

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY  
OCTOBER 30, 2019

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
CARLTON HART, Vice Chairperson (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEPHEN MORDFIN  
CRYSTAL MYERS

The transcript constitutes the minutes from the Public Hearing held on October 30, 2019.

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

10:11 a.m.

VICE CHAIR HART: All right, Mr. Moy, you can call our first hearing case when you have an opportunity.

CASE APPLICATION NO. 20121

MR. MOY: Thank you, Mr. Chairman. That would be calling to the table parties to Case Application No. 20121 of Bridges 2, that's the Number 2, Psychological Services and Consultation, LLC, caption and advertised for a use variance from the use requirements, Subtitle U, Section 201.1, to convert an existing detached residential building to a medical office building, R2 zone. This is at 639 Atlantic Street, Southeast, Square 3105, Lot 72. Mr. Chairman, there is a request from the Applicant for a postponement.

VICE CHAIR HART: Okay, good morning. If you could please introduce yourself for the record.

MR. BELLO: Good morning, Toya Bello representing the Applicant.

CHAIRMAN HILL: All right, Mr. Bello. You're here requesting for a postponement, correct?

MR. BELLO: That's correct.

CHAIRMAN HILL: Could you please explain why you need to be postponed?

MR. BELLO: All efforts have been unsuccessful trying to get on the calendar of the ANC, so we'd like the

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1 ANC to weigh in. Also, we need the additional time to  
2 augment our burden of proof statement.

3 CHAIRMAN HILL: Okay. When do you think you would  
4 like to be postponed until?

5 MR. BELLO: Middle of December, if the Board's  
6 schedule permits.

7 CHAIRMAN HILL: Okay, so that means you'll have  
8 enough time to go meet with the ANC and figure out whatever  
9 you need to do.

10 MR. BELLO: That's the idea.

11 CHAIRMAN HILL: You are aware that the Office of  
12 Planning is currently in denial of your application.

13 MR. BELLO: Yes, I am.

14 CHAIRMAN HILL: I just lost the secretary for a  
15 second because he's trying to help fix my laptop. Just wait  
16 30 seconds.

17 MR. BELLO: Certainly.

18 (Pause.)

19 CHAIRMAN HILL: Okay, Mr. Bello. Mr. Moy, if you  
20 want to look and see what mid-December looks like for us.

21 MR. MOY: All right, Mr. Chairman, staff would  
22 suggest -- if it's not too early, Mr. Chairman, the lighter  
23 schedule between December 11th or December 18th would be  
24 December 11th.

25 VICE CHAIR HART: December 9th or December 16th.

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1 (Simultaneous speaking.)

2 MR. MOY: Did you say December?

3 CHAIRMAN HILL: What did you say? He said 11th.  
4 You said 11th, Mr. Moy, correct?

5 MR. MOY: Yes, I did.

6 CHAIRMAN HILL: Mr. Bello --

7 VICE CHAIR HART: Unfortunately, I was looking in  
8 October. I understand what --

9 CHAIRMAN HILL: Mr. Bello, does December 11th work  
10 for you?

11 MR. BELLO: It works fine.

12 CHAIRMAN HILL: Okay, then we'll go ahead and put  
13 you on December 11th, and good luck.

14 (Pause.)

15 MR. BELLO: Thank you.

16 CHAIRMAN HILL: You're welcome. All right, Mr.  
17 Moy, whenever you'd like, you can call our next case.

18 CASE APPLICATION NO. 20135

19 MR. MOY: Thank you, Mr. Chairman. If we could  
20 please have the Applicant to the table to Case Application  
21 No. 20135 of 3428 O Street, LLC, captioned and advertised for  
22 a use variance from the use permissions of Subtitle U,  
23 Section 201.1, to operate a prepared food shop on the first  
24 floor and basement of an existing mixed-use building, R20  
25 zone, at 3428 O Street, Northwest, Square 1228, Lot 76. I

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1 believe there's also a request for party status under Exhibit  
2 36, Mr. Chairman.

3 CHAIRMAN HILL: All right, if you can please  
4 introduce yourself for the record.

5 MR. SULLIVAN: Good morning, Mr. Chairman and  
6 members of the Board. My name is Martin Sullivan, with the  
7 law firm of Sullivan & Barros, on behalf of the Applicant.

8 MR. DANA: My name is Andrew Dana, co-owner of  
9 Call Your Mother Deli.

10 CHAIRMAN HILL: All right, great, thank you. Is  
11 the person requesting party status here? Okay, if you can  
12 please come forward. If you could please introduce yourself  
13 for the record.

14 MS. ROTH: My name is Melinda Roth. I live at  
15 3418 O Street.

16 CHAIRMAN HILL: Okay, all right, Ms. Roth. Just  
17 out of curiosity, are any of you guys baseball fans?

18 MR. SULLIVAN: Yes.

19 MS. ROTH: Every game that the Nationals have won,  
20 I've not been at.

21 CHAIRMAN HILL: You won't be at tonight's game,  
22 either. I guess you could make it. I don't know. If that  
23 was the case, we'd keep you longer. The reason why I ask --  
24 we're going to take up time doing this. Who are the guys,  
25 the -- Joe Tory.

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1 Joe Tory had to sit and define the regulation.  
2 He was like this is the regulation, and you could just see  
3 him spelling out the regulation. He didn't necessarily  
4 believe what was going on with the regulation, but he spelled  
5 out the regulation. I bring that up because there's a  
6 regulation here that's right in front of me in terms of how  
7 party status is achieved. So if you wouldn't mind defining  
8 or telling us why you're more uniquely qualified than the  
9 rest of the public and should be granted party status.

10 MS. ROTH: Absolutely, thank you, Chair Hill.  
11 This is my block. I am directly impacted by whatever ends  
12 up in this space at 3428 O Street. It is three doors down  
13 from my house, where I've raised my two sons. I invested and  
14 bought this house. It's not an investment; it was a house.  
15 It's my forever home.

16 We've been there for well over 15 years and I  
17 actually represent other neighbors who are within 200 feet  
18 of the proposed location. As you know, because I believe  
19 it's the BZA's own directive to hear specifically from those  
20 people that would be directly impacted by this variance  
21 request.

22 CHAIRMAN HILL: Okay. Ms. Roth, when you say that  
23 you're representing other people, is there something in the  
24 record that says you're representing other people?

25 MS. ROTH: In the request for party status, I

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1 mentioned that we, in the neighborhood, have come together  
2 in support of this party status. I was the person whose name  
3 -- and who filed the party status, but there are other  
4 neighbors that are here with me that are -- I'm not legally  
5 empowered to represent anyone.

6 CHAIRMAN HILL: Okay, yes. I'm sorry, that's  
7 where I was just trying to get to.

8 MS. ROTH: I want to be very clear.

9 CHAIRMAN HILL: No, that's great. I understand.  
10 You're here representing you, for now, because you don't have  
11 anything legally saying that you're representing other  
12 people. And so, I guess, Ms. Roth, I've taken a look at the  
13 record, and I think we're going to have an opportunity to  
14 talk this out with everybody and talk to a lot of different  
15 people.

16 As one as also lives in a very densely populated  
17 area, I understand that the lines that we're talking about  
18 and the disruption to the community, we're going to get into  
19 all of those things. I guess my kind of -- and I'm going to  
20 let my -- I'm kind of talking out loud, in terms of  
21 discussing with my fellow Board members -- the thing that I'm  
22 not clear on as to why Ms. Roth is more, necessarily,  
23 uniquely qualified than -- affected, sorry -- is that if  
24 we're the immediate next-door neighbor, then they usually  
25 share a party wall.

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1           Now, I think there's a variety of other people  
2 that are here that are going to testify that are also in that  
3 block, in that area. I would think that the concerns that  
4 Ms. Roth has could be addressed during public testimony  
5 rather than as a party in opposition. And so -- Because the  
6 person next door to her or the person around the corner, I  
7 think that -- and the ANC has put in their opposition, or at  
8 least that's not -- there's a split vote within the ANC as  
9 to what's going on with this property, as well. This is no  
10 offense to Ms. Roth, but I just think -- I'll let you say  
11 something in a second, but I'm just kind of talking to my  
12 fellow board members, in that that's where I would kind of  
13 be landing right now is that she's not as uniquely affected  
14 as other people in that block. That's where I'm standing,  
15 in terms of the party status in opposition.

16           COMMISSIONER SHAPIRO: Mr. Chair, I would agree.  
17 I think those are the rules. I agree with you. I don't  
18 think that there's a way in which she is more significantly  
19 or distinctly or uniquely affected than other people would  
20 be on that block or in the surrounding area. It's not a  
21 party wall, as you said. I agree with your reasoning.

22           VICE CHAIR HART: I don't have anything to add to  
23 it. I would understand and I agree with your stated  
24 viewpoint on this.

25           CHAIRMAN HILL: Okay, Ms. Roth, you wanted to say

1 something.

2 MS. ROTH: I would, thank you for letting me add  
3 to that because the adjacent properties to the subject  
4 property are actually rentals. I, myself, live in the middle  
5 of two rentals on both sides. I am the only full-time, all  
6 the time resident that is closest to this property.  
7 Otherwise, it's rentals down 35th Street, and it's rentals  
8 on O Street, until you get to my house. That means the  
9 houses turn over either every nine months or every 12 months  
10 because it's usually to the students in Georgetown who live  
11 there. I'm the one who's actually there and deals with the  
12 trash and the litter and the rats and the noise issues. The  
13 others are all transient tenants.

14 CHAIRMAN HILL: Okay, I don't -- I guess I can  
15 throw it back to the Board. My thought, again, with it, or  
16 my standpoint was that the rest of the block or other people  
17 within the block that I think are here would have an  
18 opportunity to speak, to testify.

19 I suppose that if, you know, my fellow Board  
20 members think differently, in terms of, now, how to speak to  
21 whether or not there's rental properties adjacent, how that  
22 would necessarily affect the decision for party status --  
23 again, this isn't that the person would not be able to  
24 testify and wouldn't have -- there's a lot of information in  
25 the record, in terms of letters one way or the other.

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1           Again, as I said, we're going to probably hear  
2 from the ANC, or at least I know that there's a commissioner  
3 here that probably is going to speak. That's a good point,  
4 too, but I guess part of it -- I'll let the Applicant make  
5 a comment in that regard, as well -- was that I suppose, you  
6 know, I would kind of want to see -- I don't necessarily --  
7 it's not that I don't believe the person, but there's nothing  
8 in the record that says that there are rental properties all  
9 around and this is the only person that is a property owner  
10 that is as close to this particular property. So, I'll throw  
11 it back out to the Board.

12           VICE CHAIR HART: I guess the only thing I'll say  
13 is the owners of the buildings, while they may not  
14 necessarily reside in them, they do own them. This could be  
15 impactful to them, as well. I don't have, really, any  
16 information that has been submitted that affirms what Ms.  
17 Roth is saying, in that I understand it further.

