

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 23, 2019

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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 10:05 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT
MATTHEW JESICK
STEPHEN J. MORDFIN
MAXINE BROWN-ROBERTS
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on October 23, 2019.

C-O-N-T-E-N-T-S

WELCOME:

Frederick Hill, Chairperson 5

APPLICATION NO. 20117NAOMI GLASSMAN and KOPANO MAJARA:

Michael Gallagher, Applicant 6

Case Postponed to December 4, 2019 12

APPLICATION NO. 20054RUPSHA 2011, LLC:

Sarah Ludmila, Applicant 13

Board Comments/Questions:

Vice Chair Hart 15

Zoning Commissioner:

Michael Turnbull 18

Opposition Statements:

Pamela Robinson Schools 21

Board Questions/Comments: 22

Robert Schools 31

Case Postponed to January 15, 2020 34

APPLICATION NO. 20109BERNARD BERRY:

Eric Teran 35

Board Questions: 38

Sheena Berry, Applicant 43

Bernard Berry, Applicant 53

Office of Planning:

Matthew Jesick 54

Office of the Attorney General:

Mary Nagelhout 55

Board Deliberation: 82

Set for Decision on October 30, 2019 93

APPLICATION NO. 20131QINGLONG CHEN:

Qinglong Chen, Applicant 95

Bizhen Chen, Applicant 96

Office of Planning:

Karen Thomas 95

Board Questions: 96

Board Deliberation: 101

Motion to Approve Application: 102

Vote: 4-0-1 to Approve Application: 102

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

APPLICATION NO. 20124SAM and JOELLE BALLEW:

Jennifer Fowler, Architect	105
Questions:	106
Office of Planning:	
Steve Cochran	108
Board Deliberation:	109
Motion to Approve Application:	109
Vote: 4-0-1 to Approve Application:	110

APPLICATION NO. 20128MATTHEW PREGMON and ARIELLE GIEGERICH:

Jennifer Fowler, Architect	111
Board Questions:	113
Office of Planning:	
Brandice Elliot	117
Board Deliberation:	118
Motion to Approve Application:	119
Vote: 4-0-1 to Approve Application:	119

APPLICATION NO. 20129555 E STREET SW, LLC:

Lawrence Ferris, Attorney	122/126
Henny Schaeffer, Citizen Hotels	123
Nina Rivis, Effects Collaborative	124
Board Questions:	126
Office of Planning:	
Matthew Jesick	130
Board Deliberation:	130
Motion/Vote: 4-0-1 to Approve Application:	131

APPLICATION NO. 20133CASSANDRA SPRATT:

Cassandra Spratt, Applicant	132
Board Questions:	134
Office of Planning:	
Maxine Brown-Roberts	135
Board Deliberation:	136
Motion/Vote: 4-0-1 to Approve Application:	137

APPLICATION NO. 20134TPWR DEVELOPER, LLC:

Cynthia Jordano, Attorney	138
Case Postponed to November 13, 2019:	139

ADJOURN:

Frederick Hill, Chairman	140
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P-R-O-C-E-E-D-I-N-G-S

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10:05 a.m.

CHAIRPERSON HILL: You can call our first hearing case whenever you get a chance.

MR. MOY: All right. That would be case, Application No. 20117 of Naomi Glassman and Kopano Majara, I believe it's pronounced. This is a request for a special exception under Subtitle D, § 5201 from the pervious surface requirements, Subtitle D, § 308.3, the alley centerline setback requirements of Subtitle D, § 5004.1, and pursuant to 11 DCMR Subtitle X, Chapter 10, for area variance from the lot occupancy requirement of Subtitle D, § 304.1, this would construct an accessory garage structure with a roof deck in the R-3 Zone at premises 4614 4th Street, Northwest, Square 3249, Lot 111.

And, Mr. Chair, there is a request for a postponement, I believe, on this application.

CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Could the applicant, please, come forward?

Good morning. Could you, please, introduce yourself for the record? I'm sorry, actually, you need the microphone. I apologize. Ma'am, I think there is a handheld some -- yeah, there is a handheld somewhere. Give us one second. We will just get a handheld microphone out. Just one moment, just one moment. It's okay.

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1 Actually, I think, yeah, you can do that. Use one
2 and point it towards the Interpreter and then another one
3 pointing towards the applicant. Great. That's fine. Yeah,
4 you have to push the button. That's okay, Mr. Moy. The
5 handheld won't work. Okay. Great.

6 Could you please introduce yourself for the
7 record?

8 MR. GALLAGHER: Hi my name is Michael Gallagher.
9 I'm the architect working with Gardenia Construction and I'm
10 a representative of the owner of this specific lot. And I'm
11 working with the zoning. Well, I would like to talk with
12 you. I'll wait for you to discuss then what is going on with
13 this.

14 CHAIRPERSON HILL: Mr. Gallagher, welcome.

15 MR. GALLAGHER: Thank you.

16 CHAIRPERSON HILL: So you are requesting a
17 postponement, correct?

18 MR. GALLAGHER: Yes.

19 CHAIRPERSON HILL: Okay. So --

20 MR. GALLAGHER: Do you want me to explain?

21 CHAIRPERSON HILL: Just let me go through a couple
22 of things.

23 MR. GALLAGHER: Oh sure, of course.

24 CHAIRPERSON HILL: The -- so currently the Office
25 of Planning is unable to make a recommendation. You are

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1 aware of this, correct?

2 MR. GALLAGHER: Yes.

3 CHAIRPERSON HILL: Okay. And then also we don't
4 have a report from the ANC yet. Is that correct?

5 MR. GALLAGHER: That is correct.

6 CHAIRPERSON HILL: Have you presented before the
7 ANC?

8 MR. GALLAGHER: They have postponed our meeting
9 as well to next month, so I have -- that's one of the reasons
10 I am requesting a postponement right now.

11 CHAIRPERSON HILL: Okay. Mr. Gallagher, have you
12 been working with a zoning attorney at all?

13 MR. GALLAGHER: Yes, I have, and I have been
14 working with the Administrator and the technician and they
15 have made some changes to the numbers and they are not very
16 clear right now what those numbers are. After this, I will
17 be having a meeting with them this morning, actually, to
18 resolve the numbers and clarify that for the imperviousness.

19 CHAIRPERSON HILL: Impervious surfaces, right,
20 okay.

21 MR. GALLAGHER: And they will be working on
22 modifying those numbers. They have been wrong up until now,
23 so I'll be working with them now after this meeting,
24 actually. I'll be headed there.

25 CHAIRPERSON HILL: Okay. Mr. Gallagher, how long

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1 of a postponement do you think you would like?

2 MR. GALLAGHER: After that ANC meeting, that's
3 next month. We will be meeting once a month in regards to
4 that. We missed last week's meeting, and so not long, just
5 after that next meeting. After the next meeting this project
6 will be in their agenda.

7 CHAIRPERSON HILL: Okay. So we are going to go
8 ahead and postpone the hearing until we think you are going
9 to be ready for us. I would like to mention again however,
10 you know, working with the Office of Planning so that they
11 can clearly give us an analysis of the project and then for
12 you and your zoning attorney, you know, that you can
13 understand the standards with which we are going to determine
14 whether you meet the criteria for us to grant the
15 application.

16 MR. GALLAGHER: Yes, sir.

17 CHAIRPERSON HILL: Okay. I'm going to actually
18 ask if my Board Members if any further thoughts or comments?

19 VICE CHAIR HART: Just one point of clarification.
20 Mr. Gallagher, are you meeting with the Zoning Administrator?

21 MR. GALLAGHER: Yes. I'm sorry, what was the
22 question?

23 VICE CHAIR HART: Are you meeting with the Zoning
24 Administrator in the Zoning Administrator's office at DCRA?

25 MR. GALLAGHER: Yes, and the technician.

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1 VICE CHAIR HART: Yeah, and so that's -- it's not
2 a zoning attorney that you are meeting with. You are
3 actually meeting with DCRA and the Zoning Administrator.

4 MR. GALLAGHER: Well, and I have also been working
5 with Robert Reed also. There are three people I have been
6 working with.

7 VICE CHAIR HART: Robert Reed is?

8 MR. MOY: Mr. Vice Chair, he is on the OZ.

9 VICE CHAIR HART: Okay. That's what I thought.
10 I just wanted to make sure that it wasn't -- I was understand
11 -- trying to understand if it was staff that he was talking
12 to or if it was an outside attorney that he was speaking
13 with.

14 MR. GALLAGHER: No, it's an internal with D.C.

15 VICE CHAIR HART: Okay. Thank you. I just --
16 that was just a point of clarification, that was all.

17 MR. GALLAGHER: Oh, you are fine, yes. I have
18 been working with four people within the D.C.

19 VICE CHAIR HART: Okay.

20 MR. GALLAGHER: And they have to agree with each
21 other.

22 VICE CHAIR HART: Thank you. Oh, yes.

23 MR. GALLAGHER: I have been going through each
24 person up until now. Sorry, they have to talk with each
25 other still. I apologize.

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1 VICE CHAIR HART: Oh, that's not a problem. I
2 just wanted to make sure I understood it correctly. Thank
3 you.

4 MR. GALLAGHER: You're welcome.

5 CHAIRPERSON HILL: The Office of Planning, Ms.
6 Brown-Roberts, so you have gone through this or you have gone
7 through some of the applicant's -- some of the process
8 already. Is that correct?

9 MS. BROWN-ROBERTS: From their original
10 applications, there was some incorrect information there.
11 Then I referred them back to the Zoning Administrator. So
12 the Zoning Administrator has asked for revised plans to give
13 more detail about exactly what they are doing. So they are
14 meeting this morning to go over that and then we should be
15 able to proceed from there.

16 CHAIRPERSON HILL: Okay. They are meeting this
17 morning?

18 MS. BROWN-ROBERTS: Yes.

19 CHAIRPERSON HILL: Okay. And you have an -- you
20 would possibly have an opportunity to work with the applicant
21 also if they have any questions?

22 MS. BROWN-ROBERTS: Oh, yes. We have been -- as
23 he mentioned, you know, there are four people who have been
24 sort of working.

25 CHAIRPERSON HILL: Sure.

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1 MS. BROWN-ROBERTS: We have been working together
2 to try to get it resolved, yes.

3 CHAIRPERSON HILL: Okay.

4 MS. BROWN-ROBERTS: We have been working with him.

5 CHAIRPERSON HILL: Okay. Because just it's handy
6 to have an Interpreter here today, that's why I'm saying --

7 MS. BROWN-ROBERTS: Yes.

8 CHAIRPERSON HILL: -- it's nice.

9 MS. BROWN-ROBERTS: Yes.

10 CHAIRPERSON HILL: Okay. Wonderful. Mr.
11 Gallagher, do you have any questions?

12 MR. GALLAGHER: No, I don't think so.

13 CHAIRPERSON HILL: Okay. So, Mr. Moy, when would
14 we possibly put this back on the docket?

15 MR. MOY: Mr. Chairman, I believe the applicant
16 had originally asked for November 20th, but for you to know,
17 we have 10 cases on the docket for that day. After that, the
18 next hearing is December the 4th, where we have five cases
19 and one appeal.

20 MR. GALLAGHER: December would be fine.

21 CHAIRPERSON HILL: Okay. You said November, which
22 one are we looking at? Oh, the 20th. So December 4th is
23 that --

24 MR. GALLAGHER: I can do that.

25 CHAIRPERSON HILL: Okay. Is that free, Mr. Moy?

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1 MR. MOY: Yes, sir.

2 CHAIRPERSON HILL: Okay. All right. All right,
3 Mr. Gallagher, we're going to postpone you until December 4th
4 and I suppose if you could, obviously, take the opportunity
5 since we have an Interpreter here with us to speak with the
6 Office of Planning and the Zoning Administrator or whoever
7 you get the change to talk to today.

8 MR. GALLAGHER: Oh, yes, the Interpreter has
9 already told me they could.

10 CHAIRPERSON HILL: Okay. And thank you for this
11 opportunity actually to work with American Sign. I have
12 never done it before.

13 MR. GALLAGHER: Oh, yes, well, thank you. And I
14 hope that we can have the Interpreters back again?

15 CHAIRPERSON HILL: Oh, yeah, we're going to have
16 the Interpreters back again. You can schedule that right now
17 if you would like. All right. Okay. We will see you back
18 in December. Thank you.

19 All right. Mr. Moy, you can call the next one
20 when you get a chance.

21 MR. MOY: All right, Mr. Chairman. The next case
22 application is Application No. 20054 of Rupsha 2011, LLC, as
23 amended, for special exception under the use provision of
24 Subtitle U, § 421.1 and pursuant to Subtitle X, Chapter 10
25 for area variances from the Floor Area Ratio requirements

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1 Subtitle F, § 302.1, and from the lot occupancy requirements
2 of Subtitle F, § 304.1, to construct a 10-unit apartment
3 building in an RA-1 Zone. This is at 616 50th Street,
4 Northeast, Square 5180, Lot 814.

5 CHAIRPERSON HILL: Okay. Could the applicant,
6 please, come forward? We will get to everybody who is here.
7 Whoever the applicant is, if you could come forward? Are you
8 the applicant? If you can go ahead and sit down and just if
9 you could introduce yourself for the record, please?

10 MS. LUDMILA: Good morning, ladies and gentlemen.
11 My name is Sarah Ludmila. I'm here on behalf of Rupsha 2011.
12 We actually requested a postponement for this case to January
13 15, 2020. We received some comments from DDOT for three
14 long-term bicycle parking and updated the site plan, so we
15 requested our architect to work on that.

16 As well as during the ANC meeting, the neighbor
17 raised an issue about not getting the notification letter,
18 so we want to work on that as well. So we need a little more
19 time to accomplish everything before we actually finally can
20 come here and present.

21 So I actually uploaded the request of rescheduling
22 the BZA Hearing yesterday. I also uploaded the Certificate
23 of Service as well as I emailed the ANC and SMD Members and
24 uploaded those email as well to IZIS.

25 CHAIRPERSON HILL: Okay. I understand. Thank

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1 you. Could you spell your last name for me?

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

3 CHAIRPERSON HILL: Okay. All right. So I see the
4 request for postponement. And you were trying to get -- why
5 are you trying to get January the 15th, just out of curiosity
6 now?

7 MS. LUDMILA: Well --

8 CHAIRPERSON HILL: Do you think that's enough time
9 for you to --

10 MS. LUDMILA: -- that's enough time for our
11 architect to work on the site plan and if they want to add
12 anything on landscape or solar panel system.

13 CHAIRPERSON HILL: Okay. And then do you know if
14 you would be going back before the ANC?

15 MS. LUDMILA: That's what -- I'm not sure ANC
16 already, I think, they posted their decision, so after that,
17 can we still go to ANC and request? I'm not sure about that.
18 If we can, we would like to take the chance.

19 CHAIRPERSON HILL: Well, you can ask the ANC if
20 they will see you again.

21 MS. LUDMILA: Okay.

22 CHAIRPERSON HILL: If you have changed the
23 drawings or if you have, you know, spoken with the people
24 that were in opposition and came to another understanding,
25 then, you know, I would imagine the ANC would be willing to

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1 hear from you again.

2 MS. LUDMILA: Um-hum.

3 CHAIRPERSON HILL: And I guess I'm just trying to
4 see whether January -- yeah, I would think you would be able
5 to have enough time then to go ahead and do that.

6 MS. LUDMILA: Um-hum.

7 CHAIRPERSON HILL: I see there is people here in
8 the audience that would like to speak. Is that correct?
9 Okay. Let's see, so Ms. Ludmila, before I move on to people
10 that are here, I mean normally, this is just a request for
11 postponement.

12 MS. LUDMILA: Yes.

13 CHAIRPERSON HILL: But again, since you requested
14 late, in other words, you know, people would have possibly
15 been here, which some people are here, to speak on the case
16 itself, right? So I think that, you know, depending on what
17 my other Board Members feel, I would be fine with a
18 postponement, but I would like to hear from the people that
19 have come here to talk.

20 I suppose what -- so first of all, does anybody
21 have any questions for the applicant?

22 VICE CHAIR HART: Yeah, actually, I'm fine with
23 the postponement as well.

24 I did have, I guess, several questions that I
25 would like for you to address when you come back to us in

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1 January.

2 MS. LUDMILA: Um-hum.

3 VICE CHAIR HART: And this is really specific
4 about the relief that you are requesting. It seems as though
5 reading the record you need further information. You need
6 to provide further information for me so that I understand
7 why the variance is necessary, because I -- while I
8 understand what happened, it doesn't connect to the relief
9 that you requested. You could design a building that was
10 smaller than this, that was fewer units than this and not
11 have to request this variance relief.

12 And I don't understand that connect. There is
13 something that is connecting those two things and right now
14 there is not enough information in the application for me to
15 see how those things are connected to each other. So there
16 is an aspect of your request that just really needs to be
17 strengthened a lot. I mean, it's just lacking.

18 The other issue is kind of more of a technical one
19 and this is around some of the drawings that you provided.
20 In Exhibit 36, you have kind of sections and elevations. You
21 don't show -- in some of the plans, you show that there might
22 be solar panels on the roof, but there is nothing on the
23 elevations that actually depict that. So I don't know if
24 there are. Are they just flat and they are literally, you
25 know, just at the level of the roof itself or do they have

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1 some sort of incline to them?

2 I mean, they are just not included at all. And
3 so it's just helpful to have that information have
4 consistency in the drawings that you have. So just scrub the
5 drawings so that they are consistent with each other. If the
6 plan shows something, then the elevations and sections should
7 show them as well. If they don't, then don't have them in
8 there. But right now, they are just inconsistent, so it's
9 hard for -- and there may be other things, that's just the
10 first thing that I caught.

11 But the big piece is really try to connect the
12 relief that you are asking for, which I understand, I just
13 don't connect it to why you need to have a 10-unit building,
14 because you could have an 8-unit building and build the same,
15 you know, thing, which may actually be within the zoning and
16 be a smaller building, but it's within what you are
17 requesting. So that's the part that I'm having an issue
18 with.

19 Or it could be this -- well, it just needs to be
20 further fleshed out, the rationale, if that makes sense.

21 MS. LUDMILA: Yes, it does.

22 VICE CHAIR HART: Okay. Okay, that's it for now.
23 And I appreciate the -- and I would agree with you, Mr.
24 Chairman, on since we have some folks that would like to
25 speak, I would also like to hear them today.

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1 COMMISSIONER TURNBULL: Mr. Chair, I would agree
2 with the Vice Chair and his comments regarding the site plan
3 and the relief requested. I would like to see you beef up
4 that explanation as to why you need to do that.

5 The other thing is that per the ANC, Exhibit 65,
6 which is their report, basically is in opposition, so I
7 really do need to go back to them with the revised plans.
8 And I think you will want to try to and get their support on
9 this. So whenever you are at a point that you have met with
10 the neighbors and discussed and resolved what you feel are
11 the issues, I would set up an appointment with the ANC to go
12 back and present again to them.

13 MS. LUDMILA: All right.

14 COMMISSIONER TURNBULL: So that would be my only
15 comments.

16 VICE CHAIR HART: I just had also one question for
17 our OAG.

18 Do we need to have a specific Letter of
19 Authorization for Ms. Ludmila? I just don't know how we --
20 I mean I understand that she is here. She is saying that she
21 is representing them, but I don't know if we need to have
22 something that specifically says in the record. They just
23 kind of say their Letter of Authorization just says that the
24 organization will represent itself, but I just don't know if
25 we need something that specific in the record.

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1 MS. NAGELHOUT: That might be more of an OZ
2 question, but I think, yes. I mean, I think there should be
3 something saying that this particular individual is
4 authorized to represent, yeah.

5 MS. LUDMILA: May I interrupt for one second? I'm
6 actually on behalf of Mr. Omar Scheck who couldn't be here
7 today for whatever reason. And I'm actually presenting on
8 behalf of him. Usually Mr. Omar Scheck comes from our
9 company and he doesn't --

10 VICE CHAIR HART: Well, I understand that. I just
11 have -- since there have been other projects that we have had
12 and we have various people coming from the organization, it's
13 hard for us to understand who is actually represent -- given
14 permission to actually represent the group.

