outside, leaving, like,
16 11' net.

17 CHAIRPERSON HILL: Okay.

18 MR. ALI: 10' 8" net.

19 CHAIRPERSON HILL: Okay. Does anybody have any
20 questions for the applicant?

21 COMMISSIONER SHAPIRO: Mr. Chair?

22 CHAIRPERSON HILL: Yes, please.

23 COMMISSIONER SHAPIRO: In reference to the ANC
24 report that came in that said that you met with the ANC on
25 June 24th and that they made a -- that they had a bunch of

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1 requests of you, the applicant, I am just wondering if you
2 have any comments on those, if you've worked out what you
3 need to work out with the ANC.

4 MR. LEAVY: Well, as I understand it, the ANC has
5 favorably recommended. They -- the only issue that they have
6 currently is that there is a -- that there was a car parked
7 on the -- illegally parked on the lot previous to my purchase
8 of it and they complained about it at the meeting, or
9 actually after the meeting.

10 And I subsequently got in touch with the
11 Department of Public Works through county or city 311, I
12 guess. Put in the appropriate request.

13 I've also been in touch with the Metropolitan
14 Police Department regarding a possible ticketing. They have
15 indicated that I would need to actually meet them at the
16 property in order to do that.

17 I have not had a chance to do that yet. This has
18 just taken place a couple of -- three or four days ago. So
19 and since then another car has parked on the property.

20 So I will -- but I will take -- I've indicated to
21 them that I will take care of both immediately as soon as I
22 legally can. I legally can't tow a parked car that's on my
23 property without going through the proper channels.

24 COMMISSIONER SHAPIRO: Understandable. And there
25 were other issues in the ANC letter as well. There was a

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1 request for you to do a site survey. Other illegal dumping
2 issues, notifying next door.

3 These are all just things to -- I just want to
4 make sure what your communication was like with the ANC and
5 because while they are supportive they did have these issues
6 and I want to honor their concerns.

7 MR. LEAVY: Sure. My communication actually with
8 the ANC is, I would say, very good. They've been -- you
9 know, they did request the -- that I take care of the car.
10 I've been updating them.

11 I took the step immediately of contacting the
12 Department of Public Works, communicated that to them,
13 communicated with them when they communicated to me about the
14 second car yesterday. As far as I know, I have seen no
15 illegal dumping other than this new car. I, obviously --

16 COMMISSIONER SHAPIRO: That's a big dump.

17 MR. LEAVY: Well, that's a big dump. But we
18 regularly mow the lawn, keep the property, you know, neat and
19 clean. Have had really no requests other than to take care
20 of the cars specifically.

21 COMMISSIONER SHAPIRO: Okay. Thank you.

22 CHAIRPERSON HILL: Just to actually follow up on
23 the commissioner, I am just going to read through them again.
24 The removal of the abandoned car that has been outside since
25 property got acquisitioned in 2017. You're agreeing to

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1 remove that, correct?

2 MR. LEAVY: Correct.

3 CHAIRPERSON HILL: Need for site survey to
4 determine if boundary lines correspond to existing fence
5 lines -- you're going to do that, correct?

6 MR. LEAVY: Yes.

7 CHAIRPERSON HILL: Site control to reduce illegal
8 dumping, abandoned cars, et cetera, prior to development --
9 you're agreeing to that, correct?

10 MR. LEAVY: Correct.

11 CHAIRPERSON HILL: The last one was, again,
12 notifying potential buyer of 1123 48th Street NE that the
13 potential variance would require a reconfiguration of the
14 existing deck exit.

15 MR. LEAVY: Done.

16 CHAIRPERSON HILL: Okay. All right. Okay.
17 Anyone else?

18 VICE CHAIRPERSON HART: Just a little
19 clarification. So do you own both of those lots?

20 MR. LEAVY: Yes.

21 VICE CHAIRPERSON HART: Okay. So this 1123 is
22 also your lot?

23 MR. LEAVY: Yes.

24 VICE CHAIRPERSON HART: Okay. So it's just --

25 MR. LEAVY: Currently under --

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1 VICE CHAIRPERSON HART: Well, let me -- it just
2 seemed a little odd that they would say that they -- they say
3 in the same letter that both lots are -- I thought they said
4 that both lots were owned by you, which is fine. I just
5 wanted to make sure I understood it. And so you're just
6 saying that yeah, you can, you know, reconfigure stuff
7 because it's something that you already own -- you control.

8 MR. LEAVY: I do -- I do own it. It is under
9 contract.

10 VICE CHAIRPERSON HART: Yeah. Well, that's fine.
11 But you still --

12 MR. LEAVY: And I have a lot of support from the
13 contract owner.

14 VICE CHAIRPERSON HART: Okay.

15 MR. LEAVY: And he is aware of the fact that we
16 would -- that if a reconfiguration of the rear deck is
17 required he certainly understands that that -- that was
18 something that he'd be willing to do.