18           Right now, it's just -- hearing that there are  
19 some rentals on both 35th and O Street, but not understanding  
20 where those are with respect to where this property is. I  
21 don't know. I also have a hard time -- the people that own  
22 the buildings, they can be represented and can come to the  
23 Board, as well, at any point. I'm not sure if we've actually  
24 heard from them, either, the people that next door neighbors  
25 to this.

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1           While I understand that there are renters that are  
2 there, there are also people that own them. I don't know.  
3 I still kind of would stick with what I had -- what we had  
4 decided a little earlier. I understand, and I appreciate the  
5 additional information, but I'm just -- I don't think it's  
6 going to change my viewpoint.

7           CHAIRMAN HILL: Ms. Roth, give me a second, Ms.  
8 Roth. Well, before I turn to Mr. Sullivan, I guess, Ms.  
9 Roth, at this point -- and this is where I'm kind of  
10 struggling with this -- we're just getting through this first  
11 hoop of what's going to be a bunch of hoops here, I can see.  
12 -- Again, my struggle is it's just you.

13           If you were here as a group, okay? And you had  
14 represented a group of people and represented all of the  
15 people in your neighborhood -- I see hands going up all over  
16 the place. The difference, then -- and this is where I'm  
17 even going to be kind of expeditious or try to be expeditious  
18 of this.

19           If you were representing a group, then you would  
20 be representing the group, meaning they wouldn't then have  
21 an opportunity to speak in public testimony, right? You  
22 would be representing the group, and you would speak to the  
23 group. Party status, by the way, there's a whole process to  
24 it. There's plenty of lawyers, I'm sure. If you're a  
25 lawyer, then you read through all this stuff, if you're not

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1 a lawyer, you're read through all this stuff.

2           It puts you in a different category, so the group  
3 of people would then also be put in a different category.  
4 Then they wouldn't testify publicly for their three minutes.  
5 That's what I'm trying to weigh and figure out, and then  
6 whether or not -- but anyway, regardless, you're here, right  
7 now, as you. That's what I'm trying to figure out. I'm just  
8 sharing my thoughts, and you're listening to everybody else,  
9 as well. Mr. Sullivan, as the Applicant, did you have some  
10 comments?

11           MR. SULLIVAN: Thank you. We didn't formally  
12 oppose, but I do think the distance from the site does  
13 stretch the boundaries of what the Board typically looks at  
14 for party status. I think the tenure or ownership status of  
15 the buildings in between them is irrelevant to that  
16 determination. Obviously, no stone is going to be unturned  
17 today. Everybody's going to get a say, and all the  
18 information's going to be out there. Thank you.

19           CHAIRMAN HILL: The only disagreement I would have  
20 you with, Mr. Sullivan, is we have done party status people  
21 within this distance before, but I do think that in my case,  
22 I don't think I'm necessarily swayed by this, as well as I  
23 would also just prefer to hear from everyone, rather than it  
24 be just one person representing -- I'd like everyone to have  
25 an opportunity to speak. I'm going to be voting in denial.

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1 Does anybody have anything they'd like to add?

2 VICE CHAIR HART: No.

3 CHAIRMAN HILL: All right, Ms. Roth, we're going  
4 to go ahead and deny your party status request in opposition.  
5 However, you'll have an opportunity, like everyone else, to  
6 speak during the public testimony portion. That's the  
7 portion where we really actually want to hear from everybody,  
8 so thank you very much. All right, Mr. Sullivan, I know that  
9 there are a variety of people here. I know that there are  
10 a variety of issues that they have. I know that you've seen  
11 it all in the record. As is the norm, in terms of what I  
12 request for you to do, is you can kind of just walk us  
13 through your application.

14 It is an increased use for the variance, I  
15 suppose, or a more intense use of the variance. If that's  
16 what you want to go ahead and argue before us at this point,  
17 you can go ahead and do so. As you know, you've seen the  
18 record, and you've seen all of the people that are in there.  
19 I know that Mr. Dana, D-A-N-A -- Mr. Dana, unfortunately,  
20 I've had your bagels. They're very delicious. I understand  
21 why the community would be concerned. If your bagels sucked,  
22 then we wouldn't be here, right? Mr. Sullivan, you can go  
23 ahead and begin whenever you like.

24 MR. SULLIVAN: Thank you Mr. Chair and members of  
25 the Board. This case is 3428 O Street, Northwest. We are

1 requesting a use variance in order to operate a prepared food  
2 shop. The current use is retail. It has been retail for  
3 over 100 years. It's historically a commercial building.  
4 It was built as a commercial building. The undue hardship  
5 in converting it for a permitted use, which would be  
6 residential, is rather obvious. I think the discussion today  
7 will center on whether or not this proposed use would present  
8 a substantial detriment, or whether or not the relief granted  
9 would be a substantial detriment to the public good. I'll  
10 give a quick overview, and then Mr. Dana will talk about his  
11 operation. Currently, the building is improved. The  
12 property's improved with an existing two-story building with  
13 the retail use on the first floor.

14 It's identified as a flower shop or antique gift  
15 shop. It is -- granted, yes, it does not have a lot of  
16 traffic, and that's part of the reason why it's going out of  
17 business. This business is hopefully taking its place, or  
18 has taken its place as a retail shop. The Applicant's  
19 proposing to convert the existing non-conforming use to  
20 another non-conforming use.

21 This type of relief was special exception under  
22 the previous version of the regulations, under the 58  
23 regulations, but that special exception was essentially  
24 gutted. Now, this is a use variance. Accordingly, we're  
25 requesting use variance relief to have the Call Your Mother

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1 bagel shop --

2 CHAIRMAN HILL: Mr. Sullivan.

3 MR. SULLIVAN: Yes.

4 CHAIRMAN HILL: I'm sorry to interrupt you, and  
5 I'm sorry to ask you this question. Do you know why it went  
6 from a special exception?

7 MR. SULLIVAN: No, I don't think they know. The  
8 provision's still there. The language said that you can  
9 convert from one non-conforming use to another, provided that  
10 use that you're asking for is also permitted in the first  
11 zone where the existing use is permitted, provided it's  
12 either a residential use or a neighborhood facility. The  
13 term neighborhood facility was broadly interpreted to mean  
14 anything that serves the local community.

15 It included 7-Elevens in the past and other such  
16 uses. The term neighborhood facility was deleted. I'm not  
17 sure -- which means that the only way you can do this is if  
18 it's residential, which nobody would ever do. I don't know  
19 if it was intentional or not, but the --

20 (Simultaneous speaking.)

21 CHAIRMAN HILL: The reason why -- because a lot  
22 of things did change from the 58.

23 MR. SULLIVAN: Right.

24 CHAIRMAN HILL: I was just trying to -- I was  
25 curious as to -- this specific one, I was not aware of, so

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1 I was just curious, but please continue.

2 MR. SULLIVAN: We've done a couple cases like  
3 that, where we would have been able to ask special exception  
4 relief, but now we're at use variance.

5 CHAIRMAN HILL: Right, but there was a lot of  
6 changes, also, that made it easier for people to do a lot of  
7 things, like parking went away and a lot of things went away.  
8 That's why I was a little -- everything didn't get easier.

9 MR. SULLIVAN: No, of course. I don't even  
10 actually understand the --

11 (Simultaneous speaking.)

12 CHAIRMAN HILL: We've only got one zoning  
13 commissioner here, also. If we had the whole Zoning  
14 Commission, then they could explain it.

15 COMMISSIONER SHAPIRO: A lot of people wouldn't  
16 know.

17 CHAIRMAN HILL: All right, Mr. Sullivan, please  
18 continue.

19 MR. SULLIVAN: Sure. Call Your Mother will have  
20 approximately 15 to 20 full-time and part-time employees  
21 total, and this is important. The proposed hours of  
22 operation in a condition that the Office of Planning has set  
23 is from 7:00 a.m. to 3:00 p.m., so it's going to end rather  
24 early. Of course, the Office of Planning is recommending  
25 approval, and the ANC is in support of this. I would like

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1 to turn it over to Mr. Dana now.

2 MR. DANA: Thank you. Quick intro. My name's  
3 Andrew Dana. I live in Petworth, but I was born and raised  
4 in Mount Pleasant. My mom's actually worked in this building  
5 for my whole life, so a true Washingtonian. I say that  
6 because that's part of the reason we started the businesses  
7 we own. Growing up, there was lots of chain restaurants and  
8 big, splashy restaurants, but not a lot of neighborhood based  
9 staple restaurants that are going to be around for  
10 generations. That's in our ethos is we want to open  
11 neighborhood based restaurants in neighborhoods, serving that  
12 neighborhood, and be around for generations. This is in our  
13 company ethos through and through. In Petworth and in  
14 Parkview, where we own two restaurants, we sponsor  
15 neighborhood cleanups. We go teach classes at the local  
16 schools. Last year, we raised over \$10,000 for charity.

17 This fall, we partnered with Urban Alliance, which  
18 is a program --- excuse me -- that partners with local public  
19 schools to give kids their first shot at workforce. We buy  
20 all of our produce and dairy from local farms, so truly a  
21 part of the local community. The original business plan for  
22 Call Your Mother was we were going to bake all the bagels out  
23 of Parkview.

24 It was going to be a sleepy bagel shop, and then  
25 we were going to open small little satellite locations around

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1 the city, um, Georgetown, Capitol Hill, and have them truly  
2 be neighborhood based. As we've discussed, this has been 10X  
3 more popular than we ever thought it would be. We truly  
4 thought Parkview would be a sleepy bagel shop.

5           We were fortunate enough to get named to some  
6 pretty cool national lists. Bon Appetit named us a top new  
7 restaurant in the country, and so did Eater. Candidly, we  
8 were just not prepared to be as busy as we are. This shop  
9 in Parkview was not built for speed. It was not built to  
10 take orders really fast, so there have been some lines there.  
11 Talking about Georgetown, pretty much all we talk about is  
12 how can we move the line faster? In the last two weeks at  
13 Parkview, we've switched our point of sale system from Square  
14 over to Toast. Toast allows us to line bust, as they say,  
15 with handheld registers, so you can go to the second and  
16 third person in line and move through the line much, much  
17 faster.

18           We've already seen a great decrease in the line  
19 in Parkview since then. We also already have another  
20 location planned for Capitol Hill, so we're really trying to  
21 spread these locations out, so it is not going to draw people  
22 from other neighborhoods.

23           We truly do want this to be a neighborhood based  
24 restaurant, so we feel as we open more of these, it truly  
25 will become neighborhood based and a lot of these concerns

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1 will go away. We are super willing to work with the  
2 community. We have done this in Petworth and in Parkview.  
3 We've signed agreements with the neighborhood about playing  
4 music outside and things like that.

5 We're absolutely willing to do something like that  
6 here in Georgetown. I've actually met with a couple of the  
7 neighbors that are here today. Just to tell you a couple of  
8 the things that we're willing to do and have already done,  
9 because parking is an issue there, we have purchased parking  
10 spaces a couple blocks away for all of our staff, so the  
11 staff that does have to drive to work will not be taking any  
12 parking spaces. I've offered to put on our website that if  
13 you are looking to drive to a Call Your Mother location,  
14 please consider driving to Parkview, where there's more  
15 parking, since parking is an issue in Georgetown. Then  
16 behind me, I have some of my best staff here.