15 MS. LUDMILA: Okay.

16 VICE CHAIR HART: It's just somebody comes in and
17 says okay, we are going to do this. It's helpful for us for
18 our records that we -- when we say this is how this has
19 actually, you know, transpired and you are the person that
20 is given that authority to do that. It's just that we don't
21 have that in our record and it just makes it harder for us
22 to kind of say we work with this person and then we find out
23 that well, they don't really have or something else comes up.
24 We just like to have that as part of the official record.

25 MS. LUDMILA: I understand. Thank you.

1 VICE CHAIR HART: So thank you.

2 CHAIRPERSON HILL: So, Ms. Ludmila, just to be
3 clear, you need to put something into the record that says
4 that you are the person representing the organization, a
5 Letter of Authorization.

6 MS. LUDMILA: Okay.

7 CHAIRPERSON HILL: Okay. Do you understand?

8 MS. LUDMILA: Yeah.

9 CHAIRPERSON HILL: Okay. And then did you get
10 sworn in earlier today?

11 MS. LUDMILA: Yes.

12 CHAIRPERSON HILL: Okay. All right. Okay. All
13 right. So there are people here that wish to speak in
14 support, people that want to speak in opposition. If you
15 could, please, come forward?

16 Ms. Ludmila, if you could turn off that
17 microphone? Only one microphone at a time, otherwise we get
18 feedback. Good morning. If you could please introduce
19 yourself for the record.

20 MS. SCHOOLS: Yes. I'm Pamula Robinson Schools.

21 CHAIRPERSON HILL: Okay. And, Ms. Robinson
22 Schools, I guess so for members of the public, they get 3
23 minutes to speak.

24 MS. SCHOOLS: Okay.

25 CHAIRPERSON HILL: You guys have come here already

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1 and so they -- you understand they have asked for a
2 postponement? And you understand that they are actually
3 going to have revised plans and some changes, so I don't know
4 whether that would or wouldn't change your testimony.
5 However, you have an opportunity again to come back during
6 the hearing that would also -- going to be postponed. We are
7 going to postpone it, I guess, until January 15, 2020.

8 However, I'm going to put 3 minutes there on the
9 clock and you can go ahead and give us your testimony.

10 MS. SCHOOLS: Okay.

11 CHAIRPERSON HILL: Thank you.

12 MS. SCHOOLS: I'm a neighbor and, one, we have a
13 property directly across the street from their property that
14 is putting a 93-unit apartment building in with 48 parking
15 spaces. You know, leaving maybe conceivably 100 cars that
16 need to be parked in our neighborhood.

17 They have -- there is a single-family lot in
18 between two single-family homes, that's what they purchased
19 and want to put 10 apartments with two parking spaces.

20 Now, there is no place for them to park. As it
21 is, we are going to have a problem parking the people across
22 the street and ground has been broken, nothing can be done
23 about that.

24 So we have problems because this company, and I
25 understand they built other stuff in D.C., did not properly

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1 notify any of us, you know, the neighbors. We have here
2 approximately 60 signatures of people who oppose that
3 property being used as they are requesting. So we are
4 requesting that you deny their request.

5 I don't know whether they are going to change to
6 8 versus 10. I don't see where there is a difference. We
7 don't have the parking. Our streets cannot support it.
8 Their property will be out of character for what we have on
9 that street, you know, to put this building of 10 people,
10 probably butting up against the two houses next to it. We
11 can't support that and we don't, you know, the area can't
12 support it. And it is something that will be detrimental to
13 our community.

14 CHAIRPERSON HILL: Okay. Thanks, Ms. Robinson
15 Schools. I guess if you can give -- or you can either add
16 that into the record or you can ask the secretary, I guess,
17 Mr. Moy, after this hearing to add that into the record in
18 terms of the petition that you have there.

19 Does the Board have any questions for the witness?

20 COMMISSIONER TURNBULL: No, I just want to make
21 a comment. You know, the ANC had requested the postponement
22 saying that the applicant needed to talk to the neighbors.
23 I'm assuming that is what is going to come out of this is a
24 discussion and an explanation by this applicant with you all
25 at some point and the ANC.

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1 So whatever, something is going to happen where
2 you are going to have some kind of a time where you can
3 explain your views more one-to-one to them and then at the
4 hearing.

5 MS. SCHOOLS: Well, we -- and we have sort of done
6 that, because after the meeting there was a -- during the
7 meeting there was discussions on, you know, direct laborers
8 and some people in the community, they did not satisfy us at
9 all. We are concerned that they have -- there appears to be
10 a blatant disregard of the neighbors to not properly notify
11 us, especially when they knew because they have had
12 properties, I understand, in D.C., other than this.

13 We are concerned that they will just be a
14 detriment to the community instead of an asset.

15 COMMISSIONER TURNBULL: Total --

16 MS. SCHOOLS: So there has been initial discussion
17 and it did not go well.

18 COMMISSIONER TURNBULL: Well, let's see what
19 happens with the applicant.

20 CHAIRPERSON HILL: Okay. Let's see, so the -- and
21 just I'm kind of turning to Office of Planning, I mean, this
22 application is not here for parking, correct?

23 MR. MORDFIN: That is correct.

24 CHAIRPERSON HILL: Okay. And to speak to -- and
25 I'm -- Ms. Robinson Schools, I'm just kind of discussing

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1 things, so that you kind of know what they are here for,
2 right? And that from what Mr. Hart had just mentioned is
3 that there was -- you could do an 8-unit by right.

4 MR. MORDFIN: Well, what they could do is they
5 could do a smaller building, however many units they put in
6 there would be up to them to design the interior of the
7 building, but they are here for Floor Area Ratio and for lot
8 occupancy.

9 So if they made the building smaller so that it
10 conformed to those two provisions, then the building would
11 become matter-of-right.

12 CHAIRPERSON HILL: Got it. And then, Ms. Robinson
13 Schools, I guess like in terms of like notification, like
14 there is, you know, the posting, the letters that have to go
15 out to the people, there is the ANC meeting that they have
16 had to have.

17 Now, you know, if they haven't or you didn't feel
18 that you were notified previously, I mean, now you have been
19 notified, I guess, and so now, you know, just again if you
20 can speak more with the applicant and then also with your own
21 ANC to see what you might be able to work out in terms of a
22 discussion.

23 And then also if you have -- you can go into the
24 record and kind of take a look at the Office of Planning's
25 report and some of the other items in the record, so that you

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1 can better, you know, just understand what they are here to
2 try to get.

3 Mr. Hart, you had a question?

4 VICE CHAIR HART: Yeah, the question, it was more
5 just a point of clarification. And it's, I wasn't saying
6 that they had to do 8-units. I was saying that there is a--
7 they are requesting a variance, which is a really high -- we
8 call it a high bar. It's very -- it's more difficult to get
9 a variance than it is for another type of zoning relief
10 called a special exception, which is something that is
11 included in the zoning as you can do this if you meet this
12 criteria.

13 A variance is something that is kind of outside
14 of zoning. I know it is technical, but it's -- there is a
15 difference for, in our minds, how we see them.

16 MS. SCHOOLS: I understand.

17 VICE CHAIR HART: Thank you. So the amount, it
18 may be 6 units. I don't know what that number is. I'm just
19 saying that they are asking for 10 and I'm looking for them
20 to tell me why they have to do 10 as opposed to something
21 that is less than that that is within the actual zoning.

22 Typically when we get applicants, applicants have
23 to provide us with some sort of justification or rationale
24 as to why this is necessary. They can't do anything else or,
25 you know, they will be whatever. They just haven't given us

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1 enough information for us to be able to say okay, we
2 understand all of this and, you know, we connect all of these
3 things together.

4 And I'm asking them, because they have time now,
5 to give us some more information and -- so that we can more
6 fully understand the request that they are making, because
7 currently, personally I don't understand that connection, so
8 I want them to address that.

9 MS. SCHOOLS: Okay. So they are requesting, of
10 course, space requirements variation?

11 VICE CHAIR HART: Yes.

12 MS. SCHOOLS: Once they get into that space
13 requirement, they still will have to get permission to go
14 variance to the -- changing it from a single-family unit to
15 an apartment?

16 VICE CHAIR HART: No. This is a -- the zoning
17 that they are in, I think, is RA-1 Zone, it's a Residential
18 Apartment Zone, so they are actually -- they are -- there is
19 an ability for them to be able to do within zoning an
20 apartment building of some size. And I don't know what that
21 is, because I don't -- I'm not designing it for them. They
22 are having to figure that out, but an apartment building is
23 anything over 3 units? I'm asking OAG.

24 MS. NAGELHOUT: Yes.

25 VICE CHAIR HART: Okay. So an apartment building

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1 is anything over 3 units. So if they do anything over 3
2 units, then it has -- then it is considered an apartment
3 building and they are under zoning allowed to do an apartment
4 building. They are just asking us for this variance, this
5 thing and that's outside of what is zoning. And the thing
6 that is outside of zoning is not the use, not the apartment
7 building, but the amount of lot occupancy, how much of the
8 lots they are able to use with the building that they are
9 proposing.

10 MS. NAGELHOUT: Mr. Hart?

11 VICE CHAIR HART: Yes?

12 MS. NAGELHOUT: It's actually 3 and up is an
13 apartment house.

14 VICE CHAIR HART: Three? Okay. Thank you. So
15 it is -- so anyhow, I need to get from them more information
16 as to why that is necessary.

17 MS. SCHOOLS: Okay. And then parking as a whole
18 is an issue.

19 VICE CHAIR HART: Parking is not -- that's not --
20 there are -- sometimes the parking is a concern because of
21 what is required under zoning. In this case, there is not
22 an issue for parking for zoning purposes. I understand that
23 you are saying there is an issue just in general because of
24 the development that is happening on the street, but for our
25 purposes, we have to literally look at what is in the Zoning

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1 Regulations and then apply that to the -- whatever project
2 or proposal that is before us.

3 And right now, we do not have a requirement that
4 they are having -- they are not asking for relief from that,
5 whatever the requirement is. I can't think of what that is
6 off the top of my head, so okay. Thank you.

7 MS. SCHOOLS: Thank you.

8 CHAIRPERSON HILL: Okay. Ms. Ludmila, so we will
9 see you on January 15th and if you could put something into
10 the record again authorizing you as the person to speak on
11 behalf of the company.

12 MS. LUDMILA: I will put -- I will ask my
13 supervisor and I will let them know and they will decide who
14 will come and speak.

15 CHAIRPERSON HILL: Okay. But we do -- I do need
16 something in the record that says you -- whether somebody
17 different comes, you have been here now and so now you have
18 been under oath saying that you represent the company. I
19 just need something in the record that, at least for this
20 hearing, you did come here representing the company.

21 MS. LUDMILA: Okay. If next time I --

22 CHAIRPERSON HILL: Yeah, next time if there is
23 somebody different, then they have to send a letter that
24 there is somebody different.

25 MS. LUDMILA: Okay.

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1 CHAIRPERSON HILL: And what is it Mr. --

2 MS. LUDMILA: Omar Scheck?

3 CHAIRPERSON HILL: Yeah. Mr. Scheck, I haven't
4 seen Mr. Scheck in quite a while, so he can come down if he
5 wants to as well, but I haven't seen him in a while. You had
6 a question?

7 VICE CHAIR HART: No, I was just saying that you
8 could have a letter that says these three people can speak,
9 are able to speak on our behalf. However you want to do it.
10 We are just saying that it just has to have something,
11 because currently we have that the company is able to
12 represent themselves, but we don't know who is in the company
13 that is given that, you know, permission. It is very
14 ambiguous right now.

15 And so we just would like some more clarity on
16 that.

17 MS. LUDMILA: Okay.

18 VICE CHAIR HART: Thank you.

19 MS. LUDMILA: Thank you very much.

20 CHAIRPERSON HILL: All right. Mr. Moy, we will
21 go ahead and try to do one more before we take a break, if
22 we take a break and then you call it whenever you like.

23 MR. MOY: May I ask, Mr. Chair, while Ms. Schools
24 is still here whether or not she has filled out a testimony
25 card?

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1 CHAIRPERSON HILL: Oh, okay, great.

2 MR. MOY: A witness card.

3 CHAIRPERSON HILL: If you can, just fill out the
4 witness card and just give it to the translator there to my
5 right. Okay. All right. Great. Okay. Thank you, Mr. Moy.

6 MS. JOHN: She's the only one who gets to speak?

7 I'm sorry, you can't speak from the audience. We
8 had asked if there was anyone that wanted to speak and the
9 only person that raised their hand was the young lady there.
10 And so if there are other people that had wanted to speak,
11 then, Ms. Ludmila, you can come on back up here. Come on
12 back up here and we will just go through this. I'm a little
13 confused as to who would like to speak concerning this case?
14 If you can raise your hand? Okay. All right. That's fine.

15 So, sir, if you came all the way down here, you
16 can come on up. And then just go ahead and introduce
17 yourself there for the record. So did I close the hearing?
18 I don't even remember if I officially closed the hearing, so,
19 okay, Mr. Moy, we are still going on here with this.

20 So, sir, if you could introduce yourself, please?

21 MR. SCHOOLS: Yeah, my name is Robert Schools, 620
22 50th Street, N.E., Washington, D.C. and my concern is also
23 the variance that was mentioned. So when -- with a 10-unit
24 apartment building which would take up most of or all of the
25 properties would be bumped up against our property and our

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1 neighbor's property and take away the fire lane that would
2 be of -- would be demolished without the variance.

3 And we were sort of wondering about, one, if they
4 were going to build one apartment, I mean, one family house
5 in the area would be ideal, but you just said that the --
6 it's a Zone 1, which allows a 3-story apartment building, a
7 3-family apartment building and up.

8 What -- I thought it was a 1-Family Zone. When
9 we bought there, that's what we wanted was this connection
10 and space and we had that when we moved there. And with a
11 10-unit apartment building, we are not going to have
12 anything. And with the variance that they are going to take,
13 one property, that property will be butted up against ours
14 and there will be no fire lane between the properties or
15 anything.

16 And that's my concern, let alone the parking, but
17 that doesn't seem to matter.

18 CHAIRPERSON HILL: Okay. Ms. White or -- do you
19 have a question?

20 MEMBER JOHN: So the developer is able -- if the
21 developer meets all of the regulations for that zone, in this
22 case, the height of the building is correct, the width is
23 correct and the amount of the lot that it takes up is correct
24 and some other issues, parking, then the developer can go
25 ahead and build a building that has more than 3 units,

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1 because it is zoned for apartments.

2 So in this case, the record is that they need only
3 two variances, one for the lot occupancy, that's the size of
4 the -- the amount of the lot that is taken up by the
5 building.

6 In this case, there is a technicality because of
7 the public space. So the developer is saying if I didn't
8 have to make accommodations for this public space, then I
9 would not need any relief for the area variance. And Mr.
10 Hart is saying but you can build a smaller building even if
11 you have to give up that space.

12 So in answer to your question, yes, the developer
13 can build a matter-of-right, that's what we call it, a
14 matter-of-right building where the developer does not have
15 to come to the Board for relief.

16 However in this case, it would be advisable for
17 the developer to meet with the ANC and with the neighbors who
18 have expressed opposition to at least explain what they are
19 doing and get their input.

20 And as to parking, the developer is providing the
21 required parking, because they are not asking for parking
22 relief. That doesn't mean that there isn't a parking problem
23 on the street, but, in this case, the developer is not asking
24 to provide less parking than would be required. So I don't
25 know if that helps.

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1 MR. SCHOOLS: Right. But the zoning, they are
2 going to be allowed to butt up against each property.

3 MEMBER JOHN: No. They have to meet. They are
4 not asking to go closer to your house or the other neighbor's
5 house than what they are allowed to do.

6 MR. SCHOOLS: Well, what is the allowed space?
7 2 Feet, 3 feet between properties?

8 MEMBER JOHN: No. That space is 9 feet.

9 MR. SCHOOLS: 9 feet --

10 MEMBER JOHN: Yes.

11 MR. SCHOOLS: -- between each property?

12 MEMBER JOHN: Yes.

13 MR. SCHOOLS: So they have to stay within the 9
14 feet?

15 MEMBER JOHN: Yes. If they -- they are not asking
16 for any relief from that, so they have to meet the 9 feet.

17 MR. SCHOOLS: Oh, okay. That's all I have.

18 MEMBER JOHN: All right. Thank you for coming
19 down.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Schools.
21 All right. So we will see you now on January 15th. Thank
22 you. All right, Mr. Moy.

23 MR. MOY: Thank you, Mr. Chairman. The next case
24 is Application 20109 of Bernard Berry, as amended, for area
25 variance from the lot occupancy requirements, Subtitle E, §

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1 304.1, this would construct a 3-story principal dwelling unit
2 with a cellar level and a roof deck pool, RF-1 Zone at 509
3 O Street, Northwest, Square 471, four seventy --

4 CHAIRPERSON HILL: Actually, if you could just
5 keep one microphone on at a time, otherwise we get feedback
6 up here. And Mr. Moy, I'm sorry to interrupt you.

7 MR. MOY: No, any time, sir. Square 479, Lot 818.

8 CHAIRPERSON HILL: All right, if you'll please
9 introduce yourself for the record from my right to the left.

10 MR. TERAN: Good morning. My name is Eric Teran.
11 I'm the architect for the project and to the right of me is
12 Mr. and Mrs. Berry, the owners and my favorite clients.

13 CHAIRPERSON HILL: Okay. Very good. All right.
14 Well, why don't -- all right. So Mr. Berry, Ms. Berry, if
15 you could, please, introduce yourself for the record as well?

16 MR. BERRY: Sure. I'm Bernard Berry. Should I
17 give my address as well you said? 505 and 509 O Street,
18 Northwest, D.C.

19 MS. BERRY: Good morning. I'm Sheena Berry, 505
20 O Street, Northwest, Washington, D.C., of course.

21 CHAIRPERSON HILL: Okay, great. Mr. Teran, are
22 you going to be presenting to us?

23 MR. TERAN: Yes, sir.

24 CHAIRPERSON HILL: Okay. So I guess if you could
25 go ahead and walk us through what you are trying to do and

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1 why you think that we should -- why you meet the standards
2 for us to grant the application. I'm going to put 15 minutes
3 on the clock, just so I know where we are and you can begin
4 whenever you like.

5 MR. TERAN: Thank you. Good morning, Mr. Chairman
6 and Members of the Board. I want to give you a quick history
7 of the property. About 20 years ago, mid-90s, it burned down
8 or didn't burn, but it sustained massive damage. As you can
9 look at the existing photos, there was basically some of the
10 foundation was being held up by 2x4s. The walls were no
11 longer vertical. There was no interior structure. It was
12 definitely a safety hazard.

13 Throughout that time, it was two dwelling units,
14 which seemed like they could never agree on what to do. The
15 Berrys moved in around 2006/2007 and the last seven years
16 they tried purchasing both titles. In 2017 they were able
17 to finally purchase both titles and turn this into hopefully
18 their home for as long as they can live and pass it on to
19 their daughters.

20 As you can see, well, the first thing that Mr.
21 Berry told me as he basically just wanted a house, that was
22 the average of all the houses on the block. He didn't want
23 anything much bigger than, you know, what is already allowed
24 on that block, but when we saw the site, we obviously saw all
25 the damage that was there.

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1 We brought in a construction engineer and it was
2 not a safe building. D.C. had it as a condemned building.
3 There were people that were sleeping there. People that were
4 using it as a toilet. Drugs were being used there.
5 Mosquitos, rats and so forth.

6 Now that the Berrys were owners and they have been
7 living next door for about 13 years, in their conscience, the
8 first thing they want to do is keep the neighborhood safe.
9 And that was the decision to demo the existing building in
10 case it fell down in the next few months. Who knows when it
11 could have fallen down. They didn't want that on their
12 conscience. They didn't want anybody to get hurt, so the
13 decision was to demo the building.

14 And once we demoed the building, you know, now it
15 was going to be considered a new building, rather than -- and
16 we need a variance rather than an existing building, asking
17 for a special exception.

18 We decided to get a permit as quickly as possible,
19 so that the Berrys could start building, as they were
20 carrying two mortgages. When we got that approved, the lot
21 occupancy was approved for 61.3 percent. And the existing
22 was 62.3 percent.