19 VICE CHAIRPERSON HART: Okay. Thanks.

20 CHAIRPERSON HILL: Okay. All right. I am going
21 to turn to the Office of Planning.

22 MS. ELLIOTT: Thank you, Mr. Chairman. Brandice
23 Elliott with the Office of Planning.

24 I would like to make a correction to OP's report.
25 Not that it affects the recommendation but we did

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1 inadvertently refer to the structure as detached and semi-
2 detached in the report.

3 And just to clarify, this is indeed a semi-
4 detached dwelling and that's important because the lot
5 requirements are different. But I believe the applicant has
6 already gone over some of the exceptional situation that
7 results in a practical difficulty regarding the lot size.

8 So I'll stand on the record of OP's report for now
9 and we are recommending approval of the variance for side
10 yard. But I am happy to answer any questions you have.

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

13 Okay. So let's see. All right. Does the
14 applicant have questions for the Office of Planning?

15 MR. BELLO: No, Mr. Chairman.

16 CHAIRPERSON HILL: Okay. Is there anyone here who
17 wishes to speak in support?

18 Is there anyone here wishing to speak in
19 opposition? If you could please come forward.

20 Did you get sworn in today? Okay. Great. Please
21 go ahead and have a seat there. You can give the card to the
22 person with transcription. Afterwards. Afterwards is fine.

23 Just go ahead and have a seat, and if you could
24 please introduce yourself for the record. And you need to
25 push the button.

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1 MS. CAMPBELL: Trena Campbell. I live directly
2 at the house close to the property where he's trying to
3 build.

4 CHAIRPERSON HILL: Okay. Could you spell your
5 last name, please?

6 MS. CAMPBELL: C-A-M-P-B-E-L-L.

7 CHAIRPERSON HILL: Okay. Campbell. Okay, Ms.
8 Campbell. So we will give three minutes to take public
9 testimony. The clocks are up on the roof there, or on the
10 ceiling, on either side and you can begin whenever you like.

11 You just need to push it once.

12 MS. CAMPBELL: Once. Okay. Okay. Just a
13 question. She said semi-detached. So would that be against
14 my house or the other house? I just had a quick question.

15 CHAIRPERSON HILL: That's right. I saw you had
16 a question for the Office of Planning. Why don't you go
17 ahead and give your -- well, as far -- ask your question
18 again. I am sorry.

19 MS. CAMPBELL: Would that be close to my house?
20 I live at 1143.

21 CHAIRPERSON HILL: Right. It's not attached to
22 your house. There's -- the three -- the side yard relief
23 right now that's being requested I guess it'll be 3' 4" from
24 the property line to the house itself on the one that is
25 being proposed, right.

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1 MS. CAMPBELL: Okay.

2 CHAIRPERSON HILL: And so then -- so now did that
3 answer at least your question for the Office of Planning?

4 MS. CAMPBELL: It did.

5 CHAIRPERSON HILL: Okay.

6 MS. CAMPBELL: That was just a question I had.

7 CHAIRPERSON HILL: Okay.

8 MS. CAMPBELL: I just wanted to understand what
9 was happening next to my house.

10 CHAIRPERSON HILL: Sure. Of course. Do you have
11 testimony to give or is that the end?

12 MS. CAMPBELL: I mean, I know there's a community
13 garden there but I don't know how that affects what he's
14 doing.

15 CHAIRPERSON HILL: Okay. So, Ms. Campbell, I
16 mean, I think that -- I mean, Mr. Bello, like, I don't know
17 if you knew that Ms. Campbell was here all day.

18 But I mean, you can -- you guys could have maybe
19 talked to her a little bit and explained a little bit more
20 about what the project was so that she knows just what's
21 going on next door to her house, I guess, and then answer any
22 questions. And maybe you can do that again after this in
23 terms of depending upon where we end up with case.

24 But, Ms. Campbell, maybe also then you can get
25 some information from Mr. Leavy, who is the actual owner of

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1 the property next door and maybe you guys can communicate and
2 just be good neighbors about what's going on with, you know,
3 there's currently abandoned cars there apparently and how,
4 hopefully, the development will now take care of any trash
5 that's, you know, put there and everything like that.

6 So but in any case you have an opportunity now
7 since you also waited here all day, right, to go ahead and
8 reach, and Mr. Leavy, I am sure, would be happy to exchange
9 information with yourselves and so that we can have kind of
10 good neighbor policies like what Chairman Hood likes to
11 mention. So all right. Thank you very much. Thank you.

12 All right. Let's see. Does the board have any
13 further questions for the applicant?

14 MEMBER JOHN: Yes. Can --

15 CHAIRPERSON HILL: Sure. Mr. Ali, could you turn
16 off that microphone for me? Thank you.

17 MEMBER JOHN: Can you talk about your outreach to
18 the neighbors?

19 MR. LEAVY: Yes.

20 MEMBER JOHN: Beyond the ANC.

21 MR. LEAVY: Beyond the ANC. We met with the
22 Deanwood Citizens Association. They voted in support of the
23 project.

24 In addition to that, I sent out letters -- in
25 addition to the required letters sent out -- as I said, this

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1 was several months ago -- probably six to eight letters for
2 whoever was close to the property. Received one support
3 letter.