17 We're putting an over-qualified general manger  
18 there to make sure that all operations are very smooth. She  
19 has, before this, operated two locations at the same time,  
20 and she is going to be the GM there. We're going to train  
21 all staff to keep the location clean, calm, and quiet. We  
22 already have a plan for pest control.

23 We have a contract signed with Vega to come in  
24 weekly, which is more than the D.C. Health Department  
25 requires that you do, and we also have a contract with

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1 Tenleytown Trash to do daily trash pickups. Again, that is  
2 expensive, and we're not required to do that, but we're doing  
3 that because we want to show the neighborhood that we want  
4 to be good neighbors and be here for the long haul.

5 In closing, Mr. Sullivan touched on this, but the  
6 owner of this building, who leased this building and was the  
7 owner of Greenworks, he told me candidly if he hadn't owned  
8 the building, he would not have been able to stay in business  
9 with the flower shop there. That's why he was excited for  
10 us to take over the location and have something that is a  
11 viable business there. At the ANC meeting, there was  
12 discussion about all the closed storefronts in Georgetown.  
13 We want to help fill one of those empty storefronts. We  
14 promise we're going to be good neighbors. We're going to  
15 close at 3:00. There's no alcohol. There's no loud music.  
16 We're going to do our best, and I'm happy to work with the  
17 community to ensure any concerns are met. Thank you.

18 MR. SULLIVAN: Thank you, then. On to the  
19 variance test. The requirements are that the property be  
20 affected by exceptional size, shape, or topography, or other  
21 exceptional condition. Of course, the condition here is the  
22 historical use, the original construction as a commercial  
23 use, and the long-time use for retail and the undue hardship  
24 in converting that space to a permitted use.

25 The Board has seen many cases like this, where you

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1 have an historic commercial use and has seen this as an undue  
2 hardship to convert it back to residential. The variance  
3 would not cause a substantial detriment to the public good  
4 and would not substantially impair the intent, purpose, and  
5 integrity of the zone plan.

6 I think Mr. Dana's testimony on that point is  
7 probably the best evidence, compared to anything I could tell  
8 you here and now. We will have additional argument on  
9 rebuttal and closing to that effect, too, in response to the  
10 issues raised by the opponents here. I think the most  
11 important thing is he's done some pretty exceptional things  
12 that go above and beyond for a use which might have an  
13 impact, in particular, purchasing parking for staff, closing  
14 at 3:00 p.m., and having a track record of working with the  
15 community. I think those things speak strongly for how this  
16 use will go in the future.

17 The Office of Planning, of course, is recommending  
18 approval. The advisory neighborhood commission did vote in  
19 support of this, 6 to 2. We do also have letters in support  
20 from neighbors. That's all we have, if the Board has any  
21 questions.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Can  
23 you be more specific and go through each of the prongs of the  
24 variance test and describe how you feel that you're meeting  
25 those?

1 MR. SULLIVAN: Sure. The first prong, of course,  
2 is exceptional situation or condition. The condition is the  
3 historical use of the property and its configuration as a  
4 commercial use. It's currently set up, according to this  
5 floor plan here, it's set up for retail use, has always been  
6 retail use. It was built in the 1800s and was originally a  
7 grocery store and has always been commercial. The undue  
8 hardship is in the cost and effort in converting that to  
9 residential. Also, it wouldn't be possible because of the  
10 historic preservation concerns regarding display windows in  
11 the front, as well, which you would need to change in order  
12 to make it a marketable residential unit. That is Prong 1  
13 and 2, the exceptional condition and the undue hardship.  
14 Then the third prong is that the relief being granted is not  
15 a substantial detriment to the public good. It's important  
16 to note that the currently approved use is retail.

17 The Zoning Administrator has approved a retail  
18 bagel use. What this will do is it will allow it to be a  
19 prepared food shop. As of now, Call Your Mother has approval  
20 to hand out bagels. Then the customers can turn around and  
21 put them in a toaster and take the bagels with them. What  
22 this relief will allow is the next step, a prepared food  
23 shop.

24 They will be able to prepare the bagels and  
25 prepare the sandwiches that go with the bagels and toast

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1 them, themselves. In a sense, it's turning the toaster  
2 around. I think it's important to note when we're talking  
3 about substantial detriment, you're talking about would the  
4 relief being granted be a substantial detriment, not the use,  
5 in general. But also, I think -- and I'll touch on this more  
6 in rebuttal and closing -- that the Applicant has a response  
7 to every concern that you'll hear from the community, and  
8 I think it's a strong response.

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

10 CHAIRMAN HILL: Sure.

11 VICE CHAIR HART: You were also saying that any  
12 retail use would require a variance.

13 MR. SULLIVAN: No, the Zoning Administrator has  
14 determined that a retail use would just be a continuation of  
15 the existing non-conforming use, so that's how he approved --

16 (Simultaneous speaking.)

17 VICE CHAIR HART: So the fact that you want this  
18 to be -- to have the preparation aspect of it is what it is  
19 the dividing line.

20 MR. SULLIVAN: Correct.

21 VICE CHAIR HART: I can't recall. They're not  
22 baking them; they're just being able to make it into a  
23 sandwich or whatever that --

24 MR. DANA: Yes, we're going to bake everything out  
25 of the current Parkview location and prep everything out

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1 there. There'll be no prep or baking out of Georgetown.

2 VICE CHAIR HART: And -- Thank you very much, Mr.  
3 Dana. Mr. Sullivan, always been commercial?

4 MR. SULLIVAN: To our knowledge, yes.

5 VICE CHAIR HART: This is because you have --

6 MR. SULLIVAN: I took that information from the  
7 previous BZA approval on this, which was in the '70s, and  
8 from that order.

9 VICE CHAIR HART: I just didn't know if you had  
10 something that stated that or --

11 MR. SULLIVAN: No, just that order.

12 VICE CHAIR HART: What's the square footage of  
13 this, again?

14 MR. DANA: I don't know exact. Top floor's about  
15 700 square feet, and then the basement is a little smaller.

16 VICE CHAIR HART: You mean the first floor?

17 MR. DANA: Yes, sorry, first floor and the  
18 basement.

19 VICE CHAIR HART: All right, thanks.

20 CHAIRMAN HILL: Okay, Mr. Dana, I've got a couple  
21 of questions. Again, you guys have -- there's the one on --  
22 where are the two locations? I forget.

23 MR. DANA: We own Timber Pizza on Upshur Street,  
24 and then Call Your Mother is at the corner of Georgia and  
25 Lamont in Parkview.

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1           CHAIRMAN HILL: Right, and then you do the little  
2           popups all over the town or whatever.

3           MR. DANA: Yes, we do eight weekly farmer's  
4           markets.

5           CHAIRMAN HILL: I'm just kind of talking this  
6           through. There's going to be a lot of people that are going  
7           to testify. I understand why they're going to be testifying  
8           in opposition. You guys -- and I'm not trying to set up your  
9           argument, but you're trying to deal with increased growth.  
10          This blew up in a way that you didn't think it was going to  
11          blow up, so you're trying to figure out how to deal with some  
12          of the issues that have come with your success, correct?

13                         (No audible response.)

14          CHAIRMAN HILL: So what you're proposing, in terms  
15          of this current location, is that you're going to bring on  
16          one of your most efficient managers, someone who's already  
17          worked with your organization and has already seen some of  
18          the lines that have taken place -- I'm sure we're going to  
19          hear testimony from them and we're going to, again, hear  
20          testimony from the other people -- how to deal with some of  
21          those lines, right? And how to deal with, again, the  
22          increased popularity of what you have going on.

23                         You said that some of the things that you've made  
24          changes to is that the point of sale system, you've changed  
25          over to a different ones that's most efficient. Can you

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1 speak to why it's more efficient? I'm just curious.

2 MR. DANA: With Toast, you have your typical point  
3 of sale system, and then you get these handheld POSs. We can  
4 have staff go to the second, third, fourth person in line and  
5 start taking their order while somebody's actually at the  
6 POS. Instead of taking an order at a time, you can take  
7 three-four orders at a time.

8 CHAIRMAN HILL: You can walk down into the line.

9 MR. DANA: Exactly.

10 CHAIRMAN HILL: Then you said that you purchased  
11 the parking spaces. Do you know which way the line might go  
12 if it were to go out your door?

13 CHAIRMAN HILL: Yes. We propose that it go down  
14 35th. Right in front of our shop, the sidewalk is actually  
15 wider than the rest of the sidewalk. The previous flower  
16 shop actually put up umbrellas and chairs, which we're not  
17 asking to do, but we think we could wrap the line there --

18 CHAIRMAN HILL: Right.

19 MR. DANA: --- a couple times before it even  
20 starts to go down the block. I think it would --

21 CHAIRMAN HILL: You'd wrap it right on 35th.

22 MR. DANA: Right on 35th, in front, before it gets  
23 to the actual sidewalk, so we still wouldn't be blocking the  
24 sidewalk. I don't know if I'm doing a good job of describing  
25 that.

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1 CHAIRMAN HILL: Yes, I understand.

2 MR. DANA: Down 35th, there's also other  
3 retailers, barbershops and things like that.

4 CHAIRMAN HILL: Has anybody done any outdoor  
5 seating around that area?

6 MR. DANA: Across the street, Saxby's has some  
7 outdoor seating.

8 CHAIRMAN HILL: Have you guys thought about  
9 outdoor seating?

10 MR. DANA: We would love to have outdoor seating,  
11 but we're not going to ask for it because we would rather,  
12 sort of, make the neighborhood happy and deal with the line,  
13 first and foremost. In three years, if this really does  
14 become the neighborhood shop we want it to be and there's not  
15 a line and there's the opportunity to put an umbrella outside  
16 with a couple chairs, we would look into that.

17 CHAIRMAN HILL: All right. Was there any discussion  
18 at the ANC about outdoor seating?

19 MR. DANA: No, we didn't ask for any of that.

20 CHAIRMAN HILL: You didn't ask for any of it, so  
21 there wasn't any discussion about keeping you from having it?

22 (No audible response.)

23 CHAIRMAN HILL: Okay, then -- can you say correct  
24 in the microphone?

25 MR. DANA: Correct.

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1 CHAIRMAN HILL: Then, also, the outdoor speakers,  
2 there was discussion at the ANC about outdoor speakers.

3 MR. DANA: The flower shop had outdoor speakers,  
4 but we're going to disconnect them and not use them at all.

5 CHAIRMAN HILL: Okay, so there was no discussion  
6 at the ANC about outdoor speakers.

7 MR. DANA: No, we didn't discuss outdoors  
8 speakers.

9 CHAIRMAN HILL: I don't know where we're going to  
10 get with all this. I'm just kind of throwing out -- trying  
11 to figure out stuff. You currently don't have any issue with  
12 not having outdoor seating and not having outdoor speakers.