23 What we are here is to ask for an area variance
24 relief to be at 64.7 percent. And we want it to stay around
25 that number because the average of that block is 64.1

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1 percent. And I have provided some of those numbers in the
2 burden of proof.

3 And we believe that we are still staying within
4 the character of the neighborhood. We are not asking for 69
5 percent, 70 percent. We are just asking for something that
6 is an average of the neighborhood.

7 If you look at the floor plans, you can see that--
8 or the site plan on the first page, you can see that there
9 is a minimal addition. It's 3 feet that is being added at
10 the rear of the property. It will be enclosed on the first
11 and second floor and on the third floor there is a terrace
12 that will have a spiral staircase going up to a rooftop deck.

13 And as you can see, the adjacent building it only
14 sticks out about 14 inches past that, so we are not invading
15 anybody's privacy. There is no extra noise. There is -- the
16 glazing at the rear is the same as it was before.

17 And we have -- if you look at some of the 3D
18 renderings, you can see from the street and other neighboring
19 properties that it is a minimal impact. I don't think you
20 would even notice it if I didn't bring it up. From O Street
21 you notice a little bit of a bump-out, but I don't think it's
22 out of character for the neighborhood.

23 And with that said, we have gotten about 20
24 signatures from neighbors in the block that are in support.
25 I believe five or six of them have written letters, so we

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1 have the support of the zone -- ANC 6E Zoning and the ANC 6E
2 Board and also from -- Office of Planning has -- is also in
3 support.

4 And so we would be happy taking questions.

5 VICE CHAIR HART: Thank you very much, Mr. Teran,
6 for providing us with that plentiful background. I had read
7 through the record and understood that.

8 What I'm struggling with with this case is you
9 received a building permit for 61.3 percent, that's correct?

10 MR. TERAN: Yes.

11 VICE CHAIR HART: Okay. And so now you are
12 looking for -- the plans you are looking for are at 64.7
13 percent?

14 MR. TERAN: Correct.

15 VICE CHAIR HART: Okay. So why is that necessary?
16 I mean, if you have already received those plans, why move
17 forward with even, you know, to -- with such a small request?
18 And I'm saying small request in terms of the amount of actual
19 percentage, but it's a variance that you are looking for,
20 which is a very, and I think you probably heard the
21 conversation we had earlier, high bar for us.

22 You are asking us to do something that is outside
23 of our zoning and so then it becomes well, what is that that
24 you are asking us to do? And it is not an easy thing for us
25 to be able to say sure, yeah, you know, I can -- it's just

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1 a little thing and we can do that.

2 You are asking us to look outside of what our
3 zoning does or is supposed to request and then say sure, we
4 can do that. And I'm not understanding what that -- beyond
5 it being something similar to what is actually happening in
6 the neighborhood, I don't understand what is outside of that
7 that is compelling and that kind of meets the -- what the --
8 you have heard of the variance test?

9 MR. TERAN: Um-hum.

10 VICE CHAIR HART: The kind of prongs of the
11 variance test. There has to be some way of us connecting
12 these things to say okay, because of this, then this causes
13 them to be able to do this. And there is no other way for
14 them to kind of build their building without this variance.
15 And right now, I don't get that. I don't understand that
16 connection because I don't think that there is a strong
17 enough connection between the two things so that it can --
18 so that we can approve that.

19 I understand that it is not, you know, what it is
20 that you are requesting. I just don't understand how that
21 connects to what the zoning, the variance would allow us to
22 be able to, in these circumstances, be able to say yes. I
23 get the history. I just don't -- that building is torn down,
24 correct?

25 MR. TERAN: Yes.

1 VICE CHAIR HART: Okay. So that building as being
2 torn down is now you are starting new doing all of this and
3 you are asking something that is outside of zoning. So
4 that's the part that I'm trying to understand more,
5 understand better so that I can confidently say yeah, I get
6 it and I agree and we can move on with this.

7 MR. TERAN: I completely understand. And we have
8 had many conversations about that as well. And I think it
9 goes back to this house was in such dire straits that to try
10 to keep it and ask for a special exception, the cost for
11 trying to keep it would have been astronomical and it would
12 have been undue hardship for the Berrys to try to maintain
13 that, maintain the existing building.

14 And like I said, you see the photos, it was a
15 safety hazard. It could have come down. It hasn't come down
16 in 20 years somehow, but you can see by the footings, they
17 were being held up by 2x4s. And so that was the reason why
18 we decided to demo the project, that was the only reason.
19 If not, we would have kept the existing building. We would
20 have been here just asking for a special exception. But due
21 to safety concerns, the house being the condemned building
22 by D.C. standards, for the Berrys what they believed the
23 right thing to do was demo it and have nobody get hurt.

24 VICE CHAIR HART: I applaud them for doing that.
25 I think that is a noble thing to do. What I'm trying to nail

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1 down is you went from 63 -- 61.3 to 67 -- well, you went from
2 61.3 to 64.7 and I don't understand what that is-- what that
3 difference is and why that is necessary.

4 MR. TERAN: Well, so it was always the intention
5 to be around 64, in the 64 percent area, from the beginning.

6 VICE CHAIR HART: So --

7 MR. TERAN: But because we had -- because the
8 Berrys felt that it was a safety hazard, we wanted to demo
9 the building so nobody could get hurt, nobody goes in there
10 anymore. And because of that, then we had to go -- we are
11 here for a variance. We did the design where that we knew
12 we could get approved so they could start building right
13 away.

14 And then now we are here asking for that variance,
15 which we wanted all along and I know it's only the 3 percent
16 and it's very minimal and it's because that's what they
17 always wanted from the beginning. But in order to get the
18 permit without having to go through BZA, we wanted to get a
19 permit quickly.

20 VICE CHAIR HART: But that's -- you are --

21 COMMISSIONER TURNBULL: That's a design issue.

22 VICE CHAIR HART: That's --

23 COMMISSIONER TURNBULL: You should have designed
24 it that way in the first place.

25 VICE CHAIR HART: -- my -- that's kind of what I'm

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1 trying to get to is that I don't get what the -- I understand
2 that there is -- that there may be a vision that you are
3 looking for, but you are going through the process. You
4 know, when you submit design drawings to the DCRA, you are
5 submitting this is what we are intending to build.

6 Now, to change after that and you are -- we were--
7 at that point, you were above what the Zoning Administrator
8 -- what would be allowed, but the Zoning Administrator has
9 some leeway and so they provided you with that leeway and now
10 you are saying well, actually, we wanted a little bit more
11 than that. And so that's the issue that I'm trying to gauge.

12 And I hear what you are saying, but you are still
13 not getting there. You are saying that well, we are trying
14 to improve the neighborhood, which again I understand. I get
15 that, but that connection between getting from the -- what
16 you already have approved to what you would like, sometimes
17 we don't get what we would like.

18 And right now, I don't get the -- there is not
19 enough rationale for us to be able to, in my mind, for us to
20 be able to say sure, yeah, we get that that you can do that.
21 You are asking because you would like to do it, not because
22 there is something that is requiring you to do that. And
23 that is the part that I'm having difficulty with.

24 It is -- that's what we have to do. We cannot
25 just say okay, well, they seem to be very nice people. And

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1 I'm not -- this has nothing to do with them and it doesn't
2 have anything to do with you as a designer.

3 MR. TERAN: Um-hum.

4 VICE CHAIR HART: This really has to do with us
5 looking at it and saying well, what is it -- when we have to
6 look at this case, we have to look at this case as -- on its
7 face and I just don't see the, well, we can allow this
8 because there is some life safety issue with the 61.3 percent
9 design that is -- I'm sorry, for the 64.7 percent design, we
10 need to have this particular life safety issue that will --
11 that is above and beyond what we have got under 61.3.

12 That's kind of like okay, there is a necessity
13 there. But you have not said that and so that's what I'm
14 trying to tease out. And if you would like to say something,
15 that's -- go right ahead, please.

16 MS. BERRY: Hi, thank you. I understand what you
17 are saying, but like when we saw the house like we never were
18 -- was able to really go in the home, because it was
19 condemned and it was always separated as two units. So when
20 we saw the plans, then we knew that it was 62 -- prior to us
21 tearing it down completely, because we didn't -- originally
22 we weren't going to tear it down completely, but when Eric
23 got structural engineers, they told us that you have to do
24 that, basically, or you are not going to have the home that
25 you think you are going to have. You are just going to waste

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1 money. So that's what we had to do.

2 Now, it was 62.3 and we had -- a lot of this comes
3 from us not knowing what to ask for. So we didn't come
4 forward like Mr. Turnbull said, like come -- why didn't we
5 just design it like that from the beginning? Well, we
6 thought that when we rebuilt the house that we would rebuild
7 the house as it was or be able to do that.

8 But rules have changed, so we couldn't even get
9 what we originally had. So we asked for -- our permit was
10 for 61, which is, as you can see, less than what was already
11 there. So when we found out that we could get -- that the
12 person who approved it for that smaller percentage would do
13 that for us, we were relieved, but then we spoke to other
14 people and they were like well -- and also, keep in mind we
15 have been in this neighborhood 13 years in Washington, D.C.
16 and we have seen it change.

17 We have seen people build houses. We actually
18 live one house over, not directly next door, not where the
19 corner store is, but there is a house right there and there
20 is another house and you can see it's 505. It's actually
21 very long. And then the house that -- we are just trying to
22 get our house to match the other house that is right next
23 door to it. We are not asking -- and right next to us is an
24 empty lot. Well, it's not an empty lot, it's the back yard
25 of a liquor store.

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1 So we are asking for that space because it makes
2 a difference in our home, because well, we have a large
3 family, you know, and it would provide additional space for
4 us to have for our daughters. We have three kids. And
5 that's why we are coming to you after the fact, everything
6 is coming after, because sometimes when you are doing this,
7 we are new, we are not developers. And I know Eric is very
8 well-versed and he knows his job from top to bottom, but me
9 and my husband, we have never done this before.

10 So when you are new to this and you have never
11 built a house in D.C. and you have never been to a zone
12 meeting or -- you don't know what you have to go through to
13 get -- or what to ask for even. So that's why we are coming
14 to you after the fact, asking you instead of coming to you
15 with the permit saying hey, we haven't started building yet,
16 but here you go, can you do this for us? Because we didn't
17 know to ask for that or that it was even possible.

18 So that's why we didn't do it from the beginning.
19 It wasn't to cause problems or I don't know what the other
20 reason you would think we would not do it from the beginning
21 would be, but it's just of not knowing and I guess just, you
22 know, not being practiced in this, you know.

23 VICE CHAIR HART: No, yeah, I understand that and
24 I'll let others ask the questions.

25 MS. BERRY: Um-hum.

1 VICE CHAIR HART: You understand that the issue
2 that I'm -- that I have raised and I appreciate the
3 background into it. It's very helpful.

4 MS. BERRY: Um-hum.

5 MEMBER JOHN: My question is for the architect.
6 So why can't you build within the 61 percent? Because the
7 issue is that there is no exception or condition. The 61,
8 you know, the Zoning Administrator used his discretion, his
9 2 percent discretion, to get you to 61 percent, which is over
10 the allowed limit.

11 And so can you explain why you are not able to
12 build a house within that, you know, limit?

13 MR. TERAN: No, yeah, I understand. You can
14 definitely build a house 60 percent, 61.5. I think just from
15 our starting point, it differs from a lot of other projects.
16 If we kept the existing building, we would be asking for a
17 special exception and I think it would be a pretty easy case.

18 MEMBER JOHN: Absolutely.

19 MR. TERAN: Yeah. And so the only reason was
20 because we -- like I said, we wanted or they wanted around
21 64 percent. We still want to try and keep that, that's why
22 we are here. But yeah, to answer your question, if this was
23 -- if I was with some clients and it was a normal house, they
24 would easily redo, remodel and they wanted to tear it down,
25 I wouldn't be here, because I wouldn't believe there is a

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1 case.

2 MEMBER JOHN: So tearing down the house by itself
3 for safety reasons, which is perfectly reasonable and we
4 understand, and had you come here with an existing structure,
5 you know, you would have had a renovation and you could have
6 built to the original footprint.

7 But as you said, the rules have changed and the
8 position we are in is that you are asking for a variance,
9 which means you have to meet all these tests. And so as a
10 Board, we try to be very careful about how we interpret their
11 variances, because if we are not careful, we will end up with
12 having very loose regulations. And the developer will not
13 know what is expected and the public won't know what is
14 expected, because we, you know, just approve things willy-
15 nilly, so nobody knows what the rules are.

16 In your case, you are not asking for a lot, but
17 there is no -- you can't show an exceptional condition and
18 you can't show that you cannot have a good project within the
19 61 or 62 percent that the ZA gave you. And that's the issue.

20 So, as much as I love the design of your house,
21 I'm sort of not, you know, comfortable with your burden of
22 proof, at this point.

23 CHAIRPERSON HILL: Can I just -- I just want --
24 it's okay, you guys can talk. We are soon going to the
25 Office of Planning. I mean, what I just wanted to clarify

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1 again for you all is like again, we are tasked with
2 determining whether or not you guys are meeting the standard
3 for us to grant the relief.

4 It's not a matter of whether it's 1 percent, it's
5 2 percent, it's whatever it is. You have now asked for a
6 variance as opposed to a special exception, so there is
7 different criteria that we have to go through, you know,
8 what's the exceptional situation with your property that is
9 leading to a practical difficulty that you can't use the
10 property, so therefore we have to change the regulations,
11 right?

12 I mean, it's not something that is easily done,
13 right? Like you guys can build something now within the
14 matter-of-right. You don't need to be here, right? You are
15 here because you need to go a couple of percentage points
16 over what the Zoning Administrator was able to do in terms
17 of flexibly and maybe now after even just this little talk,
18 you wish you hadn't. I don't know. Right?

19 So we will see where we get and I mean I'm very
20 interested to hear what the Office of Planning has to say
21 because what has made this unique again is that you tore down
22 the property, right?

23 And so what that puts us in a bad situation is
24 that, you know, we are going to be here. Again, we are here
25 every Wednesday, right? I know you guys -- this is the first

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1 time and hopefully the only time, right? But we are going
2 to have somebody else before us that has the very same thing,
3 they tore down property, but they might want -- you know,
4 they will ask for more than you are asking for or what have
5 you, but they still have to meet their burden of proof as to
6 why they are meeting the variance standard, the variance test
7 to get this approved.

8 I'm going to turn to the Office of Planning unless
9 anybody else has any questions for the applicant, at this
10 point. Mr. Turnbull?

11 COMMISSIONER TURNBULL: Yeah, I just wanted to
12 reiterate what you said that part of our issue is that there
13 has to be an exceptional condition and there is nothing
14 unique about your property, the site itself. I mean, the
15 house was torn down, so it's a clean slate. The old house
16 is gone. That really doesn't enter back into the -- quite
17 into our review per say, I mean, other than the fact that it
18 was a standard house similar to the others in the
19 neighborhood.

20 But once you start with a clean slate, you will
21 look at the property and it's basically not exceptional in
22 terms of shape or size, so what is it that makes it what you
23 want to do for us to review it and grant it? And as I think
24 my colleagues have all said, it's a very high bar and so you
25 have got to be able to offer some really good questions.

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1 I mean when you talk about oh, well, I mean, some
2 people have come before us with even smaller homes and they
3 need more bedrooms or they have -- they don't have a basement
4 and their neighbors on either side do, so they have got some
5 exceptional conditions that separates them from their
6 neighbors and we can look at that with a set of eyes with
7 understanding as to how they can make a better living for
8 their house.

9 I mean, you have got a bonus room, recreation
10 room. You have got all these recreation. You talked about
11 housing, about bedrooms, but there is all this play area and
12 why didn't the architect -- I'm not going to get into design,
13 but there are ways to do this to make -- to satisfy your
14 needs.

15 And to come before us with nothing that really
16 tells us that this is an exceptional need, a really
17 exceptional need and why you have to do this, it's a high bar
18 for us to reach. It's a very high bar for us to reach. So
19 I would just reiterate the thing about the special exception.
20 What is unique about your property that would offer us some
21 insight into granting this?

22 CHAIRPERSON HILL: Okay. Mr. Berry you had a
23 comment or Ms. Berry?

24 MS. BERRY: He does and I'm going to let him
25 speak.

1 CHAIRPERSON HILL: Sure.

2 MS. BERRY: But like my concern is that, you know,
3 as people who have lived in this neighborhood before it
4 started changing, I have seen this neighborhood grow and
5 develop. I have seen houses get exceptions. Clearly, they
6 have gotten exceptions because I live in 505 O Street, so
7 there is a house next to me that has multiple units in it
8 that I know has exceptions, because -- okay.

9 I don't know what the case was in this situation,
10 all I'm saying is with the lot, if you look at the plot, we
11 are not asking for something extreme. We are asking for it
12 to just match the building that is right next to it. We
13 can't -- the back yard is extra small. We are not hurting
14 anyone. It's not a huge ask is what I'm saying.

15 I know that it doesn't meet your burden. I don't
16 know what the qualifications are to meet your burden, but I
17 do know that apartment buildings and big developers they --
18 in our neighborhood, I see them get things that we haven't
19 been able to get approved as single-family homeowners in our
20 neighborhood.

21 CHAIRPERSON HILL: Yes. Ms. Berry, it's okay.
22 I mean, I'm just trying to --

23 MS. BERRY: Um-hum.

24 CHAIRPERSON HILL: -- we have nothing against the
25 design.

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1 MS. BERRY: Right.

2 CHAIRPERSON HILL: We have nothing against what
3 you are trying to do. We are just here doing what we are
4 supposed to do, right?

5 MS. BERRY: Of course.

6 CHAIRPERSON HILL: And so -- no, I'm just saying
7 it, so I mean, I don't know whether you guys have looked at
8 the standards. I mean, do you know what the variance test
9 is? Do you know what the three prongs are? Right? No, I'm
10 just saying like you know, exceptional situation resulting
11 in a practical difficulty, right? What is so unique about
12 your property that you can't use it the way it needs to be
13 used within zoning?

14 And no, that's okay. And we are going to talk to
15 the Office of Planning here in a second, because they
16 apparently are in agreement.

17 MR. BERRY: I understand, agreement, yes.

18 CHAIRPERSON HILL: Okay. Right? And so, you
19 know, you might as well just read their testimony if you want
20 to, because they are the ones who are the experts and they
21 are on your side. Okay?

22 And so that's the argument that we are trying to
23 have. Not that you want a little bit more space. Not that
24 like, you know, it's only a little bit smaller. It's not
25 going to hurt anybody. I mean, that's all great. Like we

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1 would love to let everybody have what they want. I mean, we
2 are just stuck here with what we are trying to do and what
3 we have been tasked to and what we have been doing for years,
4 right?

5 So Mr. Berry?

6 MR. BERRY: Sure. So you know, the grand question
7 is why do we need this, right? And the real answer for me,
8 right, beyond all these other reasons that, you know, we
9 share the common back yard with where we live, so, you know,
10 we know that it needs to stay in this. We know a lot of the
11 buildings around here and the entire block, you know, Lot 35,
12 34, 33, 32 are well-over variance, right?

13 But the answer to the question is, and I'm sure
14 you've seen the pictures, there is a pool on the roof. Okay?
15 When you are in the pool right now the way it is designated
16 are the stairs are coming up behind the pool. Okay? To me
17 that's a safety hazard.

18 So my first question was well, how do I get to my
19 roof? How could I move those stairs to get to my roof? I
20 can't move the pool. I can't move these things. The house
21 is being built, right?

22 The reason that I wanted the stairs to the outside
23 is so that I could come -- I could walk outside and walk to
24 my roof and walk level to where my pool is to where there is
25 not a drop down when you are coming out the top level and you

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1 are walking upstairs and there is a pool to your right, well,
2 whoever is in the pool could then fall down those stairs.
3 So to me that was a safety hazard.

4 CHAIRPERSON HILL: Mr. Berry, I'm going to
5 interrupt just one second.

6 MR. BERRY: Yes.

7 CHAIRPERSON HILL: Because you are not arguing
8 your point at all in terms of the variance and I'm just
9 letting you know. It's okay. But I'm going to turn to the
10 Office of Planning, because they apparently have argued your
11 point and so --

12 MR. BERRY: Okay.

13 CHAIRPERSON HILL: -- I'm curious of what their
14 take is. Please, Office of Planning?

15 MR. JESICK: Thank you, Mr. Chairman and Members
16 of the Board. My name is Matt Jesick.

17 Just one point to begin. The concept of an
18 exceptional condition has been discussed and an exceptional
19 condition can include structure on the property. It is not
20 limited to the property, to the land itself. In this case,
21 we felt there was an exceptional condition in the state of
22 the previous building on the site.