4 MEMBER JOHN: Thank you.

5 MR. LEAVY: You're welcome.

6 CHAIRPERSON HILL: I guess also, Mr. Leavy or Mr.
7 Bello -- Mr. Leavy, the board member might be asking the
8 question again because the neighbor who's right next door to
9 you stayed up here until the end of the day to ask a pretty
10 simple straightforward question.

11 So I am not saying that you -- I am just letting
12 you know there's some further communications you can possibly
13 be able to do with the immediate neighbors.

14 MR. LEAVY: Yes, I understand that. I did not
15 know. We have --

16 CHAIRPERSON HILL: Sure. No, that's great. I
17 mean, like, I don't --

18 MR. LEAVY: I haven't met her. Had I known I
19 certainly would have.

20 CHAIRPERSON HILL: Yeah. I mean, it's, like, you
21 know, it's been now, you know, seven hours -- six, seven,
22 eight hours.

23 MR. LEAVY: I understand.

24 CHAIRPERSON HILL: And, you know, Mr. Bello and
25 Mr. Ali, you guys come here a lot. So, like, and if you can

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1 just kind of help your clients communicate with the people
2 right next door. That would be helpful.

3 So all right. I don't have anything else to add.
4 Nobody? Okay. Mr. Bello, are you finished?

5 MR. BELLO: Done, sir.

6 CHAIRPERSON HILL: Okay. Great. So I am going
7 to go ahead and close the hearing. Is the board ready to
8 deliberate?

9 Okay. I can begin. I would again agree with the
10 analysis that was provided by the Office of Planning. I
11 would also -- I am happy to see that the ANC is in favor and
12 that the applicant is doing its best to, again, be a good
13 neighbor in terms of the ANC and some of the issues that they
14 have with the property.

15 I do think that they are meeting the criteria that
16 we can grant the variance relief in terms of otherwise they'd
17 have a 11-foot, you know, house, basically.

18 So I am comfortable with the variance relief and
19 the three-prong test and I will be voting in favor of the
20 application. I think, as I mentioned, that they meet the
21 criteria. Does anyone have anything else they'd like to add?

22 Okay. I'll make a motion to approve Application
23 Number 20016 as captioned and read by the secretary and ask
24 for a second.

25 MEMBER JOHN: Second.

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1 VICE CHAIRPERSON HART: I don't know if you were
2 -- did you say you were going to do the ANC conditions or
3 not? I just didn't know if they were. That's what I was
4 trying to --

5 CHAIRPERSON HILL: No, that's what I understood.
6 I thought --

7 VICE CHAIRPERSON HART: Okay. That's fine.

8 CHAIRPERSON HILL: I didn't -- no, that's okay.
9 Now, it's something discussed about. Like I wasn't clear if
10 there were conditions or not. Did you guys get -- because
11 I --

12 VICE CHAIRPERSON HART: No. No. No. No.

13 CHAIRPERSON HILL: -- it seemed as though they
14 were, like, things that they would like them to do, and in
15 term of actually making them conditions --

16 VICE CHAIRPERSON HART: Okay. That's fine. I
17 just want to make sure that we dealt with it beforehand.
18 That's all.

19 CHAIRPERSON HILL: Okay. All right. Okay. Sure.

20 No, I mean, I do think -- and thank you for
21 bringing it up -- just for further clarification that there
22 were four items that we, during the testimony, provided the
23 applicant agreed to in terms of what they were going to do
24 because, to me, it seemed like they were kind of like things
25 that they need to take care, not necessarily a condition.

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1 So I'll go ahead and, again, make a motion to
2 approve Application Number 20016 as captioned and read by the
3 secretary and ask for a second.

4 MEMBER JOHN: Second.

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

7 (Chorus of ayes.)

8 CHAIRPERSON HILL: All those opposed?

9 Motion passes. Mr. Moy?

10 MR. MOY: Staff would record the vote as 5-0-0.
11 This is on the motion of Chairman Hill to approve the
12 application for the relief requested. Seconding the motion
13 is Ms. John. Also in support Ms. White, Vice Chair Hart, and
14 Zoning Commissioner Peter Shapiro.

15 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

16 Thank you, gentlemen.

17 MR. BELLO: Thank you.

18 Mr. Moy, is there anybody else -- thank you very
19 much, Mr. Bello. Is there anything else in front of the
20 board today, Mr. Moy?

21 MR. MOY: Nothing from the staff, sir.

22 CHAIRPERSON HILL: All right. Then happy
23 Independence Day, everybody. Bye-bye.

24 (Whereupon, the above-entitled matter went off the
25 record at 2:45 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 07-03-19

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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