13 MR. DANA: Correct.

14 VICE CHAIR HART: Mr. Dana, can you talk a little  
15 bit about what you -- how many people you expect to be in the  
16 building as customers? How many customers can you  
17 effectively handle inside the building? Is there a queuing  
18 line in the building, itself? What does that look like?  
19 Then how many are you expecting, the anticipation -- I've  
20 never been to this bagel shop, but -- to the existing ones  
21 you have, so what is the expectation outside?

22 Are you looking at 100 people in the line? Are  
23 you looking at 50 people in the line? What is that -- inside  
24 the building, what do you have -- I know it's a lot of  
25 questions, but what do you have in terms of what you can

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1 allow -- what can be allowed per the fire safety codes? I  
2 don't know any of that, so if you could just speak to that.

3 MR. DANA: The POSs, as you can see --- sorry --  
4 on the front, is pretty close to when you come in. You can  
5 fit about five, six people in line before it reaches the  
6 door. Then to my right is going to be where you pick up your  
7 bagel or toast your own bagel if it's retail, and then --

8 VICE CHAIR HART: You can -- see the thing in  
9 front -- the monitor in front of you, you can actually write  
10 on, so if you could just show me where that is.

11 MR. DANA: Right, so here's the POS. Then this  
12 would be the line. Then you order and you move this way.  
13 You pick up food here, and then you leave right here. What  
14 I was proposing is that the line could snake here, so it's  
15 not blocking any of the sidewalk. I think you could have  
16 five-six people in line and five-six people wait for a bagel,  
17 comfortably, inside. We're setting up this kitchen to be  
18 super fast, so you would never have any -- more than five or  
19 six people waiting in line. Our busiest, busiest days at  
20 Parkview right now, we're doing about 400 orders.

21 VICE CHAIR HART: For the entire day?

22 MR. DANA: For the entire day.

23 CHAIRMAN HILL: Can you say that again? I'm  
24 sorry.

25 MR. DANA: So for our busiest days at Parkview,

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1 we're doing around 400, a little more than 400 orders a day.

2 CHAIRMAN HILL: What are the busiest days?

3 MR. DANA: Saturday and Sunday.

4 VICE CHAIR HART: What are the hours at Parkview?

5 MR. DANA: 8:00 to 2:00. We don't see it being

6 busier than Parkview. Parkview is our flagship restaurant.

7 This is a satellite. The menu will be slightly smaller, so

8 we are not anticipating it being more than that. That's sort

9 of --

10 CHAIRMAN HILL: Did you guys already do the

11 buildout?

12 MR. DANA: We're almost finished.

13 CHAIRMAN HILL: You're almost finished with the

14 buildout? The reason why I'm just curious is there wasn't a

15 way to configure it so there would be more people waiting

16 inside, or that's just the way that you had -- this was the

17 most efficient way that you thought you could get as many

18 people inside.

19 MR. DANA: And also make -- like, get the orders

20 out as fast as possible. There's two-fold. It's move --

21 take orders really fast, and then get the orders out really,

22 really fast.

23 CHAIRMAN HILL: Then is there seating there? Is

24 that a counter?

25 MR. DANA: There's no seating, no.

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1 CHAIRMAN HILL: There's no seating.

2 MR. DANA: There's no seating.

3 CHAIRMAN HILL: What's that in the bay?

4 MR. DANA: That's just a bay window. There's a  
5 ledge that people could sit on while they're waiting for  
6 their food, if they wanted to.

7 CHAIRMAN HILL: Okay.

8 VICE CHAIR HART: Is this distance an existing  
9 distance? 'Cause I was looking at both of these distances.  
10 Is that actually what the sidewalk -- how wide the sidewalk  
11 is?

12 MR. DANA: This is existing, and this doesn't show  
13 how wide the sidewalk gets there.

14 VICE CHAIR HART: So someone just drew in like  
15 there was going to be a sidewalk here.

16 MR. DANA: Yes, there you go.

17 VICE CHAIR HART: To be able to show that.

18 MR. DANA: You can see how they had stools and  
19 umbrellas there. That's all -- right here is all just  
20 sidewalk, where we think we could wrap the line if there's  
21 a line.

22 CHAIRMAN HILL: How many ways do you think --  
23 lanes can you wrap the line, you think, there?

24 MR. DANA: I think you could go one, two, three,  
25 four, and then the fifth goes down the block.

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1 (Laughter.)

2 CHAIRMAN HILL: They disagree. Okay --

3 VICE CHAIR HART: Do you have a limit as to how  
4 many people in the building?

5 MR. DANA: We have not gotten to occupancy yet.  
6 The architect's not here. We asked for few enough where we  
7 don't have to have a bathroom, and there's no seats.

8 VICE CHAIR HART: I was just looking at number of  
9 people in the building to be able to -- if you had a  
10 different configuration to allow that because that might --  
11 I don't know. It just seems like there's a lot of space in  
12 -- there is space inside that is not being utilized well  
13 enough, given the issues that you have heard and that we --  
14 and the laughter that we heard a few seconds ago. It just  
15 seems like to be able to do something that was like that, to  
16 allow people to order, and then pick up on this side. I  
17 understand that would be tight. I'm just saying that -- is  
18 there a way to have more than just four or five people in --

19 (Simultaneous speaking.)

20 MR. DANA: Absolutely, and we're willing --

21 PARTICIPANT: -- or maybe ten.

22 MR. DANA: Sorry. Yes, and we're absolutely  
23 willing to look at that. We have discussed having the line  
24 first wrap in here and come there. We're trying to balance  
25 this, get as many people inside, but also have it be

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1 comfortable once you order and get an order out really  
2 quickly. We are looking at having it come --

3 CHAIRMAN HILL: So you'd have to flip the door?

4 MR. DANA: The door, yes.

5 CHAIRMAN HILL: Okay.

6 VICE CHAIR HART: I take it you like their new  
7 drawing tablet up there.

8 MR. DANA: It's unbelievable.

9 VICE CHAIR HART: I'm sorry; it's the little  
10 things. Yes, it is helpful to understand this because it  
11 appears as though there might be some ability to have some  
12 of that queuing -- approximately how many people do you think  
13 would be there at any given time?

14 MR. DANA: Working or --

15 VICE CHAIR HART: Both, working and customers.

16 MR. DANA: Staff, we're thinking it's four or five  
17 people working behind there, with somebody taking an order,  
18 a couple people prepping, a couple people making sure stuff  
19 is clean and running smoothly. At Parkview, during the week,  
20 when we open at 8:00 a.m., there's three customers, four  
21 customers.

22 It's very chill and sort of ebbs and flows  
23 throughout the day. I think there's times there'll be one  
24 or two customers in there during the week, and then on the  
25 weekend, when it's a little busier, you'll have, you know,

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1 ten people inside.

2 VICE CHAIR HART: Final question -- maybe not  
3 final question -- what do you expect -- what happens if you  
4 don't get this?

5 MR. DANA: We will open as the retail shop, where  
6 people buy bagels and cream cheese and toast it themselves,  
7 which I think will actually make some of the issues they're  
8 bringing up worse. That slows down the throughput. Now  
9 people are toasting their own bagel. There's not a  
10 professional doing it. Now people are walking outside with  
11 a wrapper open and a bagel in their hands. We would open as  
12 the retail shop.

13 VICE CHAIR HART: Still an expectation of the same  
14 amount of people? It's possible?

15 MR. DANA: I have no idea, yes.

16 VICE CHAIR HART: Thank you.

17 COMMISSIONER SHAPIRO: What kind of market studies  
18 have you done on this? Are you successful enough where you  
19 haven't bothered, or have you done a market study? Where do  
20 you expect your customer base is going to come from, campus,  
21 what?

22 MR. DANA: Yes, we're a small business. We don't  
23 have the means to go do a full study. Our study was sort of  
24 looking at Saxby's, across the street, which is a coffee shop  
25 and bagel shop and does pastries. I would say it's mostly

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1 students there during the week, during the day. Then on the  
2 weekends, it sort of turns into much more of, like, families  
3 and real residents of Georgetown.

4 We're expecting a similar thing as to there. We  
5 looked at population and density and all that. We thought  
6 that Georgetown could support this restaurant alone, which  
7 is sort of the whole vision and point is this is a Georgetown  
8 based bagel shop.

9 COMMISSIONER SHAPIRO: Okay, thank you. Thank  
10 you, Mr. Chair.

11 CHAIRMAN HILL: I forget where Saxby's is. Is it  
12 right across the street on 35th and O? No.

13 MR. DANA: Yes, it's right here with my new tool.

14 CHAIRMAN HILL: Okay. Okay.

15 VICE CHAIR HART: Mr. Sullivan, undue -- the  
16 hardship aspect of this --

17 MR. SULLIVAN: The hardship aspect is that --

18 VICE CHAIR HART: The hardship aspect to the  
19 owner.

20 MR. SULLIVAN: To the owner.

21 VICE CHAIR HART: Because all of the orders that  
22 we do go to the owner, not a particular, you know, business  
23 that is there, unless that owner owns that business, then  
24 it's on them. From my understanding, this is something that  
25 you're leasing, Mr. Dana?

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1 MR. DANA: Correct.

2 VICE CHAIR HART: So the owner has to deal with  
3 the hardship aspect of this. How do you see that particular  
4 aspect?

5 MR. SULLIVAN: It is to the owner. The owner's  
6 the one that has the hardship of owning and maintaining this  
7 building and this property. In order to sustain this  
8 historic property, he needs to have an income-producing use  
9 on the first floor. The undue hardship is, first of all, in  
10 converting it to a residential use, which, as I said, we  
11 think is fairly obvious, especially with the display windows  
12 and the inability to do that for historic purposes.

13 But in addition to that -- this is where the  
14 opponent's argument becomes quite ironic. It is important  
15 for the owner to have a successful business here, as well.  
16 If the business is not successful, then he has a hardship,  
17 or his hardship is not resolved. The opponents, I think,  
18 would prefer a business that is less successful. I think  
19 that's what's at the heart of this. They have a concern  
20 about the success of this.

21 VICE CHAIR HART: I'm actually trying to focus on  
22 what the Applicant's not -- the owner, what the owner is  
23 trying to -- I'm not concerned about what the neighborhood  
24 is saying. I'm concerned trying to figure out -- as a BZA  
25 member, we have to figure -- Board member, we have to figure

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1 out how does this meet the various prongs? I'm trying to  
2 figure out how it meets that particular prong because it is  
3 an aspect of this. It is not necessarily clear to me how  
4 that's -- how we get there.

5 MR. SULLIVAN: We've laid out several precedents  
6 in our prehearing statement on this, as well, because the  
7 Board has found several cases similar to this to be an undue  
8 hardship in just the hardship of converting to the  
9 residential, itself. If you can't convert to the  
10 residential, and you can't operate another use, then you have  
11 idle space, of course.