23 And the exceptional condition is not that the
24 applicant tore down the house. The exceptional condition is
25 that the house was completely gutted by fire and was left in

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1 a state in which it couldn't be safely reused. So we felt
2 that was the exceptional condition that led to this series
3 of events where structurally the house had to be torn down
4 and rebuilt. If that hadn't happened, they could have
5 proceeded with the special exception.

6 They are only asking for, I believe, 45 square
7 feet beyond what was there before, so it's a very minimal
8 variance. And it wouldn't be out of character with the
9 average lot occupancy for the homes on that square.

10 So overall, we were comfortable recommending
11 approval of the variance. And I would be happy to take any
12 questions.

13 CHAIRPERSON HILL: Okay. Anybody have questions
14 of the Office of Planning?

15 MEMBER JOHN: So and this might involve OAG as
16 well. And the Regulation, c203.2 talks about the 75 percent
17 test in allowing an unconforming structure to be rebuilt
18 after a fire.

19 And I don't know if that is what you applied, but
20 I don't know if OAG has any thoughts if that exception would
21 work here?

22 MS. NAGELHOUT: My understanding of this is that
23 the prior non-conforming building is gone, so it's not
24 legally relevant to this application. It's a level lot.
25 They need to show -- I mean forget that it even existed,

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1 because it's not relevant to the application.

2 MEMBER JOHN: So that's the answer. So did you
3 have thoughts?

4 MR. JESICK: Well, I guess, the Office of
5 Planning's position is that we disagree with what was just
6 stated by OAG that the previous building was irrelevant to
7 the -- to why this application is even here, that, yes, it
8 did play a factor in what is the exceptional condition of
9 this property.

10 MR. BERRY: May I say something?

11 CHAIRPERSON HILL: No, just give us one second,
12 Mr. Berry.

13 MR. BERRY: Oh, I'm sorry.

14 VICE CHAIR HART: So Mr. Jesick, what I'm-- and
15 you heard my -- me talk about why I was having a difficulty
16 with it. I get that there was an existing building there.
17 I get that there is -- that they may have had the opportunity
18 to use a special exception if they were able to use that
19 house.

20 But this is -- that's a lot of ifs. I mean that
21 building is no longer here. And I understand why that the
22 building is no longer here. What I'm -- I have the
23 difficulty with is because they have a plan that was approved
24 by DCRA at a particular amount, that the Zoning Administrator
25 was able to approve, it is very hard for me then to say well,

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1 this is the only option that you have.

2 You know, the 61.3 percent option, if they hadn't
3 brought that and just had the 64 percent design and they were
4 coming to us as that's what they have, I could -- I might be
5 able to understand or agree with where you are. But because
6 we have the 61 percent drawings, now I'm like well, why not--
7 why couldn't you just do that?

8 And it makes it hard then to be able to say, okay,
9 well, right now I understand that it's not a large amount of
10 space that we are talking about. To me, this is more about
11 the idea about what a variance is and that's the part that
12 I can't get over. I can't get past, because I feel that
13 there is an option that is kind of reasonable and it seems
14 like it would work within zoning, but we are being asked to
15 do something that is outside of zoning, which you know is
16 much more difficult for us to be able to approve.

17 So what I'm trying to get to is between the 61
18 percent and the 64 percent, why is that -- why should we be
19 okay with them asking for the 64 percent when we know there
20 is a 61 percent that has already been approved by the -- by
21 DCRA? And if I could have your thoughts on that, I would be
22 happy to hear that.

23 MR. JESICK: Well, I think we -- I think our
24 thinking went along the same lines up to a point there. If
25 they hadn't done the building permit, would we still have

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1 looked at this the same way? And I think we would have. I
2 think we still would have arrived at the same recommendation.
3 So I don't know that -- I'm not sure I'm answering your
4 question, but you know, I think we just felt regardless that
5 the -- on the fact that they applied for that building permit
6 and had this alternate design, we are still recommending
7 approval. We still feel the application meets the three part
8 variance test.

9 VICE CHAIR HART: And you are saying that it is
10 very much because there is -- there was a special exception
11 alternative for the existing -- if they could have used the
12 existing building? And because they are not able to do that,
13 and that building is now demolished, that this is their --
14 you know, they could have done 70 percent. I mean, they
15 could have done another design that was higher than that,
16 what was allowed.

17 And I'm not saying that you have to opine on a
18 hypothetical. I'm not asking for that. I'm just saying that
19 they could have done another design. It's just because of
20 this being tied to the existing building not having the
21 previous -- the fire destroyed or, you know, that building,
22 having to be demolished is -- it plays a role in the decision
23 that OP is making now.

24 MR. JESICK: That's correct. It plays a role in
25 the recommendation that we are making. Just to, you know,

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1 quote from our report, the variance is the only method by
2 which the owner could build a new proposed house. All the
3 other options are off the table. So this is the only path
4 forward for them is the variance.

5 VICE CHAIR HART: But it isn't because we have a
6 61 percent design. So that's the part that I have a hard
7 time with. There is another option for them, you know, and
8 so why are we saying sure? Again, I get that it's not like
9 they are asking for, you know, 500 more square feet for the
10 building. I do understand that.

11 I'm just trying to get to, you know, we have to
12 look at this in all of the cases. And as we look at this
13 case, okay, so this is fine, but this also kind of sets up
14 how we look at, you know, all the cases that we look at.
15 Again, each case has its own -- you know, stands on its own
16 merit, but it is still how do we -- are we thinking about all
17 these?

18 MR. JESICK: We definitely thought about that and
19 I think maybe the Board would feel more comfortable just
20 because this is a very exceptional condition, if not unique.
21 If someone just buys a perfectly sound home and destroys it,
22 levels the site, yeah, that's a different situation. This
23 house was destroyed by fire and was unrecoverable. So we
24 felt that that was an exceptional -- very exceptional
25 condition.

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1 VICE CHAIR HART: One final question. The Zoning
2 Commission, the Zoning Regulations do discuss what happens
3 under a fire condition. You know what happens when that
4 building is destroyed, but they do talk about some portion
5 of the building being remaining. Ms. John talked about that
6 a little earlier and it just seems like that part of it was
7 actually contemplated or at least thought about. And Zoning
8 Commissioner Turnbull can most definitely correct me on that,
9 but it just seems like that has been contemplated in the
10 Zoning Regs.

11 So again, that's the part that I am having -- I
12 have a hard time with this particular application. You don't
13 have to respond to that. I'm just saying that that's where
14 I am with it.

15 CHAIRPERSON HILL: Okay. So for me again and I
16 was listening, so I'm just trying to understand if you go
17 through the prongs of the test, right, and how you got -- and
18 I know that this is -- and we may be stuck here, I don't
19 know, that the building is gone, right?

20 So the Office of Planning how they have thought
21 about it is they are taking the previous condition of the
22 building into account as to why it is now an exceptional
23 condition to allow them to do something that they would have
24 been able to do had the building been there.

25 MR. JESICK: I think you have stated our position

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1 accurately.

2 CHAIRPERSON HILL: I like the little question at
3 the end. So, all right. So can you do me -- just walk
4 through it again, please? I'm sorry.

5 MR. JESICK: Sure. Well, it's just like you said.
6 There is the existing structure on the property, extremely
7 dilapidated. There was no opportunity to reuse that
8 building.

9 CHAIRPERSON HILL: Right. Now, I'm just going to
10 stop you. If they had kept some of it, and I forget how much
11 you can keep some of, right, I forget what the percentage is,
12 right, then they could have been here for the special
13 exception, had they kept -- we have seen some of it is really
14 small, you know. Do you know what some of it is? I'm just--

15 MR. JESICK: The Zoning Administrator has rules
16 for what --

17 CHAIRPERSON HILL: Right.

18 MR. JESICK: -- he considers existence.

19 CHAIRPERSON HILL: Existing, right.

20 MR. JESICK: Yes.

21 CHAIRPERSON HILL: So okay, keep going. I'm
22 sorry.

23 MR. JESICK: No. All I was saying was the Zoning
24 Administrator has rules as to what constitutes an existing
25 structure.

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1 CHAIRPERSON HILL: Sure. Mr. Jesick, I'm sorry,
2 going through how you got to this point in terms of the
3 exceptional situation, so I just want to hear it again and
4 again. I'm sorry.

5 MR. JESICK: Sure. Well, again, there is the
6 dilapidated building on the site. There was no opportunity
7 to keep that building. It had to be demolished. A variance
8 to get to the design that has been proposed is the only path
9 forward.

10 We didn't feel there was a detriment to the public
11 good. There is only 45 square feet more than was on the site
12 previously. So that's only --

13 CHAIRPERSON HILL: Yeah, that's okay. I don't
14 think the second and third prong, we are not necessarily
15 struggling with. And so and again for the Berrys, as you get
16 to just sit here and figure this out, we are just trying to
17 figure it out. Okay? And it's not a matter of the size
18 again or how much it is. It's the fact that you are asking
19 for something different that we can't just get to.

20 And so, yeah, Ms. John is going to take a crack
21 at saying something.

22 MEMBER JOHN: So let's say for argument sake there
23 is an exceptional condition. It has to cause a practical
24 difficulty. Right? What is the practical difficulty?

25 CHAIRPERSON HILL: Mr. Jesick?

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1 MEMBER JOHN: I mean, it seems to me they can
2 build a house within the 61 point something percent. So I
3 can't see the practical difficulty, but the particular design
4 that they want to achieve is what causes the issue. And my
5 issue with your recommendation, even though at first glance
6 I was sort of with you, oh, they are only needing 45 square
7 feet. Is that right? Where is the harm?

8 But then when I look at all the other variances
9 that I have not agreed with, then where am I at this point?

10 You know last week we had a similar situation or
11 a few weeks ago, great design, but we still can't meet the
12 test. So that's what I struggle with every time a variance
13 comes up. I always have to make sure, even if I love the
14 design, in this case it's beautiful, but the point is where
15 is it a practical difficulty in building a functional usable
16 beautiful house within 61.4 percent? That's my issue.

17 MR. JESICK: Would you like a response?

18 MEMBER JOHN: If you can.

19 MR. JESICK: Well, I think that's the question,
20 you know, we always struggle with with variances. And I
21 think even as the applicant's architect testified, you can
22 do that, obviously. And of course, we have seen smaller
23 homes as well. We just felt unbalanced because of the
24 exceptional condition of the fire that destroyed the old home
25 that we could arrive at a recommendation of approval,

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1 especially given the small nature of the relief.

2 CHAIRPERSON HILL: So the -- if they wanted to do
3 more, right, and this is why I'm a little confused, right,
4 how much more would the Office of Planning -- and this is
5 going to be really -- we are hypothesizing, you know, because
6 I'm not concerned about this, right? I'm just trying to
7 figure out the next thing that comes on. And again, you
8 know, somebody is trying to do something that really takes
9 a struggle in terms of getting to a variance standard.

10 Like how much more would the Office of Planning
11 had necessarily been approving until it got to the point
12 where it's like well, this probably is passing a line
13 somewhere?

14 MR. JESICK: I think, Mr. Chairman, we have to
15 respectfully --

16 CHAIRPERSON HILL: Yeah, that's okay.

17 MR. JESICK: -- not answer that question.

18 CHAIRPERSON HILL: Okay. All right. 70 by
19 special exception. Is that right? So 70 by special
20 exception. And then even more, you would even get a variance
21 beyond 70 percent, right? But you can't use the property,
22 so therefore you need more than 70 percent lot occupancy.

23 Okay. I have talked myself into at least
24 understanding that. So does anybody have any more questions
25 for the Office of Planning? And then I'll let the applicant

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1 ask. Does anybody have any more questions for the Office of
2 Planning? Okay. Does the applicant have any questions for
3 the Office of Planning?

4 MR. BERRY: No.

5 CHAIRPERSON HILL: Okay. All right. Is there
6 anyone here who wishes to speak in support? Is there anyone
7 here who wishes to speak in opposition? Is there anything
8 you would like to add at the end, applicant?

9 MR. TERAN: No, I think it's just agreeing with
10 Mr. Jesick that at first I didn't know how we could make this
11 a variance until we -- until I came to the understanding that
12 not every property is going to have a property where they
13 have got this type of house. So yes, maybe this will set the
14 precedence for future projects that if there is a house that
15 is condemned, is it recoverable? Maybe then they could ask
16 for a variance as we are asking. But like we are not asking
17 for 70 percent.

18 CHAIRPERSON HILL: No, I got it. Mr. Teran, I'm
19 just going to interrupt you for one second, because I just
20 want to remember this for my own good. Like we have been
21 here before where people have completely lost their minds
22 about the fact that like a wall has been left up. Okay. And
23 the fact that a wall has been left up, they get to do a
24 special exception to something to get to 70 percent. And the
25 neighborhood just loses it.

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1 Okay. They are like how is these few bricks
2 keeping the building intact, right? And so now, I wish you
3 had your few bricks. Okay? Because then you are not asking
4 for a lot, I understand. But do you under -- and I keep
5 going back to this, you are here for a variance, right? And
6 that's why we are struggling with all of this. Okay?
7 Because we are not just up here approving stuff. You know,
8 we are actually going through this exercise trying to figure
9 out things.

10 And again, Mr. Berry, it's not because you wanted
11 an easier way to get to your pool on the roof, okay, which
12 by the way sounds frickin' -- like don't use that again,
13 okay? So all right. Okay. All right. Do you have anything
14 else you would like to add, Ms. Berry?

15 MS. BERRY: I'll let Eric speak to that.

16 CHAIRPERSON HILL: Okay.

17 MR. TERAN: Go ahead.

18 MS. BERRY: I'm more attached to the emotional
19 part of the neighborhood and the fact that it is turning into
20 condos and apartments like we just saw these people up here,
21 you know, arguing that the group before us that were arguing,
22 yeah, I'm saying -- what I'm saying is as someone who loves
23 their neighborhood, I would -- we are doing something within
24 that.

25 CHAIRPERSON HILL: Oh, Ms. Berry, I'm just trying

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1 to intervene.

2 MS. BERRY: Yes.

3 CHAIRPERSON HILL: We understand that.

4 MS. BERRY: Right.

5 CHAIRPERSON HILL: And we are not -- and we love
6 all the -- there is no problem with any of the love about the
7 neighborhood or how great you guys are doing.

8 MS. BERRY: Right.

9 CHAIRPERSON HILL: That's why I'm interrupting
10 you.

11 MS. BERRY: Uh-huh.

12 CHAIRPERSON HILL: I don't think you are
13 understanding the discussion we are having up here.

14 MS. BERRY: Um-hum.

15 CHAIRPERSON HILL: It has nothing to do with all
16 those things, right?

17 MS. BERRY: Um-hum, right.

18 CHAIRPERSON HILL: It's whether or not what is so
19 unique about this, right, that can't even live within the
20 61.3. It's not that again you want access or things like
21 that. Like you are asking us to give you, grant you a
22 variance, right, which means that you can't use your
23 property. The Government is taking something from you,
24 right? You can't use your property unless we grant this.
25 Okay?

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1 And that's why we are struggling up here. You can
2 use your property, right? Okay. You just -- poor, Mr.
3 Berry, you are just going to have to get to your pool a
4 different way, okay? And so, you know, but go ahead and
5 finish.

6 MS. BERRY: Right. My reason for starting there
7 is to tell you that this house that we tore down, we didn't
8 know the condition of the house when we purchased it. So we
9 -- what we saw in mind, what we were able to do, this house
10 was condemned, police were constantly called. The
11 neighborhood was happy that we tore this house down. It had
12 to be torn down. We did not know that from looking at it,
13 because bums were living in there, but we later found out
14 that fires were started in there. And it was because of drug
15 deals.

16 So we had to so that. We wanted to keep the house
17 as it was. We did not want to tear the house down. That
18 added additional cost to us and we did that and the
19 neighborhood was happy. And now we are in the situation
20 where we are like wait a minute, we tore this house down and
21 everyone is like oh, good job, we are happy you did this for
22 the neighborhood, you know, but now we want to get the house
23 that we want and we are asking for 45 square feet and it's
24 a problem because D.C. has changed its laws.

25 The house that was already there and that D.C.,

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1 that the city abandoned for years just sat there rotting with
2 people using it for all types of bad things. And here we
3 are, we tear it down, everyone is happy, but now we do this
4 and pay the cost for it, but we can't get 45 square feet on
5 the house because we decided to do something to improve where
6 we live.

7 It doesn't -- it bothers me because we would have
8 kept the house if we would have been able to, but because we
9 weren't able to, now we are at a situation where we have to
10 follow new rules. And that's the problem, yeah.

11 CHAIRPERSON HILL: Okay. I'm just saying I don't
12 know what the rules are, that's why I'm trying to understand
13 whatever the --

14 MS. BERRY: The house was existing.

15 CHAIRPERSON HILL: -- you know --

16 MS. BERRY: Yeah.

17 CHAIRPERSON HILL: -- I don't understand what the
18 -- I still don't get the new rules.

19 MS. BERRY: Okay.

20 CHAIRPERSON HILL: But so again, whether it is 45
21 feet, whether it is 1 foot, whether it is 3 inches, you are
22 here for a variance, right? And so that's why it is a
23 problem, right? And again, we keep going -- and I'm trying
24 to figure this out also, because the Office of Planning what
25 they are saying is the fact that you had to tear it down, is

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1 the exceptional condition, right, or the exceptional
2 situation, right?

3 And so, you know, what I'm trying to understand
4 is this is the first time that this has happened, I think,
5 while I have been up here in terms of the Office of Planning
6 is using the fact that the exceptional situation was that the
7 building needed to be torn down, okay, and therefore, that
8 is how they are meeting the variance standard.

9 And so I'm trying to figure that. All right. So
10 anyway, before we start deliberating and I don't know whether
11 we are going to decide today, by the way, so I don't know
12 whether we are going to be able to decide today.

13 Do you have anything else you would like to add
14 in conclusion? Hi, Mr. Berry. By the way, Mr. Berry, this has
15 gone on way longer than I thought this was going to go.

16 MR. BERRY: I know. I'm going to try and be
17 quick.

18 CHAIRPERSON HILL: No, no, no. Just to let you
19 know, we are taking this very seriously.

20 MR. BERRY: I see that.

21 CHAIRPERSON HILL: And it's not -- I don't mean
22 to be flippant about the jokes that I was making earlier.

23 MR. BERRY: I'm not saying you were.

24 CHAIRPERSON HILL: We are trying to figure this
25 out. So go ahead, please.

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1 MR. BERRY: So my real question, right, when Mr.
2 Hart first spoke he said, you know, just help me practically
3 to understand why do you need this? How do we get here?
4 Right? And my answer, right, as the owner of the property
5 was and as everyone, my wife and Eric, have spoken about the
6 house was condemned. We lived next to the house for 13
7 years. We can't go in our back yard because mosquitos and
8 the homeless people and all these things are going on, right?

9 So I finally by the property from one person in
10 2017. I tracked down the other person in California. And
11 bought the other, you know, probably in 2018, right? I go
12 and I make it one unit. I would have absolutely kept the
13 house. I loved the house. It had ivy growing down the side.

14 And then the structural engineer comes out and
15 grabs a piece of brick and I don't think, you know, he still
16 worked with the house, it just crumbles, right? So he goes
17 well, why didn't we keep a part of the house, because I think
18 that that's great that D.C. does that. You see all these
19 glass buildings going up, but they got the four old row
20 houses there, I think that's a great look, right?

21 But I couldn't do that. Literally my brick was
22 no good, because the house burned down in the mid-90s and
23 what did D.C. do about it? They did nothing. They let it
24 go through the tax sale a couple of times, someone got it,
25 eight years later, I worked for seven years going to people's

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1 homes as the property changed hands, going to someone's
2 hearings at the tax sale and say hey, I'll buy it if you --
3 you know, like I worked for seven years to get my hands on
4 this house, right?