12 The Board and the Zoning Regulations and variance  
13 relief history supports the fact that a primary use of  
14 variance relief is to keep a property from being idle. The  
15 hardship is, of course, all on the owner here. It's not a  
16 hardship to Call Your Mother because they can find another  
17 space. In this case, they contracted for the space before  
18 they understood that they might not be able to do everything  
19 they wanted to do. But that's not before the Board. The  
20 hardship's all on the owner because they need to use this  
21 space. If they don't get this relief, then they have an  
22 undue hardship in finding a successful use which can maintain  
23 their ownership of this property and the maintenance of this  
24 property.

25 VICE CHAIR HART: You have something that has said

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1 that this is the -- I don't want to say only -- that they  
2 have searched for other businesses, and that they -- this is  
3 the only one that has seemed, to them, to be -- I'm trying  
4 to figure out how we got here.

5 MR. SULLIVAN: I don't think that's part of the  
6 test, that the owner is required to find every other  
7 alternative use.

8 VICE CHAIR HART: I didn't say every alternative,  
9 Mr. Sullivan. What I'm trying to understand is there are 100  
10 other types of uses that we could look at. It could be a  
11 hardware store. It could be something else. I don't know  
12 what else.

13 Five years ago, cupcakes were the rage and we had  
14 cupcake shops happening everywhere, but that, necessarily,  
15 that kind of ebbed and is not as popular, generally, as --  
16 they used to be on every corner, it seemed like, but they're  
17 not that way now. What I'm trying to get to is while they  
18 may not have looked at 50 uses, are they saying that this is  
19 the only particular use that they're trying to get? That's  
20 the part that I'm trying to get to. We're being asked to do  
21 a variance -- to approve a variance. There is a business  
22 that can operate here right now, as a retail -- as a shop  
23 that is not preparing the bagels, but is just selling the  
24 bagels. There is a legitimate business that's able to do  
25 that. So this particular owner can be there right now, but

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1 just not prepare that. I'm trying to nail down what is the  
2 aspect that is the hardship that we need to address?

3 MR. SULLIVAN: I think Mr. Dana can provide some  
4 more testimony on that.

5 VICE CHAIR HART: Thank you. I'm not trying to  
6 be hard. I'm trying to understand this, so that I can kind  
7 of say okay, I get that. I get where we are. I'm not making  
8 that connection right now. I'm being more emphatic than  
9 being -- I feel like I'm coming across as being angry. I'm  
10 not angry; I'm just trying to understand.

11 MR. SULLIVAN: Understood. If Mr. Dana's  
12 testimony doesn't resolve the issue, we could always provide  
13 additional information from the property owner on that aspect  
14 of it.

15 MR. DANA: Thank you. The original property  
16 owner, unfortunately, has passed away in the last six months.  
17 His son has inherited. His son's now living upstairs. Prior  
18 to that, he had run Greenworks for 30 years there. We had  
19 a bunch of candid conversations, where he said A, if I didn't  
20 own this building, I would not have been able to be in  
21 business. B, he said people email me and call me all the  
22 time looking to lease this building. He said that he just  
23 sort of knows, inherently, what's going to work on this block  
24 and not from being there for 30 years, and he thought we were  
25 going to work. That's not super analytical, but that is --

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1 he had lots of people banging on the door to lease the space.  
2 I think being in business there for 30 years made him an  
3 expert in the area. Thank you.

4 CHAIRMAN HILL: Mr. Sullivan and Mr. Dana, I guess  
5 that is something that, as we're parsing through this -- and  
6 Mr. Dana, you did now kind of speak to it, in that what is  
7 it that is the undue hardship on this particular property  
8 owner. What you're speaking to is that -- we might see what  
9 happens later, in terms of supplementing the record or just  
10 through this discussion is to, again -- right, it could be  
11 a hardware store.

12 It could be -- the people that are here in  
13 opposition -- again, we haven't even gotten to the ANC  
14 because the ANC was split. I'm kind of looking at it in a  
15 variety of lenses. One, the zoning, obviously, and then  
16 there's just kind of conditions. A crazy successful design  
17 shop, furniture shop, where just the interior designers come  
18 in -- we know which cupcake place you're talking about.  
19 Anyway, that is something that I think I would like to hear  
20 more of, also, as we kind of move forward. Does anybody have  
21 any more questions of either the Applicant or the attorney  
22 for the Applicant for now?

23 VICE CHAIR HART: No, I'm good.

24 CHAIRMAN HILL: Actually, I did; I'm sorry. Mr.  
25 Sullivan, can you kind of walk us through -- did you go to

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1 the ANC meeting?

2 MR. SULLIVAN: We did.

3 CHAIRMAN HILL: I'm saying did you go to the ANC  
4 meeting.

5 MR. SULLIVAN: I did, yes.

6 CHAIRMAN HILL: Can you guys tell us a little bit  
7 about how -- because it was a 6-2 split vote. I know that  
8 the two people that submitted letters, I guess one is the  
9 SMD, perhaps, for the area there, but can you tell us how  
10 that ANC discussion went?

11 MR. SULLIVAN: Yes, he's, oddly enough, also the  
12 authorized representative of the ANC, so I'm not sure how  
13 he's going to speak on behalf of the ANC. It was -- I don't  
14 want to speak for the ANC, but it was a 6 to 2 vote. I got  
15 the sense that the six members that voted in support were in  
16 favor of a vibrant use. They were excited about this  
17 particular use and thought that it was something that was  
18 welcomed in the Georgetown community. I think they weren't  
19 too concerned about the claims of potential impacts from  
20 that, that it could be handled by Mr. Dana.

21 CHAIRMAN HILL: Okay, that's fine. If you have  
22 nothing else to add, that's fine. Just so I'm clear, if we  
23 can kind of get through -- I don't know where I am with this,  
24 but if we can kind of get through the prongs of the test, and  
25 as Mr. Hart just kind of -- more of the specificity in terms

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1 of the undue hardship to this particular owner.

2           Some of the things that I'd be interested in  
3 talking more in depth about, again, is I'd like to see just  
4 how many people you might be able to zigzag on that sidewalk,  
5 and then how you might be able to deal with the configuration  
6 on the inside if you flip the door. Then we're going to talk  
7 a little bit more the hours. The hours that you came up with  
8 are the ANC -- or the Office of Planning, I guess, came up  
9 with was from 7:00 to 3:00. You're saying at your other  
10 store, it's from when? It stops at 2:00?

11           MR. DANA: Yes, 8:00 to 2:00.

12           CHAIRMAN HILL: When is kind of the busiest -- the  
13 weekends, you get a lot of people, and then in the mornings?  
14 I'm just kind of curious what's your typical rush?

15           MR. DANA: During the weeks, it's sort of steady  
16 from 8:00 to 9:30, people getting breakfast. It's pretty  
17 quiet 10:30 to 11:45. Then there's a, you know, lunch rush  
18 because it's lunchtime. Then the last hour is also pretty  
19 calm during the week.

20           CHAIRMAN HILL: Are you guys doing coffee and  
21 stuff like that?

22           MR. DANA: Yes.

23           CHAIRMAN HILL: So prepared sandwiches.

24           MR. DANA: Correct.

25           CHAIRMAN HILL: And -- I'm going to turn to the

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1 Office of Planning.

2 MS. MYERS: Good morning, Crystal Myers with the  
3 Office of Planning. The Office of Planning is recommending  
4 approval of this case, with the condition that the hours of  
5 operation be from 7:00 a.m. to 3:00 p.m. The main reason why  
6 we are recommending approval is because it's been discussed  
7 this property has had a history of commercial use on -- I  
8 guess, the ground floor or the first floor level from the  
9 origination of it.

10 Also, there is a residential use on the second  
11 floor that would be maintained. Another factor we strongly  
12 considered when looking at this was the fact that converting  
13 the ground floor to a residential use would be burdensome on  
14 the owner. The matter of right for that zone would be a  
15 residential. On that ground floor, the layout, the store  
16 windows, all of that in the corner entrance more lend  
17 themselves to a commercial use on that floor, so we were  
18 believing that it makes sense to continue using it as  
19 commercial, rather than converting it to residential. The  
20 Office of Planning thought that the Applicant's plan of  
21 operating the business worked and would manage a lot of the  
22 concerns. With that, the Office of Planning is recommending  
23 approval.

24 VICE CHAIR HART: Good morning. I asked the  
25 Applicant about the issue, the undue hardship issue. Can you

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1 explain -- can you get into more detail about that aspect of  
2 it? What I'm trying to get to is the Applicant is able to  
3 have the bagel shop now, without this BZA approval. They are  
4 looking to, I guess, be a little bit more -- a little  
5 expansive, I guess, on the use, in terms of having it as a  
6 prepared -- preparing the bagels.

7 I'm just trying to understand not the person that  
8 is leasing the space, but the owner. How is it affecting  
9 them? I understand the issue about converting it to  
10 residential. That part is fine. I get that. That makes  
11 sense to me.

12 The aspect that I'm trying to get to is we're  
13 being asked for a variance. There seems to be an ability to  
14 do some other type of retail here. That's the part that I'm  
15 trying to parse out. If you could try to illuminate that a  
16 little bit, that would be helpful.

17 MS. MYERS: We were satisfied with the Applicant's  
18 argument that it would be a burden to the owner because of  
19 the fact that it was already set up for commercial, like you  
20 said, and reconfiguring it would be a challenge financially,  
21 as well as just the burden of having to reconfigure it to  
22 residential, which is the matter of right. Now, you're  
23 right, there is a variance on the property now that allows  
24 for retail, but the Applicant's argument is that this was --  
25 they already are allowed to do retail on the site.

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1           We thought of this as being a marginal increase  
2 from what you can do now. It's already allowed to do some  
3 level of a bagel retail aspect of it. Actually, the special  
4 exception to a food shop use, perhaps, would make it a little  
5 bit more efficient because of the fact that right now, when  
6 you, I guess, toast your bagels, etc., you'd be, in all  
7 likelihood, lingering a little bit longer to do that.

8           But the food shop, prepared food shop use would  
9 be very similar to what you can already do on the site  
10 because it's already a commercial function there. The Office  
11 of Planning pretty much has consistently, or generally  
12 consistently has supported maintaining a commercial use in  
13 a portion of a building that's already had commercial use for  
14 a long period of time.

15           That generally is our stance, so we didn't feel  
16 that this was extensively different commercial use than what  
17 you could do there. But I do see that -- why there is a bit  
18 of a challenge there. Bottom line for us was that this  
19 wasn't much different than what is already allowed, so we  
20 were comfortable recommending approval, as long as it were  
21 managed the way that the Applicant had suggested. We  
22 extensively looked at the Applicant's plan of operation to  
23 make sure that there were no tables, that there would be  
24 efficient flow of customers. That was important to us, and  
25 we thought that the Applicant's plan would have satisfied

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1 that concern.

2 VICE CHAIR HART: Okay, thank you.

3 CHAIRMAN HILL: Ms. Myers, again, just to  
4 reiterate, because I'm just -- I can get through the first  
5 thing, in terms of the exceptional situation, in terms of why  
6 they're -- Mr. Hart's the one who brought this up a little  
7 bit more as to why the building is the way the building is.  
8 The building is the way the building's been for 100 years.