5 So I'm just looking at this practically like why
6 should we give a variance? Well, I'm not just here asking
7 for a variance. There is a global picture to this and it is
8 that all right, so I could have gotten a special exception.
9 Shoot I could build this house and get a special exception,
10 right now that's a messy part of it. I could have gotten a
11 special exception if I could have kept the house. I would
12 have kept the house.

13 CHAIRPERSON HILL: Yeah, Mr. Berry, I know. We
14 are all saying the same thing over and over again.

15 MR. BERRY: Yeah.

16 CHAIRPERSON HILL: And so you know, yeah, okay,
17 sorry. I'm just trying to say you are saying the same thing
18 again and again.

19 MR. BERRY: Yeah.

20 CHAIRPERSON HILL: But go ahead and finish, I'm
21 sorry to interrupt you.

22 MR. BERRY: Okay. And maybe I just need to get
23 my two cents out and then I'll feel better, you know, so I
24 appreciate you bearing with me. I appreciate everyone
25 bearing with me, I know they want to be heard as well, right?

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1 So I mean you threw my train of thought off.
2 Sorry about that.

3 MR. TERAN: Global idea.

4 CHAIRMAN HILL: I'm sorry.

5 MR. BERRY: You know, I just look at the common
6 sense of it all, right? Hey, Mr. Berry, if you had kept the
7 old property, right, that everyone wanted gone or wanted
8 fixed, we will give you a special exception, it wouldn't be
9 no big thing.

10 Okay. Let me do that. Oh, well, the house can't
11 stand. It has got to come down. If you keep a part of it,
12 then you can do it. Okay. I'll keep a part of it. Oh,
13 well, it all has got to come down. None of it is good.
14 Okay. Well, I'll tell you what, I'll get a building permit
15 and I'll come here before I get this original building
16 permit, but what does D.C. do after I buy the property? They
17 take the property value for tax purposes from less than
18 \$300,000 to \$770,000. And then what do they do? They tax
19 me at 10 percent on it.

20 So can I practically wait to come here and get a
21 building permit the proper way the first time? No, because
22 D.C. is about to charge me 77,000 a year in property taxes.
23 It's not practical. So what you need to do, Mr. Berry, what
24 does the head of DCRA tell me? Right? The lady who stepped
25 down Ms. Boling, Linda Boling, Lord, I've got her phone

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1 number and email. She helped me out.

2 She said what do you -- do you know what you need
3 to do, Mr. Berry, you need to get a building permit so I
4 cannot tax you at the 10 percent. So that's what I did. I
5 did what I had to do, because D.C. forced my hand. And then
6 I go and so I get my building permit and I go okay, well, now
7 let's apply for the special exception, that's what we applied
8 for, right?

9 And they go no, you don't need a special
10 exception. You need a variance. But in order to get a
11 variance, you are going to have to have some type of
12 traumatic event, right? How are you really being burdened
13 here? And I'm being burdened by the entire process of it,
14 right? And if D.C. hadn't have tried to steal my money at
15 10 percent, right, they never did that to the lady who lost
16 it to the tax sale. They didn't do it to the two
17 corporations that bought it from the tax sale.

18 Not -- I'm telling you 30 days after I bought the
19 second part of the property in December of 2017, I get
20 something in the mail in January and I even went down to the
21 office and wrote a letter and did the process of trying to
22 get it brought down. No, we won't do anything. So I'm doing
23 the right thing, right? I'm doing what everyone wants in
24 D.C., for people in the neighborhood to buy the properties.
25 I'm taking it from a two-unit to a one-unit. I'm staying

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1 within the guidelines of my own neighborhood.

2 People -- I know everyone in my neighborhood or
3 I know at least 60 percent. They are like they are so happy
4 that is coming down. I'm not going over, right? My proposed
5 is 64.7 percent. I think the neighborhood is over 64 percent
6 anyway, not to mention the buildings that are over 70 or 80,
7 because they had time to get a special exception. D.C.
8 didn't come and say give me my \$77,000.

9 So that's what led to all of this and now I'm here
10 because this is your process. I'm asking for a variance only
11 because you all have made me have to ask for a variance. And
12 the real caveat and you can tell me if I'm wrong, because I
13 sell cars, I don't know. But a year from now, right, my
14 house will be done in January, I could come here a year from
15 now and ask for a special exception and get this. But
16 because it's a variance I can't? Like this is just extra
17 messed up.

18 So to me it only makes sense to give the variance
19 here. I know we may have to go to someone else and they go
20 well, you gave that variance. Okay. Well, then you buy the
21 condemned house and tear it down, because it won't stand and
22 the -- have the head of DCRA tell you what to do. So you go
23 get a building -- you showed me all those steps and we will
24 give you a variance, too, because it's a bar to me. It's not
25 a bar that is unobtainable. And I feel like we are meeting

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1 that bar, even the Office of Planning thinks so. Even my six
2 neighbors who wrote letters, my 20 people who signed stuff,
3 the ANC. If you give variances, I don't know how we don't
4 get a variance here. So that's my two cents I wanted to say.

5 MEMBER JOHN: So, Mr. Berry?

6 MR. BERRY: Yes, ma'am?

7 MEMBER JOHN: Life is not fair.

8 MR. BERRY: Yeah, boy I tell my kids that all the
9 time. I'm not even looking for it to be fair.

10 MEMBER JOHN: Right.

11 MR. BERRY: I'm just trying to play within the
12 guidelines.

13 MEMBER JOHN: So let's not even --

14 MR. BERRY: Office of Planning --

15 MEMBER JOHN: -- talk about buying a car or
16 getting a car--

17 MR. BERRY: No, I said I sell cars.

18 MEMBER JOHN: That's not -- you know, I'm just--

19 MR. BERRY: Yeah.

20 MEMBER JOHN: Yeah. Let's not even talk about
21 that.

22 MR. BERRY: Yes, ma'am.

23 MEMBER JOHN: So you have had a lot of time,
24 because we understand your situation, everybody here
25 understands it.

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1 MR. BERRY: Yes, ma'am.

2 MEMBER JOHN: We see a lot of great designs every
3 week that we personally love. And I love your infinity pool
4 and I hope you can get it built and maybe invite us over 4th
5 of July or something. But your architect cannot even say
6 with a straight face why he can't build you a nice house with
7 your pool within the 61.3 percent and that's the problem.

8 MR. BERRY: Yeah.

9 MEMBER JOHN: And I know he is not going to
10 disagree with me.

11 MR. BERRY: And he -- but my opinion --

12 MEMBER JOHN: Okay?

13 MR. BERRY: -- is that he shouldn't necessarily
14 have to, right? And I know that we are here because we have
15 to --

16 MEMBER JOHN: Well, this is the last thing.

17 MR. BERRY: Okay. Yes, ma'am. I'm sorry.

18 MEMBER JOHN: So we have to live within the
19 regulations because the moment you get up out of that seat
20 and we allow the variance with this very tenuous connection,
21 you see all these developers behind there and all these
22 lawyers, they are going to come right in and say oh, but last
23 week in BXXX, this is what you did. And so we are entitled
24 when -- you know, why do you think these developers are
25 holding on to this little wall that is about to fall down?

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1 They are holding on to them because there is this
2 loophole that says if you have an existing building, however,
3 that is defined with a few bricks, then you can get
4 alteration and repair. But if you have a lot with nothing
5 on it, however it got there, and there are some exceptions
6 in the regulations which you apparently do not meet, so if
7 the next person comes in with this vacant lot and says oh,
8 I need to put up a pool or an infinity pool and I can't do
9 it any other way and I need a variance, what do we do, at
10 that point? There are no regulations.

11 So I think we have a lot of cases on this schedule
12 and we appreciate all you did for the neighborhood, but we
13 are stuck with the regulations as they are. And maybe this
14 discussion will help other people who come behind you, so
15 they can see how the Board struggles with these variances.

16 And I think since I have been here, I'm the new
17 kind on the block, I have seen a lot less variances for these
18 very tenuous burdens of proof. So I think it is getting
19 better and so I thank you for your patience, but I think we
20 really have to move along.

21 Mr. Chairman, that would be my recommendation.

22 MR. BERRY: Yes, ma'am.

23 CHAIRPERSON HILL: That's okay. I'm going with
24 the new kids on the block thing for a minute and just like
25 figuring out whether you're the new kid on the block.

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1 Okay. Oh, I'm going to go back with the
2 architect. And I am going to go back to the Office of
3 Planning one more time. By the way, we are going to take a
4 break after this.

5 And so the architect, so just so I understand, the
6 difference between the 61.3 percent design and the 64.7
7 percent design, what's the difference again? Like what was--
8 programmatically, why did you have to change it?

9 MR. TERAN: Well, we changed -- we bumped out the
10 3 feet on each floor, just made one of the bedrooms bigger
11 and the kitchen on the first floor bigger.

12 CHAIRPERSON HILL: So it's 3 feet?

13 MR. TERAN: Yeah, 3 feet by I think 15.5, 16 feet.

14 CHAIRPERSON HILL: Okay. Okay. 3 feet in the
15 rear?

16 MR. TERAN: Correct.

17 CHAIRPERSON HILL: Is that what you said?

18 MR. TERAN: Yes.

19 CHAIRPERSON HILL: Okay. On all of the floors.
20 And that's what is getting you over the -- that is what
21 increasing the couple percentage points?

22 MR. TERAN: Yes. And the spiral staircase that--
23 half of the spiral staircase overhangs the terrace.

24 CHAIRPERSON HILL: Right. It's the spiral
25 staircase that is also getting over the lot occupancy, right?

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1 MR. TERAN: Yes.

2 CHAIRPERSON HILL: Okay. So, Mr. Jesick, because
3 this is the -- I don't know we can deliberate. I don't know
4 where -- I actually don't know where I am exactly, maybe
5 everybody is where they are, so I don't know whether -- what
6 is going to happen in deliberation, but I want -- the Office
7 of Planning, do you -- and this is what I'm trying to
8 understand, right?

9 If we are kind of setting a precedent, then I want
10 to understand a little bit better, right? Because I don't
11 recall, and maybe you can just if you remember anything, I
12 mean, you guys talk amongst yourselves, right? Like how --
13 if -- do you think that this is setting some kind of a
14 precedent? I mean, how unique is this situation, right? How
15 is there -- you know, if somebody is going to come by again
16 with a similar situation, right, but they are going to want
17 to go to 70 percent, 80 percent, whatever it is, right? And
18 that's why I'm just trying to understand.

19 And I just want -- I guess, you are now part of
20 our deliberations. Like, you know, trying to understand the
21 practical difficulty, how you are connecting that with the
22 previous building and if you think -- first of all, do you
23 think we are setting a precedent?

24 How unique necessarily is this? I'll go with
25 that.

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1 MR. JESICK: I don't think you are setting a
2 precedent. I think it is very unique. I can recall one case
3 probably 10, 12 years ago where an adjacent rowhouse was
4 under construction. The subject property kind of collapsed
5 because of that construction and they, I believe, got a
6 variance to slightly increase their lot occupancy on the
7 third floor. These things come along very rarely, these
8 sorts of cases where the condition of the home lends itself
9 to the practical difficulty and the exceptional condition.

10 CHAIRPERSON HILL: Okay. All right. Anybody got
11 anything else for anybody?

12 MEMBER JOHN: Mr. Chairman, since I have been here
13 within the last several months --

14 CHAIRPERSON HILL: Yes.

15 MEMBER JOHN: -- we have had a case and I know the
16 lawyer and I can see the structure where there was a
17 snowstorm and the building collapsed. And there was a major
18 discussion about just how much of the building was left, so
19 there could be an alteration and repair, you know, not a
20 variance.

21 And so I just, you know, am really struggling.

22 CHAIRPERSON HILL: Okay. That's fine. So you
23 don't have any more questions for the Office of Planning?
24 Okay. Do you have any more questions for the Office of
25 Planning? Okay. We are all done. Okay. All right.

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1 I'm closing the hearing. All right. So, are we
2 ready to -- we can start deliberating. We can just start
3 talking. We can take a break and come back, you know,
4 because I -- yeah, does somebody want to -- I don't know
5 where I am. Okay. I mean, I am more -- well, yeah, I don't
6 know where I am. Does anybody? Somebody who really knows
7 where they are go ahead.

8 VICE CHAIR HART: And not the applicant. Yeah,
9 I think that we have kind of been talking about this for
10 about an hour now. And I think you understand the questions
11 that I had regarding the project, the questions that I had
12 for the architect, as well as the owners. And while I
13 understand it and I understand why they are asking for this,
14 I just can't get passed the -- and I understand that, you
15 know, how much that they are looking for.

16 I don't agree that there -- I think that because
17 they have an option that is -- that they have already said
18 that is at the whatever 61 percent, that asking for this is--
19 seems to be above what they had -- well, sorry, what they are
20 asking is above what they have already received an approval
21 for from -- I mean, they have gotten a permit on the design
22 already.

23 And so it is -- because of that, it doesn't seem
24 like they have -- that there is a necessity to go even higher
25 than what they have gotten for -- as a permit for that 61.3

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1 percent design, lot coverage design that they have already,
2 you know, stated as gone through DCRA.

3 And so asking for more than that seems -- it
4 doesn't seem justified. There -- I get that there was a
5 building that was there previously. I get that there was --
6 that building had to be removed, but it seems as though that
7 I am not -- and I understand OP's point about them not --
8 because that building had to be demolished, the existing
9 building had to be demolished, and I'll note a little bit
10 here.

11 When I bought a house or property, I made sure I
12 knew what was actually there. And that I'm not buying a
13 property unseen. So I understand that you might not -- they
14 may not have been able to get into the house, but it seems
15 as though when you put an investment down on something, you
16 are understanding what it is that you are kind of getting
17 yourself into.

18 Because of this very reason, because there are
19 things that you may be now connected to or may have to start
20 putting money into because you just didn't know. And even
21 if you don't see it, have somebody go in that can actually
22 look at it and be able to say this is what this is before
23 putting that outlay down, so that you know that there is not
24 going to be an issue. You know that there is going to be
25 extra things that actually happen.

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1 So while I can sympathize with the Berrys about
2 this, I do have the issue of we are being asked to do --
3 approve a variance and there isn't a connection between the
4 exceptional condition that has led to this practical
5 difficulty. And I just can't get passed it. I see that the
6 approved building permit of 61.3 percent is something that
7 says oh, well, we can actually do it within what the -- I
8 mean, close to what the zoning allows. The zoning allows 60
9 percent. The ZA gave, you know, the 2 percent over that,
10 which is fine.

11 I just see that as being well, if you are able to
12 do that, then why are we now being asked for something that
13 is, you know, above that. And again, I get what the Office
14 of Planning says, I just don't agree with them. So I would
15 not be in support of the application.

16 CHAIRPERSON HILL: Okay.

17 VICE CHAIR HART: And I know -- and you are very
18 well-aware that once we do the -- you know, if we decide to
19 vote against this, then the applicant will have to wait if
20 they are willing to -- if they want to come back. You know,
21 they have to -- they can't submit another application. They
22 are either building what 61 percent is or waiting, I guess,
23 if they want to ask for another -- some other relief. I
24 don't know what other relief that is.

25 CHAIRPERSON HILL: Yes, but they can't ask for

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1 another.

2 VICE CHAIR HART: No, no. Maybe that is just
3 going to the 61 percent.

4 CHAIRPERSON HILL: Okay. So you are a no. And
5 I would ask the Office of Planning a question.

6 Do I have to technically reopen the case again,
7 Ms. OAG?

8 MS. NAGELHOUT: Yes.

9 CHAIRPERSON HILL: Ms. OAG?

10 MS. NAGELHOUT: Yes, you closed the record so yes.

11 CHAIRPERSON HILL: Okay. I always love the
12 answer. Okay. I'm reopening the case. So for the Office
13 of Planning, the -- and I understand the argument that you
14 are making for the variance and I understand how you are
15 getting there, so beyond that, I just want to understand this
16 concept that if they had built -- you know, if they went
17 ahead and built the 61.3 percent, whatever right, and they
18 don't get the variance, right, and then they could come back
19 for a special exception, correct?

20 MR. JESICK: Yes, I believe that is correct.

21 CHAIRPERSON HILL: So again, this is the thing
22 that is just also annoying in terms of how this works, right?
23 So they could come back for a special exception later for the
24 additional 3 percent or whatever it is, correct?

25 MR. JESICK: 3 percent or they could go up to 70

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1 percent.

2 CHAIRPERSON HILL: They go up to 70 percent by
3 special exception. So and I'm just curious, so how then --
4 when is it -- I'm just talking zoning terms, when is it
5 technically built? Like when could they come back and ask
6 for a special exception?

7 Like let's say this gets denied, right? And you
8 go ahead and you build. You get your permit and so now you
9 have a permit for 61.3. When is it that it is built to the
10 point that they could come in and ask for a special
11 exception?

12 MR. JESICK: When we were initially evaluating
13 this application, we were looking at the exact wording of
14 5201, which is the special exception section and the
15 definition of building. And I think the definition of
16 building has to do with, you know, a structure with a roof,
17 etcetera.

18 So I think once it is under roof, maybe then it
19 would be considered a building and then they could ask for
20 5201. I would have to look at the exact wording and we would
21 probably want to get, you know, some kind of legal advice on
22 that.

23 CHAIRPERSON HILL: Right.

24 MR. JESICK: But yes.

25 CHAIRPERSON HILL: Right. And so if this were

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1 denied, and now I'm talking to OAG or just whoever wants to
2 answer this question, if this were denied, that's a denial
3 of a variance, right? So then they couldn't come back for
4 a year again asking for a variance. But just because this
5 is denied doesn't mean that they couldn't come back and ask
6 for a special exception later, correct?

7 MR. JESICK: I think that's correct. They could
8 come back in shorter duration than the 12 months.

9 CHAIRPERSON HILL: Right. And so just trying to
10 again talk this through a little bit more, they could come
11 back with the exact same design, right, and that wouldn't
12 hurt their case or anything, right? I mean, like, you know,
13 if they came back with the exact same design and this is, you
14 know, I think -- like I always feel smart when somebody up
15 here goes oh, I see where you are going with this.

16 So I was feeling smart there for a second. So
17 under roof is whatever under roof qualifies as, right? So
18 they could come back after it is under roof for a special
19 exception, go through this whole process again with the exact
20 same design and it wouldn't harm their case with the Office
21 of Planning.

22 MR. JESICK: It certainly wouldn't harm their case
23 with the Office of Planning. All those steps you mentioned,
24 we would just want to double check with OAG and the Zoning
25 Administrator and everyone just to be sure that's the actual

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1 process, you know, under roof and can they come back within
2 12 months, etcetera. So we would just want to double check
3 all those steps.

4 CHAIRPERSON HILL: Okay. The 12 month thing is
5 just all I'm trying to understand now. Again, like so there
6 is a possibility that if this were denied, then the 12 month
7 thing could come into effect if it's the same design? You
8 don't know?

9 MR. JESICK: I don't know.

10 CHAIRPERSON HILL: But it could?

11 MR. JESICK: We would have to look at the wording
12 in the regulations.

13 MEMBER JOHN: I think the regulation says
14 something about coming back on the same facts and I would
15 think a change in relief is not the same exact facts. And
16 anyway, I think that rule can be waived for good cause.

17 CHAIRPERSON HILL: Okay. All right. So we are
18 back here. Okay. We are having a hearing again. Okay? You
19 all have magically reappeared. And so we might take a break,
20 okay, just because we might need to take a break. But -- and
21 you guys can talk amongst yourselves, because what I'm just
22 trying to talk through here, and this is just because it's
23 just new to me, right? That under roof means something,
24 right?

25 And then once you are under roof, you could apply

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1 for a special exception versus a variance, right? What I'm
2 not clear on yet is whether or not your one year being able
3 to come back in and whether or not you guys understand this
4 or not and you guys didn't spend money on a zoning attorney,
5 correct? Yeah, that might have been another person that
6 might have been helpful.

7 So the -- if you all get denied now, you can't
8 come back here for a year, right? So you can withdraw your
9 application. Okay? And that will be up you, right? And
10 then you just withdraw your application. You are back to
11 zero. Okay? But -- and I'm throwing that out for no reason
12 I guess, because -- yeah, so I'm going to take a break.
13 Okay.

14 I'm going to take a 15 minute break and we are
15 going to come back. There you go.

16 (Whereupon, the above-entitled matter went off the
17 record at 11:57 a.m. and resumed at 12:09 p.m.)

18 CHAIRPERSON HILL: All right. Mr. Moy, let's call
19 us back to order, please.

20 MR. MOY: Thank you, Mr. Chairman. I think you
21 have already done so, so the hearing is back in session.

22 CHAIRPERSON HILL: Okay. Just so that everybody
23 knows what we are going to do here, we are going to try and
24 hear 20133 next. Okay. And then after that we are probably
25 going to take lunch. So if you are here, I hope you are

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1 getting paid by somebody. Okay.

2 Let's see. So I would like to -- since we have
3 this hearing still open, I just want to state a couple of
4 things for the record. I am not giving any kind of advice
5 up here. Okay? I'm just -- I literally am just kind of
6 trying to understand things up here. I don't know whether
7 any kind of a special exception could be granted. I don't
8 know anything about anything, okay? I'm just -- and I want
9 to be very clear to that. I was just trying to understand
10 how the Office of Planning had thought about different
11 applications.

12 So that being the case, we are still open. Is
13 there anything the applicant wants to say in conclusion?

14 MR. BERRY: I had a question.

15 CHAIRPERSON HILL: Okay. Oh, sorry.

16 MR. BERRY: And maybe you can't answer it, you
17 know, basically.

18 CHAIRPERSON HILL: What's the question?

19 MR. BERRY: My question is will I have to wait a
20 year to apply for a special exception if this is not granted
21 today?

22 CHAIRPERSON HILL: Right. That's where again I
23 don't know. You know, I mean, I don't know. I mean just
24 kind of hearing from the Office of -- the OAG's pontification
25 is that it seems to me, also it might be a different

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1 application, right, so therefore you wouldn't be confined by
2 the year. But also the Office of Planning then wasn't sure
3 either, right, as to what might happen, right?

4 So I don't -- I can't give you advice. Honestly
5 and I just don't know, right?

6 MR. BERRY: Okay.

7 CHAIRPERSON HILL: But to me, it seems as though,
8 you know, again, just thinking out loud, it seems as though
9 you would be able to come back because it would be a
10 different application, but I don't know. I can't say for
11 sure. Did you have something?

12 VICE CHAIR HART: Only that while I have given you
13 my kind of thoughts on this, you know, if the rest of the
14 Board Members are still trying to figure some of this out,
15 we could put -- give it a week and give some time to -- no?
16 Okay. That's fine.

17 CHAIRPERSON HILL: All right. Okay. I don't
18 think it is going to change anything.

19 All right. So you are done, right? Sure.

20 MR. TERAN: So we are just -- the new strategy
21 sounded like we probably won't get approved. Is it better
22 to withdraw now and then we don't have --

23 CHAIRPERSON HILL: Again, Mr. Teran, I appreciate
24 all this stuff. Again, like I really don't give advice. I
25 really don't, right? I was just kind of like thinking out

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1 loud and you have been here now for a very long discussion
2 and you have been actually -- since you guys haven't been
3 difficult, you have been able to participate in the
4 discussion. If you were difficult, I would have turned your
5 microphones off. Okay?

6 MR. TERAN: Yeah.

7 CHAIRPERSON HILL: So you know, we have been
8 trying to figure this out. It's been very hard, right? I
9 don't know, right? Okay. And so you know, I don't think it
10 matters one way or the other. I mean, you can just go ahead
11 and finish, all right, or you can do whatever you want to do,
12 but I can't give you advice. And I just took a break, right?

13 MR. TERAN: Yes.

14 CHAIRPERSON HILL: So do you have anything else
15 you would like to add?

16 MR. TERAN: No, I don't.

17 MR. BERRY: I think we should withdraw our
18 application, because I don't know if I can apply for a
19 special exception with you all and it seems as if as though--

20 CHAIRPERSON HILL: Okay. Yeah, I mean, that's on
21 you. If you want to withdraw your application, then -- I
22 mean, now I've got to turn to OAG. So to OAG, to withdraw--
23 can an applicant just withdraw an application like that?

24 MS. NAGELHOUT: I think it is supposed to be done
25 in writing. If you wanted to, you could just stop this and

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1 set it for decision next week and then --

2 CHAIRPERSON HILL: Got it.

3 MS. NAGELHOUT: -- it will drop off if they do
4 withdraw.

5 CHAIRPERSON HILL: Okay. So if you guys want to
6 withdraw, you have to do it officially, if you don't, we are
7 going to have a vote next week. Okay? So we will put it on
8 put it on for a vote next week, Mr. Moy?

9 MR. MOY: Yes, sir, that would be October the
10 30th.

11 CHAIRPERSON HILL: Okay. And, Mr. Turnbull, you
12 can just submit by absentee.

13 COMMISSIONER TURNBULL: Yes.

14 CHAIRPERSON HILL: Okay. All right. Okay, guys,
15 thanks for coming in. It has been a lot of fun.

16 MR. BERRY: Thanks.

17 MR. TERAN: Thank you.

18 CHAIRPERSON HILL: All right. Okay. Mr. Moy, you
19 can call our next one and then we are going to take lunch.

20 MR. MOY: All right. Case Application No. 20131
21 of Qinglong Chen. This is a request for a special exception
22 under Subtitle E, § 5203.3, from the rooftop addition
23 requirements of Subtitle E, § 206.1, to remove a rooftop
24 architectural element on an existing detached principal
25 dwelling unit RF-1 Zone. This is at 711 Lawrence Street,

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1 Northwest, Square 3653, Lot 24.

2 CHAIRPERSON HILL: Okay. If you could, please,
3 introduce yourself for the record? You need to push the
4 button there on the microphone.

5 MR. CHEN: Yeah, My name is Qinglong Chen. I'm
6 owner of the 711 Lawrence Street.

7 CHAIRPERSON HILL: Okay. Mr. Chen, your last name
8 is spelled C-H-E-N?

9 MR. CHEN: Yes, C-H-E-N.

10 CHAIRPERSON HILL: Okay. And are you here
11 representing yourself?

12 MR. CHEN: Yes.

13 CHAIRPERSON HILL: Is there anyone else here
14 representing you in terms of architects or legal or it's just
15 another member of your family? I mean, somebody is raising
16 their hand, so I don't know. You are here representing
17 yourself. You are the only one here currently for your
18 application, correct?

19 MR. CHEN: I don't --

20 CHAIRPERSON HILL: Okay. You can come sit up
21 here, please, and just introduce yourself.

22 MR. CHEN: I'm sorry.

23 CHAIRPERSON HILL: That's all right, Mr. Chen.

24 MS. DONG: Yeah, my name is Lijun Dong. I'm his
25 friend. I'm here to help him translate if he needs.

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1 CHAIRPERSON HILL: Oh, okay. All right.

2 MS. DONG: And then his wife also there.

3 CHAIRPERSON HILL: Okay. All right. So, Mr.
4 Chen, if you could kind of go ahead and walk us through your
5 application and tell us what you are trying to do and why you
6 think you meet the standard, the criteria for us to grant the
7 application. Okay? I'm going to put 15 minutes on the clock
8 and you can begin whenever you like.

9 MR. CHEN: Yeah, because I bought a house.
10 Actually, they finish before I buy the house. So I don't
11 know that -- what they do.

12 VICE CHAIR HART: When did you buy the house?

13 MR. CHEN: I bought it after --

14 VICE CHAIR HART: If you are going to -- if you
15 want to, you can come to the dais as well.

16 CHAIRPERSON HILL: That's all right. Just
17 introduce yourself again, please. You need to push the
18 button. You need to push the button.

19 MS. CHEN: Hi, how you? My name is Bizhen Chen.
20 I'm 711 owner, too. We come --

21 CHAIRPERSON HILL: Okay. Can I interrupt you one
22 second? You need to turn off those two microphones. Only
23 one microphone can be on at a time. Thank you.

24 MS. CHEN: Sorry.

25 CHAIRPERSON HILL: It's all right.

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1 MS. CHEN: Okay. We bought the house in the 2016
2 August. I don't know that they say under -- allege therefore
3 are legal, but we never do anything. We just -- they build
4 up their house in 2011. This not our do. So I don't know
5 how to do now.

6 CHAIRPERSON HILL: I understand. That's okay.

7 MS. CHEN: Yeah.

8 CHAIRPERSON HILL: All right. Okay. How do you
9 spell your last name for me?

10 MS. CHEN: C-H-E-N.

11 CHAIRPERSON HILL: Oh, Ms. Chen, also.

12 MS. CHEN: Yeah.

13 CHAIRPERSON HILL: Okay. Great. All right. I'm
14 going to turn to the Office of Planning.

15 MS. THOMAS: Yes, good morning, Mr. Chair and
16 Members of the Board. From what we understand, this is --
17 was an ongoing issue at DCRA with respect to this house. The
18 applicants were unaware of any issue with the house when they
19 purchased the house and DCRA just wants this matter cleared
20 up for their records. Apparently even though the house was
21 built and redone in 2011, because they purchased the house
22 in August of 2016 and I don't know why I have tried to get
23 this explanation from DCRA, but the roof line, the house was
24 rebuilt actually from what it was.

25 CHAIRPERSON HILL: Ms. Chen, could you turn off

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1 your microphone for me? Thank you.

2 MS. THOMAS: And built with a third floor. It was
3 a two-story house and so DCRA wants them to come in and
4 address the issue of the roof line. The change in the roof
5 line because it's an RF-1 Zone.

6 What has happened is that -- what the issue is to
7 me is in this RF-1 Zone, this house is a detached house by
8 itself. It's on a very large lot, but because there is this
9 roof line provision in the RF-1 Zone, DCRA wants them to come
10 in and clear it up, but this is not through anything that
11 they had to do it.

12 So just for the record, we wrote a report and we
13 have no objection to the house as it is now, because it has
14 been that way for the last, since 2011, eight years, I guess,
15 yeah. They just --

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

18 VICE CHAIR HART: Just one quick question. Go
19 ahead.

20 COMMISSIONER TURNBULL: No, I just -- the -- there
21 is a set of floor plans in the record by Dong Architects,
22 which is two -- I think they are dated 2016. How does that
23 come into play?

24 MS. THOMAS: I really don't know. Apparently the
25 applicant -- could you explain how you got those plans in

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1 there?

2 MS. CHEN: Yeah. 2016, I think, after they bought
3 house, they -- at one time they want to like subdivide into
4 two units, but then later they withdraw the application.

5 COMMISSIONER TURNBULL: Oh, so the plans don't
6 reflect anything or --

7 MS. CHEN: No, yeah, we were told by DCRA we need
8 to apply for as-built for the third floor.

9 COMMISSIONER TURNBULL: As-built for the third
10 floor?

11 MS. CHEN: Yeah, yeah, yeah. So it's the as-built
12 plan.

13 COMMISSIONER TURNBULL: All right. So this
14 reflects the way the house is now?

15 MS. CHEN: Yeah, yeah, exactly. Yeah, we are not
16 going to do any new work.

17 COMMISSIONER TURNBULL: New -- all right. So
18 that's just -- okay, thank you.

19 MS. CHEN: Everything is existing, yeah.

20 COMMISSIONER TURNBULL: All right. Thank you.

21 VICE CHAIR HART: So the only question that I had
22 and I'm just trying to understand this, the original building
23 was demolished.

24 MS. CHEN: From what --

25 VICE CHAIR HART: Before 2011.

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1 MS. CHEN: Yes, from -- no, I'm sorry. It's not
2 demolished. It -- they --

3 VICE CHAIR HART: No, I'm sorry, I was just asking
4 the Office of Planning.

5 MS. CHEN: Oh.

6 VICE CHAIR HART: What I'm trying to understand
7 is the building, there was a building there before 2011.
8 That building has been demolished and there is a new building
9 that is built-in-place.

10 MS. THOMAS: Yes, from what we observe in the
11 records and the photograph records and the GIS, yes, that
12 building was -- the original building was a two-story type
13 bungalow and it is now that new structure that -- with three
14 stories, yes. And that's what they bought.

15 VICE CHAIR HART: Okay. And so --

16 COMMISSIONER TURNBULL: Can I clarify something?
17 I mean, was it the whole building or was it just the roof and
18 the third floor at the top removed, not the whole building?

19 VICE CHAIR HART: That's the part that I'm trying
20 to figure out.

21 MS. THOMAS: From what I could observe, just from
22 visual records, it seems to be the whole building. I can't
23 verify that and DCRA didn't speak to me about that.

24 VICE CHAIR HART: And so, Ms. Chen -- Dong, you
25 are saying that the building -- that part of the existing

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1 building that was before 2011 is still there? They have just
2 added a floor and they have probably reclad or put other --
3 so the building wasn't totally demolished?

4 MS. CHEN: No.

5 VICE CHAIR HART: Yeah, if you could just say that
6 on the record.

7 MS. DONG: Yeah, there is -- the existing building
8 was two-story. In 2011, the previous owner build addition.

9 VICE CHAIR HART: Okay.

10 MS. DONG: And when they replace the roof, they
11 replace the roof element.

12 VICE CHAIR HART: And so how did you come to know
13 this information? I just don't know. Are you --

14 MS. DONG: We got the plan from 2011 permit.

15 VICE CHAIR HART: Okay. And are those in the
16 record?

17 MS. DONG: Yeah.

18 VICE CHAIR HART: Okay. Maybe I'm missing that.
19 I have the drawings. Can you tell me where those are?

20 MS. DONG: Let me see --

21 VICE CHAIR HART: I mean, I only see -- I only saw
22 the one set of plans, so is there another set of plans?

23 MS. DONG: Oh, okay. I think the 2011 plan is not
24 in the record.

25 VICE CHAIR HART: Okay. The reason I'm asking

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1 that is what I'm trying to figure out is why are we-- if the
2 building is from 2011 --

3 MS. DONG: Um-hum.

4 VICE CHAIR HART: -- if the original building was
5 demolished as the Office of Planning says --

6 MS. DONG: Um-hum.

7 VICE CHAIR HART: -- and a new building was built
8 in its place, then I don't know why there is an issue with
9 the third floor, because it's an entirely new building. So
10 I just couldn't quite understand the connection between all
11 of that.

12 However, if what you said is now true and they,
13 I can kind of understand that the third floor would have been
14 rebuilt or demolished and then they added a third floor or
15 sorry, the roof would have been demolished and they added a
16 third floor, didn't that kind of make sense to me that the
17 relief that they were requesting is for, you know, an
18 architectural, what is it, I can't remember the name of it,
19 the architectural element on the third floor being --

20 MS. DONG: Yes.

21 VICE CHAIR HART: -- the roof element being
22 changed. I kind of understand that a little bit better, but
23 I just didn't understand the -- what the Office of Planning
24 was saying that if it was a demolished building, that part
25 didn't make sense to me.

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1 So I think this is a little bit -- I hope this is
2 a little bit clearer to me. That's all the questions I have.

3 CHAIRPERSON HILL: Okay. Does anyone have any
4 more questions for the Office of Planning? Does the
5 applicant have any questions for the Office of Planning?

6 Is there anyone here who wishes to speak in
7 support? Is there anyone here who wishes to speak in
8 opposition? Is there anything else you would like to add at
9 the end, Mr. Chen?

10 MR. CHEN: No.

11 CHAIRPERSON HILL: Okay. That's all right. No
12 problem. I know what ma means, so that's why I was smiling.

13 All right. Okay. I'm going to close the hearing.
14 Is the Board ready to deliberate? Okay. I'm going to start
15 deliberating. I am going to agree with the analysis of the
16 Office of Planning, as provided. I understand and I didn't
17 speak to it, to the testimony, but the ANC-5E did submit an
18 email that basically said that they weren't going to talk
19 about, they weren't going to have a position.

20 So I do think that the applicant has done some
21 community outreach and I am going to again, agree with the
22 Office of Planning's analysis and vote to approve.

23 Is there anything anyone else would like to add?

24 VICE CHAIR HART: No, I would concur with that.
25 I would just make sure that the applicant is aware that they

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1 have quite a bit of parking, at least the images that I saw
2 on the front.

3 MS. DONG: That was also done in 2011.

4 VICE CHAIR HART: Okay. Well, I'm just saying
5 that you may want to check with the D.C. Public Space
6 Committee which is through the District Department of
7 Transportation about that, the front, because I think there
8 may be a larger curb-cut than may be allowed, but I don't
9 know that. I just think you need to check it. So that's it.

10 CHAIRPERSON HILL: Okay. All right. Okay. I'm
11 going to make a motion to approve Application No. 20131, as
12 captioned and read by the Secretary, and ask for a second.

13 MEMBER JOHN: Second.

14 CHAIRPERSON HILL: Motion made and seconded.

15 All those in favor say aye.

16 ALL: Aye.

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

19 MR. MOY: Staff would record the vote as 4-0-1.
20 This is on the motion of Chairman Hill to approve the
21 application for the relief requested. Seconding the motion
22 is Ms. John. Also in support Vice Chair Hart and Zoning
23 Commissioner Michael Turnbull. No other members present.

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

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1 MS. DONG: Thank you.

2 CHAIRPERSON HILL: You're welcome. We are going
3 to take a break for lunch. We are going to come back maybe
4 at 1:15. Okay. Thank you.

5 (Whereupon, the above-entitled matter went off the
6 record at 12:27 p.m. and resumed at 1:30 p.m.)

7 CHAIRPERSON HILL: All right. Mr. Moy, we're
8 going to get back and I'm going to let you call us together.
9 We are going to just flip to -- I think the applicants are
10 all the same, so we're going to flip No. 4 for No. 5 in our
11 docket, so if you wouldn't mind calling it in that order?

12 MR. MOY: Thank you, Mr. Chairman. The Board is
13 back. The Board is returning to its hearing session. The
14 time is about 1:30 p.m. and as the Chair just mentioned, the
15 next case application before the Board is Application No.
16 20124 of Sam and Joelle Ballew, B-A-L-L-E-W. This is a
17 request for relief for special exceptions under Subtitle E,
18 § 5201. This is from the lot occupancy requirement, Subtitle
19 E, § 304.1, rear yard requirement, Subtitle E, § 306.1. This
20 would construct a two-story rear addition to an RF-1 Zone at
21 333 9th Street, Southeast, Square 924, Lot 38.

22 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
23 Moy. Good afternoon. Could you, please, introduce yourself
24 for the record?

25 MS. FOWLER: Hi, I'm Jennifer Fowler. I'm the

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1 architect representing the homeowners.

2 CHAIRPERSON HILL: Okay. Ms. Fowler, do you have
3 an infinity pool on your roof?

4 MS. FOWLER: No, I don't. Not yet.

5 CHAIRPERSON HILL: Okay.

6 MS. FOWLER: I'm working on it.

7 CHAIRPERSON HILL: All right. If you could go
8 ahead and tell us about your application and how you believe
9 that you are meeting the criteria for us to grant the
10 requested relief. I'm going to put 15 minutes on the clock,
11 Mr. Moy, so I know where we are. And you can begin whenever
12 you like.

13 MS. FOWLER: Okay. Thank you. So this is an
14 existing three-story row dwelling on Capitol Hill and 9th
15 Street, Southeast. It technically has a cellar or basement,
16 but because the ceiling height is higher than 4 feet, it's
17 considered three-stories. The homeowners originally
18 contacted me looking to do a third -- a rooftop addition, but
19 seeing that it would be considered a fourth level, we kind
20 of looked towards a rear expansion, which then was triggering
21 kind of special exception relief, rather than variance.

22 So we are proposing a very modest addition. It's
23 approximately 11 feet deep. It is at the upper two levels.
24 So the lower level, which is currently their kitchen and
25 living space, dining space will remain as it is. And then

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1 we are going to expand the upper two levels. So technically,
2 well, it's the first and second floor.

3 The top level of the addition will actually have
4 a dogleg, a court on the north side in order to maintain the
5 window in the bedroom that is existing there. So again, this
6 is a single-family residence. They are just kind of looking
7 to create some additional living space and some additional
8 bedrooms for their family up on the upper level.