9 The argument that the Applicant is making, in  
10 terms of the hardship to the owner as to why this use should  
11 be increased is that for 30 years, they've had whatever kind  
12 of retail it is that's been there now and it's unsuccessful.  
13 Therefore, this increased use is necessary to now unburden  
14 the property owner from this use. Is that the -- was that  
15 the analysis of the Office of Planning?

16 MS. MYERS: I'm sorry; you're saying that this  
17 would unburden the --

18 CHAIRMAN HILL: I'm sorry. I didn't state that  
19 well. Can you explain again how this is an undue hardship  
20 to the property owner if it remains the way it is?

21 MS. MYERS: We strictly looked at this as being  
22 -- that the space is set up for commercial use. To do this  
23 as a matter of right, to use the space as a matter of right  
24 would require configuring it for residential use. We thought  
25 that would be a burden to the owner because it was never set

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1 up for residential use.

2           As for the fact that there's a variance on the  
3 property that allows for retail -- because I think that's  
4 kind of, I guess, the big question here, and how would it be  
5 a burden to the owner on whether or not to continue it as  
6 retail and, therefore, the food shop preparation would be --  
7 require a variance, we looked at it as being the variance use  
8 that they're asking for is, I guess, a very marginal change  
9 to what the variance on the property is today for the retail  
10 use.

11           We felt that it wasn't, I guess, a significant  
12 change. If the Board feels differently, that's your call.  
13 It's just that our thought was that a bagel retail shop use  
14 versus a bagel food shop use, managed the way that the  
15 Applicant is proposing to manage it, was a very negligible  
16 difference between the two. For a space that has a history  
17 of being commercial, never residential, we thought that it  
18 was appropriate to recommend approval.

19           CHAIRMAN HILL: I appreciate that. I understand  
20 what you're speaking of. I was just trying to delineate.  
21 It's helpful that the Applicant has pointed out, again, that  
22 they would be able to use the commercial use the way it is  
23 now, just selling the bagels and the customers toasting them  
24 on the side or what have you. They're able to use it in a  
25 certain way now. I understand what the question -- or the

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1 analysis -- you've answered my question. Thank you. Please,  
2 Mr. Shapiro.

3 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. As  
4 we're talking this through, and we're talking it through  
5 using the first two prongs of the use variance test, I think  
6 the real issue that we're going to be hearing a lot about  
7 from the community, and I think we need to dive deeper into,  
8 even with OP, as you're talking about it, it's really around  
9 is this -- how does the Applicant demonstrate that this is  
10 not going to cause a substantial detriment to the public  
11 good?

12 Certainly, it's going to have an impact. I think  
13 that's what I'm most curious to hear about. The first two  
14 prongs, I get it. I think we're going to hear a whole lot  
15 about substantial detriment. I'm looking forward to hearing  
16 both sides of that.

17 CHAIRMAN HILL: That leads me to this. First of  
18 all, does the Applicant have any questions for the Office of  
19 Planning?

20 MR. SULLIVAN: No, thank you.

21 CHAIRMAN HILL: How many people are here to  
22 testify, either in favor or in opposition? Could you raise  
23 your hands? Okay, great. I say great because we're going  
24 to take a break. Everyone will have three minutes when we  
25 get back here. Okay. We're going to take a break.

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1           Then just so everybody knows, in terms of the rest  
2 of the day, just three minutes multiplied by how many people  
3 here can tell you how long that part's going to go. Then  
4 we're going to have a little bit more discussion with the  
5 Applicant, a little bit more rebuttal, conclusion. Then  
6 we're probably going to end up going to lunch.

7           Whoever's here after that, just to let you know  
8 -- and there's some people that have a hard stop -- we have  
9 a hard stop at 4:00, so we're going to try to get out of here  
10 way before that because we're all flying to Houston for the  
11 game. We're going to take a ten-minute break. Thank you.

12           (Whereupon, the above-entitled matter went off the  
13 record at 11:18 a.m. and resumed at 11:32 a.m.)

14           CHAIRMAN HILL: All right, everybody, let's settle  
15 back down. This is not ANC 2D's community meeting. We're  
16 going to go ahead and take public testimony. What I like to  
17 do first is -- Mr. Dana, by the way, thank you for buttoning  
18 up all the way to the top for your shirt there for us. I  
19 really appreciate that. If we can go ahead and take public  
20 testimony first, in terms of support. Could you please raise  
21 your hand how many people we have? I guess, Mr. Sullivan and  
22 Mr. Dana, if you wouldn't mind just stepping back. Could all  
23 of the people wishing to speak in support please come  
24 forward? Sure, yes, go ahead and sit. I thought I had more  
25 hands, that's why I got --

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1 (Off-microphone comments.)

2 CHAIRMAN HILL: Okay. I can't hear from the  
3 audience, but thank you. Sure, any of those seats. First  
4 of all, why don't you start by introducing yourselves?

5 MS. DISALVO: My name is Lindsay DiSalvo, and I'm  
6 going to be the opening GM manager for Call Your Mother Deli  
7 in Georgetown.

8 CHAIRMAN HILL: Could you spell your last name for  
9 me, please?

10 MS. DISALVO: Yes, DiSalvo, D-I, capital S-A-L-V,  
11 as in Victor, O.

12 CHAIRMAN HILL: Okay, great. You, sir?

13 MR. SZABO: Good morning. My name is Austin  
14 Szabo. Spelling of the last name is S-Z-A-B-O. I am a  
15 resident of the neighborhood in support of Call Your Mother.

16 CHAIRMAN HILL: Okay, great. Just so both you  
17 guys know, and everybody, we get feedback up here if more  
18 than one microphone is on at a time, so if you could just  
19 turn the microphone on, then go ahead and give your  
20 testimony, then turn the microphone off -- Ms. DiSalvo, all  
21 the other people that were interested in speaking, you're  
22 saying they were all also affiliated with Call Your Mother?

23 MS. DISALVO: Correct.

24 CHAIRMAN HILL: Okay all right. Ms. DiSalvo, we'll  
25 go ahead and let you speak first. You'll have three minutes

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1 there to testify, and you can begin whenever you like.

2 MS. DISALVO: First, I'll speak to answer some of  
3 the concerns of the community, and then a little bit about  
4 the human aspect of it all. One thing that we definitely  
5 have taken into effect, due to our popularity in Park View,  
6 is looking at the POS system and changing that. Ticket times  
7 right now, for us, are extremely quick. In fact, once people  
8 place an order, they're getting their food within one, max  
9 two minutes.

10 It actually surprises them whenever we bring it  
11 to them, which is really exciting. In addition to the line  
12 busters of the Toast system, we also pass out menus down the  
13 entire line, as far as we can, so that way, people are  
14 already thinking about what they're going to order. Once  
15 they get to somebody with a POS, they're able to place their  
16 order immediately. Some kind of Park View versus Georgetown,  
17 as well, are Park View has space for seats. It has that  
18 ability to linger. It has that draw for people to come and  
19 sit and hang out and spend time there. Georgetown won't have  
20 any seats. It won't have that hang out in the area, in the  
21 space, as much, either. The other thing, with the line, we  
22 do plan on having stanchions, so that would be very  
23 organized, which would queue the line to make sure that the  
24 zig and the zag is within the parameters as much as possible.

25 We think that will help with that. Other things,

1 we have daily trash pickup, which, again, like Andrew Dana  
2 said, is going above and beyond, but we want to make sure  
3 that we are keeping the neighborhood clean and that we are  
4 not creating any issues in that way.

5           The other thing is we really instill in our team  
6 members, and it's part of our task when opening, is that we  
7 go and we clean the area, the perimeter of the location,  
8 making sure that we pick up any mess that's been left  
9 overnight from the neighborhood or anything like that. We  
10 do really instill making sure that our location, our place  
11 is clean.

12           It looks nice, and it's really, I guess, better  
13 than it was when we left it. Then we're just  
14 super-inclusive, as well. Our team that we have is -- we're  
15 locally owned. We're minority owned. We are female owned,  
16 as well. That is something that makes us really proud to be  
17 part of the community. Thank you.

18           CHAIRMAN HILL: Okay, thank you. Mr. Szabo, you  
19 can begin. Mr. Moy, if you can throw up three minutes for  
20 me. I lost Mr. Moy. Was Mr. Moy there at the beginning?  
21 I'm going to put -- you going to be the timer?

22           PARTICIPANT: I'll be the timer.

23           CHAIRMAN HILL: Okay, great. You can start  
24 whenever you like, Mr. Szabo.

25           MR. SZABO: Thank you. Good morning, everyone.

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1 While I believe that students choosing to spend their most  
2 formative years in our one full neighborhood at Georgetown  
3 deserve to have a say in how their neighborhood should be set  
4 up, I come here as a four-year resident of Georgetown,  
5 planning to live here in the long haul.

6           When I first heard about this variance, I was  
7 mainly concerned about the third element, which was  
8 substantial detriment to public good. Everything that I've  
9 heard here today and everything in the record has suggested  
10 to me that this business is more than capable of handling any  
11 issues that are brought up, including trash, rats, or crowd  
12 control.

13           We've been dealing with these kinds of things in  
14 the Georgetown neighborhood for years now. We're right next  
15 to a very large university. I think that we can handle  
16 anything like that very easily. I also believe -- and this  
17 is the main reason I came here to speak today -- that this  
18 business will add much-needed diversity to the neighborhood,  
19 both cultural diversity and in terms of food options for  
20 residents and students. As someone who is Jewish, myself,  
21 I'm happy to see this business help reverse the nationwide  
22 decline of Jewish eateries. All the Jewish delis that I grew  
23 up eating at have now closed or relocated away from me. I  
24 look forward to returning to my family's tradition of picking  
25 up a bagel in the morning and repeating what my family would

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1 do mainly when I was in Los Angeles. Thank you.

2 CHAIRMAN HILL: Does the Board have any questions  
3 of the witnesses?

4 VICE CHAIR HART: Just a brief question about the  
5 stanchions that you talked about, and maybe it's a question  
6 for Mr. Dana, but that you might have it. I'm just curious  
7 about how much of that conversation about how that could play  
8 out came before the ANC, before OP? There's public space  
9 issues. I'm not sure you actually can come up, Mr. Dana,  
10 unless, Mr. Chair, you think that's appropriate.

11 CHAIRMAN HILL: Yes, whatever. Let's just see if  
12 the witness -- it actually does matter, Mr. Dana, or Ms.  
13 DiSalvo, whoever you want to answer that is fine.

14 VICE CHAIR HART: Did it come before the?  
15 (Simultaneous speaking.)

16 MR. DANA: We talked about the ANC. I said I'm  
17 happy to work with the community, whatever they see fit. We  
18 have not applied for a DDOT for stanchions or anything like  
19 that. We're talking maybe we'd have staff out there that's  
20 just talking people through it, but happy to work with the  
21 community for whatever they see fit.

22 VICE CHAIR HART: None of this is in writing; it's  
23 just an option that you've been exploring.

24 MR. DANA: Correct.

25 VICE CHAIR HART: Thank you. Thank you, Mr.

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1 Chair.