9 It is -- we are asking for relief for lot
10 occupancy and also for the rear setback. The lot occupancy
11 we are proposing 70 percent, so underneath the cutoff for 70
12 percent for variance. And we are also asking for the rear
13 yard setback from the rear property line. So we are just
14 under the 20 foot requirement at 19 foot 8 inches.

15 So those are the two elements that we are looking
16 for. We have letters of support from the two adjacent
17 neighbors who have reviewed the plans and are fine with the
18 project. It's a landlocked property, so there is really no
19 visibility from any public way. There is a two-story
20 carriage house immediately behind the property that actually
21 belongs to 824 D Street, Southeast, and there is also a
22 number of carriage houses on the alley, so this is just kind
23 of a landlocked property. You can't really see it from
24 anywhere, aside from the adjacent neighbors and possibly from
25 the carriage house behind.

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1 Again, this has been supported by the ANC, the
2 CHRS, and the adjacent neighbors. So I will rest, leave it
3 at that and open it up to questions. Thank you.

4 CHAIRPERSON HILL: I just have a quick -- the 331
5 9th Street, are you guys -- I mean, I know they are in
6 support.

7 MS. FOWLER: Uh-huh.

8 CHAIRPERSON HILL: But in terms of like that, are
9 you blocking more windows as you are kind of going farther
10 out? I mean, I know you are keeping that dogleg there, but
11 I was just curious.

12 MS. FOWLER: They do have limited windows on that
13 floor. They have -- there is a glass door on the first floor
14 and then another window on the second floor facing this
15 property. And then they have actually a rear extension that
16 comes out, it looks like, about 10 feet beyond the original
17 house that does not have windows on the second floor, but
18 has, it looks like, high windows on the first floor.

19 CHAIRPERSON HILL: All right. So you are blocking
20 that second story window and that other window on the first
21 floor?

22 MS. FOWLER: Well, I think the ones on the
23 extension are a good bit further out than where we are
24 building. So I think it would be kind of impacting the
25 windows in the court that are kind of further back.

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1 CHAIRPERSON HILL: All right.

2 MS. FOWLER: But they are comfortable with the
3 proposal regardless.

4 CHAIRPERSON HILL: Okay. Okay. Does the Board
5 have any questions for the applicant? Okay. I'll turn to
6 the Office of Planning.

7 MR. COCHRAN: Thanks, Mr. Chair. OP is
8 recommending approval of both special exception requests and
9 we would note that the ANC has also, since we filed a report,
10 filed a letter in support of the application.

11 There is just one thing for the record I wanted
12 to be sure about. Our report says that your rear yard would
13 be 19.6 feet. I think I just heard you say 18 something.
14 So I just wanted to be clear of when you go to DCRA what the
15 actual figure is.

16 MS. FOWLER: Yeah, I think it is 19 foot 8 inches.

17 MR. COCHRAN: Okay.

18 MS. FOWLER: Or 19.6 --

19 MR. COCHRAN: Thanks.

20 MS. FOWLER: Yeah.

21 CHAIRPERSON HILL: Okay. Does the Board have any
22 questions for the Office of Planning? Does the applicant
23 have any questions for the Office of Planning?

24 MS. FOWLER: No, thank you.

25 CHAIRPERSON HILL: Is there anyone here wishing

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1 to speak in support? Is there anyone here wishing to speak
2 in opposition? Is there anything the applicant would like
3 to add at the end?

4 MS. FOWLER: No, thank you.

5 CHAIRPERSON HILL: Okay. I'll go ahead and close
6 the record. Is the Board ready to deliberate?

7 VICE CHAIR HART: Yes.

8 CHAIRPERSON HILL: Okay. I would also be in
9 agreement with the analysis that was provided by the Office
10 of Planning, as well as that of ANC-6B. The neighbors were
11 in support and I was just kind of curious again as far as the
12 -- that dogleg, but it seems that the neighbors are
13 comfortable with the view or the light and air that would be
14 getting in through those windows. But I do believe that they
15 have met the criteria and I'll be voting to approve.

16 Is there anything else anyone would like to add?

17 VICE CHAIR HART: Only that it's a really nice
18 looking house. The architectural design of the front, I mean
19 I know you are not doing that, but it just is rather nice.

20 CHAIRPERSON HILL: Okay. Great. All right. I'm
21 going to make to approve Application No. 20124, as captioned
22 and read by the Secretary, and ask for a second.

23 VICE CHAIR HART: Second.

24 CHAIRPERSON HILL: Motion made and seconded.

25 All those in favor say aye.

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1 ALL: Aye.

2 CHAIRPERSON HILL: All those opposed? The motion
3 passes. Mr. Moy?

4 MR. MOY: Staff would record the vote as 4-0-1.
5 This is on the motion of Chairman Hill to approve the
6 application for the relief requested, seconding the motion
7 was Vice Chair Hart. Also in support Ms. John and Zoning
8 Commissioner Michael Turnbull. No other Member present.

9 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
10 Moy. Thank you.

11 MR. MOY: The next case application is Application
12 No. 20128 and this is the Application of Matthew Pregmon and
13 Arielle?

14 MS. GIERGERICH: Arielle Giergerich.

15 MR. MOY: Thank you. This is the request for
16 relief for special exception under Subtitle E, § 205.5 and
17 5201 from the rear yard requirements of Subtitle E, § 205.4,
18 Subtitle E, § 5201 from the lot occupancy requirements,
19 Subtitle E, § 304.1 and from the non-conforming structure
20 requirements, Subtitle C, § 202.2. This would construct a
21 rear third floor addition on an existing attached principal
22 dwelling unit. RF-1 Zone. This is at 1421 D Street,
23 Southeast, Square 1062, Lot 101.

24 CHAIRPERSON HILL: Okay. Great. Thank you.
25 Could you, please, introduce yourself for the record?

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1 MS. FOWLER: Hello. I'm Jennifer Fowler.

2 CHAIRPERSON HILL: Okay. All right. Ms. Fowler,
3 if you could go ahead and walk us through your application,
4 what your client is trying to do as well as how you are
5 meeting the criteria for us to grant the relief requested?
6 I guess you could speak, I guess, to the CHRS concerns that
7 they have and I'm going to put 15 minutes on the clock, Mr.
8 Moy, just so I know where we are, and you can begin whenever
9 you like.

10 MS. FOWLER: Okay. Thank you. This is an
11 existing single-family house on D Street, Southeast, with no
12 basement, no cellar, just a two level property. The
13 applicant/owner is hoping to expand the upper floor, the
14 second floor with a rear addition and then a rooftop
15 addition.

16 So existing, there is the original brick house and
17 then you have about an 8 foot deep two-story sleeping porch
18 that was enclosed at some point. The first floor has already
19 been renovated and there is -- the kitchen is kind of in the
20 back of the house, so they are not hoping to expand on the
21 first floor. Where they really need the additional space was
22 on the upper floors for bedrooms, sleeping areas.

23 So the second floor we are kind of expanding an
24 additional 4 foot 7 beyond the existing porch wall, sunporch.
25 And then we are doing a full third floor addition on top of

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1 that kind of extending out to that depth as well.

2 So again, we are asking for relief for adding to
3 a non-conforming structure. The lot occupancy and also the
4 fact that we are going 2 feet 10 inches passed the allowed
5 rear setback, you know, the distance from the adjacent
6 neighbor's rear walls.

7 So the goal again, the goal is to add bedroom
8 space on the upper floors for their growing family and as
9 well an office space.

10 So there is -- it's very similar to other -- a
11 couple other properties on the block. There are at least two
12 other third floor additions to the east, one of which extends
13 to the front of the house and another one which is setback.

14 On the front of the house we are planning to keep
15 the cornice intact and we are building up above that and we
16 are going to extend the facade with brick facing with the
17 details to match the facade below. So trying to keep it more
18 in keeping with the block and the neighborhood.

19 As it goes back, we are going to go to kind of
20 lighter materials in the rear, a little more contemporary
21 look. Part of it is because we are kind of overlapping. We
22 are cantilevering over the existing first floor structure,
23 so we wanted to keep it more light and modern.

24 Fortunately due to the orientation of the
25 property, it sits -- it faces to the north, the facade. The

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1 addition is on kind of the south end of the house. The sun
2 impacts are pretty minimal to the adjacent neighbors. Most
3 of the shadows are cast towards the rooftops of the houses
4 and neither of them have solar panels.

5 And we did find that, you know, in the morning
6 hours 1419 will be impacted somewhat, but it is never going
7 to lose, you know, all the light on its rear wall. And then
8 the same thing for the afternoon at 1423, there will be some
9 impacts in the afternoon.

10 We also kind of analyzed to make sure there was
11 no impacts to anybody on Kentucky, which is kind of the
12 diagonal street behind this addition, and there was no impact
13 at all to those properties.

14 The owners of 1419 and 1423 have signed letters
15 of support and we have I think about seven or eight letters
16 of support in the file. It was generally very well-received
17 by the neighbors.

18 Regarding the CHRS, I did present the plans to
19 them. Unfortunately, they don't do any kind of discussions
20 in front of the applicants, so I don't really know, you know,
21 exactly what the conversations were. I do know that they
22 have -- they tend to not really care for third floor
23 additions, so that's all I can say as far as that is
24 concerned.

25 CHAIRPERSON HILL: Okay. Does the Board have any

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1 questions for the applicant? Just real quick, you guys are
2 going 12 feet back? Is that how far you are going back?

3 MS. FOWLER: It's 12 feet 10 inches.

4 CHAIRPERSON HILL: Okay. And so you are going 2
5 feet 10 inches past what you can go, right?

6 MS. FOWLER: Correct.

7 CHAIRPERSON HILL: So how come you just, I'm just
8 curious, how come programmatically got just 2 feet 10 inches
9 more?

10 MS. FOWLER: I think it was partially just to try
11 and fit in. It's a relatively small house and so trying to
12 fit in. They needed a small office space with a door,
13 because one of them works at home, and also the two bedrooms
14 and bathroom on the top floor was kind of the driving force
15 for that space.

16 And if you look at A3, which is in the plans, they
17 are not huge rooms. You know, we are just trying to kind of
18 create comfortable spaces there. And we were going to have
19 to get occupancy relief in 202.2 regardless, so they wanted
20 to go ahead and try to get the --

21 CHAIRPERSON HILL: You know, I'm just curious why
22 you didn't go more, you know.

23 MS. FOWLER: Oh, okay.

24 CHAIRPERSON HILL: Like how come you settled on
25 the 2 feet whatever inches?

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1 MS. FOWLER: I think part of it was just -- yeah,
2 this is just what we needed to make it work.

3 CHAIRPERSON HILL: Okay.

4 MS. FOWLER: We didn't want to push the limits.

5 CHAIRPERSON HILL: Okay. All right. Does anybody
6 have any questions for the applicant?

7 COMMISSIONER TURNBULL: I do, Mr. Chair.

8 CHAIRPERSON HILL: Mr. Turnbull?

9 COMMISSIONER TURNBULL: One of the things in the
10 CHRS letter, they wanted you only to go to the 10 foot line.
11 They thought that would mitigate shadows. Is there any
12 comment on that or is there much? I wouldn't think 2 feet
13 would be significant.

14 MS. FOWLER: I mean, I think any little bit helps,
15 but I also think we have looked at -- you know, we did the
16 sun study and we -- no one has raised, aside from CHRS, has
17 raised concerns about the shadows.

18 COMMISSIONER TURNBULL: Okay.

19 MS. FOWLER: And I only saw their letter this
20 morning, so I really didn't have a chance to go in and, you
21 know --

22 COMMISSIONER TURNBULL: But the neighbors on
23 either side are not really concerned?

24 MS. FOWLER: Correct.

25 COMMISSIONER TURNBULL: I'm just curious on the

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1 treatment of the exterior of the metal panels.

2 MS. FOWLER: Yes.

3 COMMISSIONER TURNBULL: And how you went with
4 that, just curious.

5 MS. FOWLER: We have done another -- we had
6 another addition we did down the street. There was a third
7 floor that -- where we used a similar product and we have
8 gotten a lot of good feedback from the neighbors and people
9 we know from that. And part of it is the light colored metal
10 just tends to disappear and it is a very high-end product.
11 It's not like an inexpensive kind of metal.

12 COMMISSIONER TURNBULL: Yes.

13 MS. FOWLER: But it just really especially on a
14 gray day, you almost -- it just matches the color of the sky,
15 so it's --

16 COMMISSIONER TURNBULL: Okay.

17 MS. FOWLER: -- a little less jarring than some
18 of the other materials. But the idea was we do want to have
19 the brick on the front and we are wrapping the brick.

20 COMMISSIONER TURNBULL: Yeah.

21 MS. FOWLER: And there is another addition a few
22 doors down that has a similar treatment, but kind of was an
23 alternative to the HardiePanel, HardiePlank siding.

24 COMMISSIONER TURNBULL: I was just curious.

25 MS. FOWLER: Yeah.

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1 COMMISSIONER TURNBULL: I mean, that was what you
2 would normally see is someone would put HardiePlank there.

3 MS. FOWLER: Exactly.

4 COMMISSIONER TURNBULL: Okay.

5 MS. FOWLER: Yeah.

6 COMMISSIONER TURNBULL: All right. Thank you.

7 MS. FOWLER: Um-hum.

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

10 MS. ELLIOT: Good afternoon, Mr. Chair and Members
11 of the Board. I'm Brandice Elliot representing the Office
12 of Planning.

13 We are recommending approval of the relief that
14 has been requested for the rear wall extension, lot occupancy
15 and addition to non-conforming structure.

16 I'll stand on the record of our report, but I'm
17 happy to answer any questions you have.

18 CHAIRPERSON HILL: Does the Board have any
19 questions for the Office of Planning? Does the applicant
20 have any questions for the Office of Planning?

21 MS. FOWLER: No, thank you.

22 CHAIRPERSON HILL: Is there anyone here wishing
23 to speak in support? Is there anyone here wishing to speak
24 in opposition?

25 Ms. Fowler, is there anything you would like to

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1 add at the end?

2 MS. FOWLER: No, thank you.

3 CHAIRPERSON HILL: All right. I'm going to close
4 the hearing. Is the Board ready to deliberate? Does
5 somebody else want to deliberate?

6 VICE CHAIR HART: Sure. I'll start. Thanks.
7 Yeah, I am in support of the application. I think the
8 applicant provided sufficient information about how they meet
9 the criteria for allowing the relief which has to do with the
10 rear yard addition as well as the lot occupancy relief.

11 I think that the sun study, you know, in looking
12 at how it affects light and air aspect of it, I think the sun
13 study was very helpful in understanding this. Because the
14 property is on the south side of the road, that the shadows
15 would then be cast to the, you know, other side. I think
16 that helps in some ways, in many ways actually, because the
17 impacts wouldn't be as pronounced if the property was on the
18 north side of the road and then the shadows would be cast
19 behind it.

20 You know, I do have the -- while I'm not always
21 in favor of having expansions to the north, I understand that
22 this is a relatively small lot that we are talking about or
23 the building that we are talking about. And I didn't have
24 that much of an issue with the height, the height actually
25 is allowed, so I would be in support of the application. And

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1 that's it.

2 CHAIRPERSON HILL: Okay. Actually before we
3 continue on, I want to reopen the record. I want to ask the
4 applicant something.

5 The letter that you get -- that we got from, you
6 know, Capitol Hill Restoration Society, they are talking
7 about shadowing effect on one of the properties. But the
8 other -- both adjacent neighbors were in support, correct?

9 MS. FOWLER: That's correct.

10 CHAIRPERSON HILL: Okay. All right. I'm closing
11 the record again.

12 MS. FOWLER: Okay.

13 CHAIRPERSON HILL: So anybody else want to
14 deliberate?

15 COMMISSIONER TURNBULL: I would just concur with
16 the Vice Chair.

17 CHAIRPERSON HILL: Okay. I will also be in
18 agreement. I'm going to move to approve Application No.
19 20128, as captioned and read by the Secretary, and ask for
20 a second.

21 VICE CHAIR HART: Second.

22 CHAIRPERSON HILL: Motion made and seconded.

23 All those in favor say aye.

24 ALL: Aye.

25 CHAIRPERSON HILL: All those opposed? The motion

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1 passes. Mr. Moy?

2 MR. MOY: Staff would record the vote as 4-0-1.
3 This is on the motion of Chairman Hill to approve the
4 application for the relief requested. Seconding the motion
5 Vice Chair Hart. Also in support Ms. John and Zoning
6 Commissioner Michael Turnbull. And no other Members present.

7 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you.
8 Mr. Moy, whenever you would like, you can call our next case.

9 MR. MOY: Thank you, Mr. Chairman. So that would
10 be Application No. 20129. This is of 555 E Street SW, LLC.
11 This is a request for relief for a special exception under
12 the penthouse requirements, Subtitle C, § 1500.3(c), this
13 would establish a penthouse bar and restaurant use for the
14 penthouse of the proposed hotel in the D-5 Zone. This is at
15 550 School Street, Southwest, Square 494, Lot 36.

16 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
17 Moy. If you could, please, introduce yourselves from my
18 right to the left?

19 MR. SCHAEFFER: Good afternoon. Henny Schaeffer.
20 I work for Citizen M Hotels.

21 VICE CHAIR HART: Can you spell your last name for
22 us, sir?

23 CHAIRPERSON HILL: Yes, I'm sorry.

24 MR. SCHAEFFER: S-C-H-A-E-F-F-E-R.

25 CHAIRPERSON HILL: Okay. Great. Thank you.

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1 MS. RIVIS: Hello, I'm Nina Rivis. I'm from
2 Effects Collaborative, architects of this project.

3 CHAIRPERSON HILL: Okay. R-E-V-I-S?

4 MS. RIVIS: R-I-V-I-S.

5 CHAIRPERSON HILL: Okay. Great.

6 MR. FERRIS: Lawrence Ferris with the Law Firm of
7 Goulston and Storrs, land use counsel for the applicant.

8 CHAIRPERSON HILL: Okay. Great. Mr. Ferris, are
9 you going to be presenting to us?

10 MR. FERRIS: Yes. I'm having some technical
11 issues with getting my thumb drive to upload, but maybe I'll
12 just pull it up from the record online.

13 CHAIRPERSON HILL: I don't know, maybe if IT can
14 come out and help us or we will see what happens. While he
15 is pulling that up, I will note we have a previous Chair of
16 the Board of Zoning Adjustment with us here and, you know,
17 we would like to, you know, thank you for your support. I'm
18 sure you have gotten to witness all of the things you have
19 been missing all of the previous Wednesdays of your life.
20 And so we are glad -- oh, yeah, it probably was Tuesdays at
21 that time. You are correct. So we are glad that probably,
22 you know, all those memories probably came rushing back in
23 and I'm sure you have enjoyed them, yes.

24 All right. Mr. Ferris, I'll go through some of
25 again the questions. I guess if you can walk us through when

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1 you are ready, through your presentation, and again kind of
2 tell us how you believe you are meeting the criteria for us
3 to grant the requested relief. Mr. Moy, I'm going to put 15
4 minutes on the clock there, so I know where we are. And you
5 can begin whenever you like.

6 MR. FERRIS: Okay. Thank you for your patience.
7 Good afternoon, Chairman Hill and Members of the Board. We
8 are here today to request special exception relief for the
9 property located --

10 CHAIRPERSON HILL: Can I interrupt you one second?
11 I'm sorry. Just the plans that we are looking at, which
12 exhibit, do you know? Which is the one that was updated?
13 Is it 32A? Because they kind of have the same date,
14 apparently, as Exhibit 6 and Exhibit 15.

15 MR. FERRIS: It would be 32A.

16 CHAIRPERSON HILL: Okay. Great.

17 MR. FERRIS: We may have not updated the date,
18 but, yes.

19 CHAIRPERSON HILL: Okay. Great. Thank you.

20 MR. FERRIS: So again, we are here today to
21 request special exception relief for the property located at
22 550 School Street, Southwest. We are requesting relief
23 pursuant to Subtitle C, § 1500.3(c), to permit a penthouse
24 bar for the proposed hotel at the property. The property is
25 located in Southwest Washington, east of L'Enfant Plaza and

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1 just north of I-395. The site is Zoned D-5 and the
2 surrounding area is characterized primarily by federal office
3 buildings and hotels.

4 The project is a mixed-use development with two
5 components. First a multi-family residential building with
6 194 units. And then a hotel with 252 rooms. The two uses
7 will share one building, but otherwise are entirely separated
8 from each other within the building.

9 We are seeking approval from the Board today for
10 the hotel bar, which is permitted as a matter-of-right in the
11 zone, but requires special exception approval to be located
12 in the penthouse.

13 With me today are Henny Schaeffer from Citizen
14 Hotels, who will provide some background about the hotel and
15 the proposed bar.

16 And Nina Rivis, the project designer, with Effects
17 Collaborative, who will walk us through the plans.

18 Before we dive into our presentation, I would like
19 to note that we have reports in support from the Office of
20 Planning and from DDOT as well as reports in support from the
21 ANC. We met with ANC-6D in September once at an executive
22 meeting and then again at the ANC's full public regularly
23 scheduled meeting. And at that time, there were no concerns
24 raised by the ANC or the community.

25 With that, I'll hand it over to Mr. Schaeffer who

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1 will give you a little background about the hotel.

2 MR. SCHAEFFER: Thank you. Good afternoon.
3 Citizen M, it's a Dutch Hotel Company. We have affordable
4 luxury is our motto, that means that we let guests decide
5 what they perceive as being luxury and not what many hotel
6 operators force upon others as what luxury should be.

7 We are very involved with the community, love to
8 work around -- want to be good neighbors. The plan is that
9 in the next five years, we will have 20 hotels operational.
10 In the U.S. we just recently opened our third property, this
11 is in Boston. We have two hotels currently also New York
12 another one that we will work on next year is Seattle and
13 then, of course, we are very excited now to be in D.C.

14 The rooftop, it serves about 100-110 people. It
15 is primarily -- the rooftop is for hotel guests, you know,
16 our business is selling hotel rooms, but again, it is an
17 amenity, but it is as I said, we want to be good neighbors.
18 And you know, it's an unbelievable, you know, asset to also
19 make sure that it is available to residents and people of the
20 community.

21 And any other questions you might have later on,
22 I'll be glad to answer those.

23 MS. RIVIS: So I'm going to show you the way this
24 project is laid out. As it was already explained, it's in
25 the southwest and it's surrounded immediately by federal

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1 office buildings. Dominic Church on the corner of 6th and
2 E and all other properties, like I said, immediately adjacent
3 are all office buildings.

4 This project was designed with the idea to be a
5 mixed-use that will bring a diversity of uses that will bring
6 life and activity to this area of the city. It has a
7 residential component, retail spaces on the ground floor and
8 of course, the hotel with the 252 rooms.

9 The bar is located on the upper -- the roof level.
10 This floor plan is set back per zoning requirements. In
11 reality, the facade of the hotel bar is not really visible
12 from the street, based on setbacks. It has a wide and nice
13 terrace about of about 2,000 square feet. And the bar area,
14 the total gross area of this floor is about 8,000 square
15 feet. If you see the way it is laid out, most of the back
16 of the house spaces, and operational spaces necessary, are
17 located towards the interior, now courtyard that separates
18 the hotel with the residential component. And the public
19 area is facing School Street.

20 This is a project that was designed with the
21 priority to, like I said, bring life and diversity of uses
22 to this area with natural materials, very committal. And it
23 is being designed with a very high level of acoustical
24 requirements, not only for -- have some buffer with the
25 residents on the south side of the property, but especially

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1 for most forward to have going forward for the guest
2 residents.

3 So in reality, this the bar and the mechanical
4 areas on this floor and the ballpark are being designed with
5 the acoustical requirements that will buffer noise.

6 MR. FERRIS: All right. In conclusion, we believe
7 we meet the standard for the special exception relief we're
8 requesting pursuant to Subtitle C, § 1500.3(c). The proposed
9 rooftop bar is in harmony with the general purpose and intent
10 of the regulations. The use is permitted as a matter-of-
11 right in the D-5 Zone and we are only asking for relief in
12 order to locate that in the penthouse where we believe that
13 use will provide an attractive gathering place and also be
14 able to take advantage of the surrounding views of the city
15 to the north, including the mall and the monuments.

16 Approval will not result in any adverse effect on
17 the surrounding properties, which consist primarily of other
18 hotels and large office buildings that are most active during
19 the daytime hours.

20 In addition, the use will be fully separated from
21 the residential units as Ms. Ravis just explained.

22 With that, I believe we would just rest on the
23 record and are happy to answer any questions.

24 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
25 Ferris. Does the Board have any questions for the applicant?

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1 VICE CHAIR HART: Just -- and I know this is --
2 that you are looking for the bar, but I was a little curious
3 where do you -- how do you determine the height of the
4 building for the hotel? I mean, I understand the
5 residential, because it is kind of on whatever that street
6 is that has the -- 6th Street. I can understand that, but
7 this is -- this hotel is 120 feet tall/high. Am I reading
8 that correctly?

9 MR. FERRIS: Correct. But it's all one building.
10 So the high measurement would be the same for both the
11 hotel --

12 VICE CHAIR HART: You mean functionally it's one
13 building? Is it like the first floor is connected?

14 MR. FERRIS: For zoning purposes, it is a single
15 building and it is internally connected.

16 VICE CHAIR HART: Okay. But where is the
17 connection? That's what I don't understand. We don't have
18 any floor plan, so I don't know where they -- that's what I'm
19 asking.

20 MR. FERRIS: It is connected on the second floor.

21 VICE CHAIR HART: Okay.

22 MS. RIVIS: And also on the first floor for -- the
23 loading areas are all shared.

24 VICE CHAIR HART: Okay. I mean, that's fine. I
25 just -- I am just trying to understand for -- you know, when

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1 I look at it, I first have to get past that before I get to
2 the bar issue. So I was trying to understand where that was
3 from. I didn't have any floor plans that actually showed the
4 interior of the building, so it was a little bit difficult
5 to figure that out. But I appreciate the information,
6 because that then helps me, you know, understand that aspect
7 of it.

8 I didn't have any questions on the bar itself.
9 I just was more curious as to how we got to this point.
10 Thank you.

11 MEMBER JOHN: So the slide showing the bar did not
12 identify what streets were. What are the streets there?

13 MR. FERRIS: So just to clarify, this is kind of
14 a detailed view and hopefully this view helps. The hotel bar
15 is this red outlined area facing onto School Street,
16 Southwest, to the north.

17 MEMBER JOHN: Um-hum.

18 MR. FERRIS: And with no area facing onto 6th
19 Street or E Street.

20 VICE CHAIR HART: So the bar itself is like here
21 on this, in this drawing?

22 MR. FERRIS: Correct.

23 VICE CHAIR HART: Yeah.

24 MEMBER JOHN: So has the hotel been built or you
25 are in the process of building?

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1 MR. FERRIS: It's currently under construction.

2 MEMBER JOHN: Okay. And so I'm a bit curious, why
3 wasn't the bar added at the time that you received the permit
4 for the original structure?

5 MR. FERRIS: Right. So we were undergoing permit.
6 We expected the bar to be open only to hotel visitors and so
7 that was approved by DCRA. It was only until we decided that
8 maybe it made sense to make the bar open to the public to
9 come back for the special exception. I hope that answers
10 your question.

11 MEMBER JOHN: Thank you.

12 COMMISSIONER TURNBULL: Just one question. How
13 do you see the terrace being used? Large screen TVs or I'm
14 just curious, how much activity is going to be on. Is this
15 just for drinks and/or is there going to be more activity out
16 there than --

17 MR. FERRIS: My understanding is that it is just
18 going to be for drinks with no amplified music.

19 COMMISSIONER TURNBULL: Sound or --

20 MR. FERRIS: Correct.

21 COMMISSIONER TURNBULL: -- TVs?

22 MR. FERRIS: But Mr. Schaeffer can confirm.

23 MR. SCHAEFFER: Yeah, the focus will be more on
24 the inside than the outside. You know again like I said, we
25 want to be good neighbors. We don't want to be a

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1 disturbance, but again, it's a perfect site to enjoy the
2 views and it will also be certain months of the year that it
3 cannot be used due to weather. So the focus will be more on
4 the inside.

5 COMMISSIONER TURNBULL: Okay. Thank you.

6 CHAIRPERSON HILL: Okay. We're going to turn to
7 the Office of Planning.

8 MR. JESICK: Thank you, Mr. Chairman and Members
9 of the Board. My name is Matt Jesick. I'm here today
10 filling in for Mr. Jonathan Kirschenbaum.

11 The Office of Planning can rest on the record in
12 support of the application. And I would be happy to take any
13 questions. Thank you.

14 CHAIRPERSON HILL: Does the Board have any
15 questions for the Office of Planning? Does the applicant
16 have any questions for the Office of Planning?

17 MR. FERRIS: No, thank you.

18 CHAIRPERSON HILL: Is there anyone here who wishes
19 to speak in support? Is there anyone here who wishes to
20 speak in opposition? Mr. Ferris, is there anything you would
21 like to add at the end?

22 MR. FERRIS: No, thank you.

23 CHAIRPERSON HILL: Okay. I'm going to close the
24 hearing. Is the Board ready to deliberate? Okay. I can
25 start. I didn't have any issues with the application. I

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1 thought that the analysis that the Office of Planning has
2 provided, I would agree with. I would also agree with the
3 support that the ANC-6D has provided.

4 I would also agree with the burden of proof that
5 the applicant has provided as to how they are meeting the
6 standard for us to grant the relief requested.

7 And so I will be voting in favor of the
8 application. Is there anything anyone would like to add?

9 I'm going to make a motion to approve Application
10 No. 20129, as captioned and read by the Secretary, and ask
11 for a second.

12 VICE CHAIR HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded.

14 All those in favor say aye.

15 ALL: Aye.

16 CHAIRPERSON HILL: All those opposed? The motion
17 passes. Mr. Moy?

18 MR. MOY: Staff would record the vote as 4-0-1 and
19 this is on the motion of Chairman Hill to approve the
20 application for the relief requested. Seconding the motion
21 is Vice Chair Hart. Also in support is Ms. John and Zoning
22 Commissioner Michael Turnbull. No other Members present.

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

25 MR. FERRIS: Thank you.

1 MS. RIVIS: Thank you.

2 MR. MOY: The next application, if we could have
3 parties to the table, is Application No. 20133 of Cassandra
4 Spratt, S-P-R-A-T-T. And this is a request for relief for
5 special exception under Subtitle D, § 5201 from the rear yard
6 requirements, Subtitle D, § 306.2. This would construct a
7 two-story rear addition to an existing attached principal
8 dwelling unit, R-3 Zoned. This is at 130 Rhode Island
9 Avenue, Northeast, Square 3538E, Lot 19.

10 CHAIRPERSON HILL: Okay. Great. Thank you.
11 Could you, please, introduce yourself for the record?

12 MS. SPRATT: Hi, I'm Cassandra Spratt. I'm the
13 owner at 130 Rhode Island Avenue, Northeast.

14 CHAIRPERSON HILL: Okay. Ms. Spratt, did you get
15 sworn in earlier?

16 MS. SPRATT: I did.

17 CHAIRPERSON HILL: Okay. All right. So, Ms.
18 Spratt, if you can kind of walk us through what you are
19 proposing to do, as well as how you believe you are meeting
20 the criteria for us to grant the relief requested?

21 Also, I did see that -- I don't know whether we
22 actually did get anything from your ANC-5E, although it
23 appears as though you believe they have voted in favor and
24 you can testify to that on the record when you go through
25 your presentation.

1 Mr. Moy, I'm going to put 15 minutes on the clock,
2 and you can begin whenever you like.

3 MS. SPRATT: All right. Great. Thank you so
4 much.

5 So yeah, I'm looking to do rear first and second
6 floor addition on the house. And so the only exception we
7 are looking for is that my neighbor on the western side, who
8 has reviewed it and agreed and supports the project.

9 We are -- actually, I'm on Rhode Island and he is
10 technically a V Street address, so he is just set at a little
11 bit of an angle to my house and his back wall is 3 feet and
12 3 inches behind me. So to do the standard 10 foot by-right
13 extension, I'm, you know, 3 feet shy of that right on his
14 side, so we are just asking to be able to build to the basic
15 10 foot there.

16 I have letters from both him and my neighbor on
17 the eastern side as well as all eight neighbors on the entire
18 block that share that back alley. I'm not interested in
19 doing anything that my neighbors aren't in support of. I
20 have heard too many of those things here today, I think. And
21 I did manage to get on the ANC agenda last week, which was
22 October 15. It did vote and pass. There are recorded
23 minutes, so you don't even have to take my word for it. You
24 can go see it online there.

25 But my ANC representative has been having like

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1 personal emergencies. She has a nephew in her care and she
2 has just had a really hard time like meeting the requirements
3 and getting the paperwork in.

4 So they did vote. I think six people were there.
5 It passed with those six votes. So I'm just going to leave
6 it at that and if you guys have any questions for me, I'm
7 happy to answer them.

8 CHAIRPERSON HILL: Just real quick and then I'll
9 let my fellow Board Members. The -- anything you -- the
10 neighbor there to 128, they are also in support. Is that
11 correct?

12 MS. SPRATT: Yes.

13 CHAIRPERSON HILL: Okay. And, Ms. Spratt, are you
14 an attorney?

15 MS. SPRATT: No.

16 CHAIRPERSON HILL: Are you an architect?

17 MS. SPRATT: No.

18 CHAIRPERSON HILL: Wow, okay. Because I mean, I
19 was going through the record earlier and like I thought your
20 presentation was really good on Exhibit 31. Like you could--

21 MS. SPRATT: I'm in operations --

22 CHAIRPERSON HILL: Okay.

23 MS. SPRATT: -- in the corporate world. Yeah, we
24 are organized.

25 CHAIRPERSON HILL: There you go.

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1 MS. SPRATT: Yeah.

2 CHAIRPERSON HILL: Well, you are really pretty
3 organized, I've got to tell you. You should have helped a
4 couple of earlier applicants.

5 Does the Board have any questions for Ms. Spratt?
6 Okay. I'm going to turn to the Office of Planning.

7 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman.
8 Maxine Brown-Roberts for the Office of Planning. And I will
9 stand on the record in which we recommend approval of the
10 special exception. And I'm available for questions. Thank
11 you.

12 CHAIRPERSON HILL: Does anybody have any questions
13 for the Office of Planning? Has the Office of Planning seen
14 the presentation, Exhibit 31?

15 MS. BROWN-ROBERTS: Yes, sir.

16 CHAIRPERSON HILL: Were you impressed, Ms. Brown-
17 Roberts?

18 MS. BROWN-ROBERTS: Yes, sir.

19 CHAIRPERSON HILL: I was impressed. All right.
20 Does the applicant have any questions for the Office of
21 Planning?

22 MS. SPRATT: No.

23 CHAIRPERSON HILL: Is there anyone here who wishes
24 to speak in support? Is there anyone here who wishes to
25 speak in opposition? Is there anything else you would like

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1 to add at the end, Ms. Spratt?

2 MS. SPRATT: No, just thanks for your time.

3 CHAIRPERSON HILL: Okay. Great. All right. I'm
4 going to close the hearing.

5 Is the Board ready to deliberate? Okay. As I
6 have stated, I have really enjoyed the presentation in
7 Exhibit 31. Like that was all well-done. And so I actually
8 would agree with the analysis that was provided by the Office
9 of Planning, as well as the burden of proof that was provided
10 by the applicant.

11 I do believe the testimony of the applicant in
12 terms that the ANC-5E did vote to support the application.
13 However, we haven't gotten anything from them, so we can't
14 really give any great weight to what the ANC has supposedly
15 done. But I do feel good about the fact that the applicant
16 has gone to the ANC and has stated on the record they are in
17 support, as well as the support of different letters.

18 But again, I do believe that the applicant has met
19 the standard for us to grant the relief requested and I'm
20 going to be voting to approve.

21 Is there anything else anyone else would like to
22 add?

23 VICE CHAIR HART: No. I would concur with the
24 Chairman. Your assessment of this particular case, I thought
25 it was well-put together as well. It was very helpful seeing

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1 the sun diagrams and the other, the shadow studies that they
2 provided.

3 And you know, it's funny because this is actually
4 -- you know, while this is a rectangular lot because of where
5 it is located, it is kind of at an odd angle with some of
6 the, you know, with the neighbor to the west, I guess, and
7 you know, that causes some issues. That neighbor to the west
8 also has a longer house than what the applicant has, which,
9 you know, makes their -- you know, it just makes -- this
10 makes sense as to why they are asking for this relief and
11 therefore, I would be -- and I believe they that actually met
12 the criteria under zoning and I would be in support of the
13 application as well.

14 CHAIRPERSON HILL: Okay, yeah. I mean, I thought
15 the -- it is really interesting back in terms of like the
16 whole row. Anyone else?

17 COMMISSIONER TURNBULL: I'll be voting in support,
18 Mr. Chair.

19 CHAIRPERSON HILL: Okay. I'm going to make a
20 motion to approve Application No. 20133, as captioned and
21 read by the Secretary, and ask for a second.

22 VICE CHAIR HART: Second.

23 CHAIRPERSON HILL: Motion made and seconded.

24 All those in favor say aye.

25 (Chorus of ayes.)

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1 CHAIRPERSON HILL: All those opposed? The motion
2 passes, Mr. Moy.

3 MR. MOY: Staff would record the vote as 4-0-1.
4 And this is on the motion of Chairman Hill to approve the
5 application for the relief requested. Seconding the motion
6 Vice Chair Hart. Also in support Ms. John and Zoning
7 Commissioner Michael Turnbull. No other Members with us
8 today.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you.
10 Mr. Moy, whenever you get a chance, you can call our last
11 case.

12 MR. MOY: Thank you, Mr. Chairman. So that would
13 be Application No. 20134 of TPWR Developer, LLC. Captioned
14 advertised for a special exception under Subtitle K, § 921.1,
15 from the minimum linear ground-floor building frontage
16 restriction of Subtitle K, § 902.7(e). This would develop
17 a mixed-use project with ground-floor retail in the WR-2 Zone
18 at 7100 Georgia Avenue, Northwest, Square 2950, Lot 849.

19 And as you are aware, Mr. Chairman, there is a
20 request for a postponement under Exhibit 37.

21 CHAIRPERSON HILL: Okay. Great. Could the
22 applicant come forward please? Could you, please, introduce
23 yourself for the record?

24 MS. JORDANO: Good afternoon, Cynthia Jordano with
25 Saul Ewing Law Firm representing the applicant.

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1 CHAIRPERSON HILL: Okay. Ms. Jordano, so you
2 would like or your client would like a postponement. Could
3 you explain why, please?

4 MS. JORDANO: Yes. We received the Office of
5 Planning report a little over a week ago with conditions that
6 we had not prior to the submission of the report had an
7 opportunity to discuss with them. And the project at issue,
8 the space is for a major sub-anchor tenant within the town
9 center component of the Walter Reed project.

10 It's an important tenant and we don't actually
11 have a signed lease with that tenant, so we need to really
12 consult though with the prospective tenant and as well with
13 the brokers to make sure that the conditions that are being
14 proposed are going to work.

15 CHAIRPERSON HILL: Okay. Perfect. Do you know
16 how much time you might need?

17 MS. JORDANO: We had requested November 13th. I
18 think I cleared that with staff that they thought that they
19 could put it on that agenda without a lot of crowding.

20 CHAIRPERSON HILL: Mr. Moy, is that accurate?

21 MR. MOY: I think your docket can accommodate
22 another case.

23 CHAIRPERSON HILL: Okay. November 13th, is that
24 what you said?

25 MS. JORDANO: Yes.

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1 CHAIRPERSON HILL: Thank you. Does the Board have
2 any questions for the applicant?

3 Is there anyone here wishing to speak?

4 Okay. All right, Ms. Jordano, then we will see
5 you on November 13th.

6 MS. JORDANO: Thank you very much.

7 CHAIRPERSON HILL: Thank you. All right. Mr.
8 Moy, is there anything left that -- and if you have any cards
9 for the transcriber.

10 Is there anything left for the Board today, Mr.
11 Moy?

12 MR. MOY: No, sir.

13 CHAIRPERSON HILL: Okay. Then we stand adjourned.

14 (Whereupon, the above-entitled matter went off the
15 record at 2:17 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 10-23-19

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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