2           CHAIRMAN HILL: Okay, great, thank you. Ms.  
3 DiSalvo, could you give us a little bit of background, in  
4 terms of the experiences you've already had with this  
5 particular business, in terms of -- again, Mr. Dana was  
6 talking about, again, your ability to be one of the more  
7 experienced people that have gone through this process and  
8 have thought about what things might be problematic. Can you  
9 walk us through what things you think might be problematic  
10 and also the experience you've already had with the business  
11 and how long you've been there?

12           MS. DISALVO: Sure. I have been with the company  
13 for a year and a half. Prior experience, I've opened  
14 multiple restaurants with, obviously, this company, but also  
15 with other restaurant companies. Really, I was a teacher for  
16 five years, so my organization and operations, I'm very  
17 operations focused and problem solving proactive. I'm always  
18 thinking about what could come up, what could be the issues.

19           CHAIRMAN HILL: I'm sorry to interrupt you, but  
20 again, it was more like how you have had experiences dealing  
21 with the lines.

22           MS. DISALVO: Sure. I think that's all -- we  
23 learned that lesson in Park View, every single one of us.  
24 While it wasn't expected, now we are learning how to combat  
25 that and make sure that we aren't creating those in our

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1 future locations. We know how to correct them or be  
2 proactive about them and the possible issues that we could  
3 see at other locations.

4 CHAIRMAN HILL: All right, great. Anyone else  
5 have any questions for the witnesses? Thank you all very  
6 much. Could everyone please raise their hand as to wants to  
7 speak in opposition? If you could please come forward. Mr.  
8 Commissioner, if you wouldn't mind taking this first one here  
9 to the right. Everyone just come on up. I think there's  
10 enough microphones for everybody.

11 If we need one more chair, you can just bring up  
12 a chair at the end there. If you have something to present,  
13 if you want to go ahead and grab that easel that's over there  
14 to my far left. Then there is a camera. Mr. Moy can point  
15 out where the camera is, so that the easel can be -- or the  
16 placard, I guess, can be shown. Commissioner, could you  
17 quickly introduce yourself, if you wouldn't mind?

18 MR. MURPHY: Yes, I am Rick Murphy. I'm chair of  
19 ANC 2E. I am not here representing ANC 2E in this matter.  
20 I lost.

21 CHAIRMAN HILL: I got you. You won earlier,  
22 though, Mr. Murphy.

23 MR. MURPHY: Yes, indeed.

24 CHAIRMAN HILL: The reason why I was starting with  
25 you while Ms. Roth -- I guess she's already pulling it up.

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1 That's great. I just wanted to clarify that. I know there  
2 is actually something in there -- actually, you're going to  
3 serve a dual purpose, I think, whether you like it or not,  
4 to a certain extent, because you're in here, in the record,  
5 representing the ANC. You can, at least, speak to what  
6 happened, and we'll --

7 MR. MURPHY: I can, but in fairness, as I've  
8 mentioned to Mr. Sullivan, that was a clerical error. The  
9 letter that went in named me as representative it sort of  
10 wrote. It should have named the vice chair, who's the  
11 proponent of the resolution.

12 CHAIRMAN HILL: Who's the vice chair?

13 MR. MURPHY: Lisa Palmer.

14 CHAIRMAN HILL: She was the one who put forth the  
15 motion.

16 MR. MURPHY: She's the one that put forth the  
17 motion, yes.

18 CHAIRMAN HILL: Are you the SMD?

19 MR. MURPHY: I am the SMD. Therein lies the  
20 distinction.

21 CHAIRMAN HILL: Commissioner Gibbons, he voted  
22 against, as well?

23 MR. MURPHY: He did. That's correct.

24 CHAIRMAN HILL: I appreciate you wearing pants  
25 coming here for the meeting. Commissioner Gibbons usually

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1 wears shorts. If we could just kind of go down the line here  
2 and everybody introduce themselves. Ma'am, are you not going  
3 to participate?

4 (Off-microphone comments.)

5 CHAIRMAN HILL: Okay. We can maybe grab a chair  
6 there for you at the end, or maybe you can squeeze in  
7 somewhere, and then we can kind of go through this here as  
8 easily as possible. Then we can share the microphones. If  
9 we could please just kind of go down the line and introduce  
10 ourselves for the record. Commissioner, if you could start  
11 again.

12 MR. MURPHY: My name is Rick Murphy. I reside at  
13 3136 P Street, in Georgetown, and I represent Single Member  
14 District 3 in ANC 2E.

15 MR. DIGNAN: My name is Brandan Dignan. I'm a  
16 resident of 3413 N Street, Northwest, which is on the same  
17 block as the bagel shop.

18 MR. SAVAGE: Michael Savage, 3425 O Street.

19 MS. ALLMOND: Emma Allmond, 3413 N Street.

20 MS. CARAVATTI: Marie Louise Caravatti. I own  
21 1405 and 1407 35th Street. I've lived there for 35 years.

22 CHAIRMAN HILL: Could you spell your last name for  
23 me?

24 MS. CARAVATTI: C-A-R-A-V-A-T-T-I.

25 CHAIRMAN HILL: Thank you.

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1 MS. CARAVATTI: Thank you.

2 MS. ROTH: Melinda Roth, 3418 O Street. Actually,  
3 I have two separately deeded properties, the house and the  
4 garage that is off of the alley on 35th Street that would be  
5 also affected.

6 CHAIRMAN HILL: Okay.

7 MR. RUTH: Connor Ruth, 3418 O Street.

8 MS. CRUSE: Karen Tammany Cruse. I live at 1263  
9 35th Street -- excuse me, 1259 35th Street, and I've lived  
10 there for 45 years.

11 CHAIRMAN HILL: Could you please spell your name  
12 for me?

13 MS. CRUSE: It's Karen Tammany, T-A-M-M-A-N-Y  
14 C-R-U-S-E.

15 CHAIRMAN HILL: Okay.

16 MR. NEELEY: Christian Neeley, 3412 O Street.

17 CHAIRMAN HILL: Okay. Commissioner Murphy, we'll  
18 start with you, but I guess you're here representing  
19 yourself. We still might have some questions for you being  
20 a commissioner of the ANC. As you've been here before,  
21 everybody's going to get three minutes. The three minutes  
22 are on the clock, Mr. Moy, right there. I don't know, Mr.  
23 Moy, why does that one not show up there to the right? Is  
24 that just not -- for some reason just there? Do you guys  
25 have three minutes in front of you?

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1 MR. MURPHY: We do.

2 CHAIRMAN HILL: All right, thank you. Mr.  
3 Commissioner, you can begin whenever you like.

4 MR. MURPHY: Chair Hill, Vice Chair Hart, Mr.  
5 Shapiro, I have come here today to urge you to deny the  
6 pending application for a use variance that would allow Call  
7 Your Mother to open a bagel shop in my district, frankly, in  
8 the heart of my district. As I've noted, I do not represent  
9 the entire ANC on this matter. I lost. The record reflects  
10 that six of my colleagues don't agree with me.

11 They voted in favor of a very simple resolution  
12 recommending that you grant the relief requested by Call Your  
13 Mother. Only I and Commissioner Gibbons, whose district is  
14 just a block north of 3428 O Street, voted against that  
15 resolution. The fact is, I share many of the sentiments  
16 expressed by my colleagues at the ANC meeting before they  
17 voted in favor of this variance. Declining commercial  
18 activity is a huge problem in Georgetown. Call Your Mother  
19 is the kind of business we would like to attract to our  
20 community, but not at this location. I would absolutely love  
21 to see a hardware store at this location, a florist, again,  
22 at this location. We're not against a little bit of  
23 commercial activity over in this corner of our neighborhood,  
24 just not this kind of activity.

25 To my mind, the cost the arrival of this business

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1 would impose on the residents who live near the intersection  
2 of 35th and O would far outweigh the benefits obtained by the  
3 residents in the other parts of our community. In short, the  
4 proposed use would cause a substantial detriment to the  
5 public good.

6 In this connection, I note that the record  
7 includes a letter from the Citizens Association of Georgetown  
8 expressing community opposition to this application. The  
9 facts, as I understand them, are clear. The Applicant's goal  
10 is to replicate the success he has achieved at his location  
11 at the corner of Georgia Avenue and Lamont.

12 I'm actually a fact witness with respect to that  
13 store because I drive past it frequently on my way to  
14 President Lincoln's Cottage at the Old Soldiers Home, at the  
15 Armed Forces Retirement Home. Earlier today, you heard Mr.  
16 Dana say that generally, there are no more than three or four  
17 people in that location. I went by there last Friday  
18 morning, at about 9:45, and there were at least eight people  
19 sitting outside, not to mention four I counted in the front  
20 window, and I don't know how many were standing inside.  
21 That's a very different sort of location. It's in the  
22 Georgia Avenue mixed use zone. It's surrounded by other  
23 commercial establishments.

24 It has indoor and outdoor seating, and it's  
25 bordered by wide sidewalks that can accommodate the long

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1 lines that form there on weekend mornings. The subject  
2 location is very different. It is squarely in the middle of  
3 the R20 zone and will have no, or very little, indoor seating  
4 and no outdoor seating.

5           When asked, at the ANC meeting, how he proposed  
6 to handle the weekend crowds, the Applicant helpfully  
7 suggested that he would create Disney World style  
8 switchbacks. When someone reminded him that he would not be  
9 permitted to install stanchions and ropes in the public  
10 space, the Applicant got even more helpful and offered to  
11 draw chalk lines on the sidewalk.

12           That's not going to work. The bottom line is that  
13 it is simply beyond dispute that the proposed store would  
14 draw crowds, noise, trash, and traffic to this street corner  
15 in the middle of the R20 zone. How does the zoning code  
16 apply to these facts? For starters, if I understand the  
17 rules correctly, the Applicant has the burden of proving that  
18 granting the requested variance would not substantially  
19 impair the intent, purpose, and integrity of the zone plan,  
20 as embodied in the regulations. The stated purpose for  
21 creating the R20 zone was to retain the quiet, residential  
22 character of the neighborhood. Thus, the requested variance  
23 should not be granted unless the Applicant has succeeded in  
24 persuading you that plopping a Call Your Mother bagel shop  
25 in the middle of this neighborhood would be consistent with

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1 the goal of retaining the quiet residential character of the  
2 surrounding area.

3           The crowds, noise, trash and traffic that would  
4 undoubtedly accompany the arrival of Call Your Mother simply  
5 don't belong in the R20 zone. On the other hand, if the  
6 Applicant is interested in opening a store just four blocks  
7 east in the MU4 zone, in the building you decided on earlier  
8 this morning, I've been quoted as saying I would be happy to  
9 lead a brass band to welcome him to that location. I  
10 respectfully submit that this application should be denied.  
11 Thank you.

12           CHAIRMAN HILL: Okay, thank you. Just to let  
13 everybody know, we let the commissioner go a little bit  
14 longer, again, because he is the commissioner there. The  
15 next person, Dignan.

16           MR. DIGNAN: Mr. Chairman, we're just sitting out  
17 of order here. If you wouldn't mind.

18           CHAIRMAN HILL: Going to Ms. Roth first? Okay,  
19 sure. All right, Ms. Roth, you, as well. We'll see how it  
20 goes. I'm not going to try to cut people off. Basically,  
21 it's three minutes. You've got slides here. There's a lot  
22 of people here that are going to speak in the same kind of  
23 way, but you can go ahead and begin whenever you like.

24           MS. ROTH: Thank you. I feel like we are at a  
25 little bit of a disadvantage because we didn't know until

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1 this morning that the party status would be rejected, and  
2 that gives us no chance for rebuttals or cross-examinations  
3 of testimony that has already occurred, where there has been  
4 several misrepresentations.

5           Let me start by saying we would welcome Call Your  
6 Mother to Georgetown, but like their other locations, we  
7 would like them to go in a space that is commercially zoned  
8 and does not require you to bend the zoning rules. If we  
9 were here talking about McDonald's or Chipotle or another  
10 fast food restaurant, we would not be here today.

11           But because this is a well-loved bagel restaurant,  
12 there is -- there are issues and there are support for this  
13 restaurant to come to Georgetown. Let me talk about the  
14 three prongs, since I want to try to stay within the three  
15 minutes, let me talk about the three prongs that are required  
16 from the Applicant to meet their burden of proof, in order  
17 to grant this variance. The first burden of proof is about  
18 the extraordinary or exceptional conditions. You heard the  
19 Applicant argue that corner doors and large shop windows  
20 prevent conversion to residential use. Yet, we have photos  
21 here of houses that are in the very neighborhood that have  
22 both corner doors and large shop windows. No one converted  
23 those windows or those doors.

24           If this is such a hardship, there were no cost  
25 estimates as to what that conversion would even cost. More

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1 importantly, this site has never been listed, not listed for  
2 sale, not listed for rent. They did not try and get any  
3 other business there. Within days of Greenworks closing  
4 their doors, in order to combine with another location that  
5 was not far, also just -- not far away, the renovation  
6 started on this property.

7           We've dealt with, already, the contractors parking  
8 illegally and other issues. Greenworks was there for 30  
9 years. That is a successful business, one that can operate  
10 for 30 years. There's no efforts made to try and attract any  
11 residential use or other commercial use, so we do not believe  
12 that they meet the first prong at all, given that there are  
13 houses with these exact same features.

14           You can see the picture on the right is a house  
15 with both a corner door and large shop windows. There, we  
16 kill both birds with one stone. Second, we talked a little  
17 bit about the hardship. We want to be very clear that the  
18 hardship, again, should be on the owner. The property was  
19 never listed for lease or sale. There's been no market test,  
20 whatsoever. There's no evidence that this prong has been  
21 met. This is not a vacant property that was idle, like the  
22 first case you heard this morning, for ten years. This has  
23 never been -- there's been no attempt to find any other  
24 tenant.

25           In fact, the Applicant is on the record of saying

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1 that the reason they're in this location is because they have  
2 a sweetheart deal and a lease that is likely, perhaps, even  
3 below market rate. The costs of renovation and signing a  
4 lease, signing a ten-year lease, do not mean that there is  
5 any hardship to the owner.

6 Let me very quickly go through the substantial  
7 detriment to the public good. The Applicant argues about  
8 their existing track record, their charitable giving, and all  
9 the extremely wonderful things that they are doing for the  
10 communities that they are located in. We believe that is  
11 terrific, but they're irrelevant to granting this variance.

12 The Applicant argues that -- is arguing for a  
13 neighborhood prepared food shop, but I want -- you saw the  
14 picture earlier. We already have Saxbys across the street  
15 that sells the exact same things. They sell coffee, drinks,  
16 and bagels. This is a misrepresentation because Call Your  
17 Mother is not going to be a neighborhood prepared food shop.  
18 It is a wildly popular destination restaurant that one of my  
19 neighbors is going to speak more about. It draws from  
20 everywhere, from outside of the neighborhood. We already  
21 heard from Commissioner Murphy about the ANC. I'll move on  
22 to the Office of Planning. The Office of Planning  
23 recommended approval, but their memo specifically states, as  
24 a condition, that employees are permitted to sell bagels to  
25 customers, but are not permitted to toast and prepare them.

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1           That is what the memorandum states specifically.  
2 It is entered into evidence in the record. This is not the  
3 business model that the Applicant wants. Here's a view of  
4 their menu. This is also entered into evidence. There's  
5 much more than just bagels and cream cheese being offered.  
6 More on the substantial detriment to the public good.

7           All of the things that the Applicant has promised,  
8 in terms of trash pickups, pest control, daily deliveries and  
9 new technology is great, but it doesn't help with control  
10 over the patrons. There's no seating, so where will these  
11 patrons go to eat what they buy there? There's going to be  
12 litter everywhere.

13           Saxbys garbage can is already overflowing.  
14 Department of Public Works can testify, if needed, that that  
15 trash location is a huge problem for them. We have nothing  
16 but rats. Parking is already very tight because of Holy  
17 Trinity and Georgetown University and Georgetown Visitation  
18 schools. Cannot block the sidewalk, block the alley, and  
19 block our one lane, one-way cobblestone O Street. Also, of  
20 course, we'll have some testimony, probably, about the noise  
21 with the early morning deliveries. Just quickly to address  
22 the shorter hours.

23           CHAIRMAN HILL: Ms. Roth, I'm just going to  
24 interrupt for one second. I understand that you didn't get  
25 party status, so you have this slide deck that you want to

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1 go through. I'm just letting you know I'm going to let you  
2 go through this slide deck. I'm not asking anybody to cede  
3 their time. Go ahead and move through your slide deck.

4 MS. ROTH: I appreciate that, and I will go as  
5 quickly as possible. I wanted to be clear that this  
6 conception of shorter hours, all that means for the  
7 neighborhood is we're only going to be inconvenienced for  
8 those shorter hours. You have to think about that for a  
9 second.

10 It doesn't change whether they would be open later  
11 or not, although the Applicant is on record saying they may  
12 extend the hours. I'm going to move to the next slide  
13 because I think my neighbors will be addressing other issues  
14 here. Here's something that has not been addressed yet. The  
15 second part of the third prong is the impairment to the  
16 intent, purpose, and integrity of the zoning plan.  
17 Commissioner Murphy spoke briefly about this. The zoning  
18 plan exists for the reason -- Commissioner Murphy talked  
19 about retaining the quiet residential character. We believe  
20 granting this variance impairs this intent, purpose, and  
21 integrity. More importantly, we think this is a slippery  
22 slope. We think if this variance is granted, then it opens  
23 the floodgates in any quiet residential neighborhood for any  
24 other fast food restaurant, prepared food shop, or restaurant  
25 to move into those neighborhoods. It sets a huge precedent.

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1 The likely result, in fact, is many of the neighbors actually  
2 moving out of D.C., given this is not what they bargained for  
3 when they bought their homes. I'm going to --

4 CHAIRMAN HILL: Ms. Roth, how much you got left?

5 MS. ROTH: I'm going to skip to the conclusion  
6 just for you.

7 CHAIRMAN HILL: Not just for me, Ms. Roth. I can  
8 cut you off at any time. Go ahead.

9 MS. ROTH: This is the conclusion. Here, we have  
10 kind of a vertical thought process, where first, we have the  
11 neighbors, where we have a map which another one of my  
12 neighbors is going to speak about, where the overwhelming  
13 majority, somewhere between 93 and 95 percent, depending upon  
14 who you count from letters that came in this morning that  
15 oppose granting the variance. We already heard about the ANC  
16 2E, but the most important part is the two commissioners who  
17 represent the area most impacted oppose this variance. You  
18 have read and heard about the CAG opposing the variance,  
19 given on purely legal grounds. We have, in opposition,  
20 entered into the record, D.C. Councilman representing the  
21 entire ward opposes. We have the two different D.C.  
22 departments, including the Office of Planning, where the  
23 approval was conditional, and we have the Department of  
24 Transportation that has no actual study or impact to the  
25 pedestrian traffic or parking issues.

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1           Finally, if needed, we would be very happy to ask  
2 Mayor Bowser if she would like this precedent in slippery  
3 slope of granting such a variance. Thank you very much for  
4 letting me go way over my three minutes. I really appreciate  
5 it.

6           CHAIRMAN HILL: That's all right. We were back  
7 over here.

8           (Off-microphone comments.)

9           CHAIRMAN HILL: Okay, it doesn't matter. That's  
10 all right. We're going to put your three minutes here, right  
11 in front of you, okay?

12           MS. ALLMOND: Okay. Thank you for hearing us  
13 today. This is not a neighborhood residential eatery but a  
14 commercial and nationally awarded fast food destination. It  
15 will result in major proven tourist foot traffic in a  
16 residential neighborhood, less street parking for residents  
17 in an area with existing street parking shortages, and  
18 increased traffic for families and students in the morning  
19 and afternoon, incidentally around 7:00 or 8:00 or 3:00 at  
20 Holy Trinity, Georgetown Visitation, and Hyde-Addison  
21 Elementary School, all only blocks away. 8:00 to 3:00 hours  
22 will be the most disruptive to them, but rats and trash don't  
23 leave at 3:00 p.m.

24           With little to no room for seating -- as we found  
25 out today, no room -- and a consistent outdoor line, patrons

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1 of Call Your Mother will cause increased outdoor noise and  
2 congregating, block residential sidewalks, create trash, rat,  
3 and sanitation problems on a street that already has an  
4 established rat issue.

5           It will not be able to effectively take on this  
6 trash issue, however well meaning this offer may be. Since  
7 there will be no seating, patrons will leave the fast food  
8 establishment to eat on surrounding streets and sidewalks,  
9 causing a rippling effect of trash. Mr. Dana claims things  
10 will be quiet, but he has no control over the patrons waiting  
11 in line or after taking their food.

12           This is one of the many items that, unlike his  
13 attorney proposes, Mr. Dana does not and cannot have a  
14 solution for. On July 13th, Call Your Mother's Instagram  
15 account acknowledged that its already long lines were even  
16 longer due to Eater's Top 16 New Restaurants in America  
17 article, so much so that the account stated their employees  
18 would walk the outdoor line to hand out water and keep  
19 patrons hydrated. This is a tangible illustration of the  
20 number of people that would seek out this restaurant in a  
21 strictly residential neighborhood, and the traffic, parking  
22 -- not just for employees, but for patrons, Uber Eats  
23 drivers, other pickup drivers -- noise, delivery trucks,  
24 trash, public nuisance and property value concerns that would  
25 come along with Call Your Mother opening in its proposed

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1 location.

2           As a fast food restaurant, there will be no  
3 reservations, no seating, no system for crowd or line  
4 control, regardless of the updated technology. My husband  
5 and I actually drove to the current location, but have never  
6 tried the food because we didn't get out of the car after  
7 seeing the line. I've never seen a line that long at any  
8 restaurant.

9           What Mr. Dana proposed today with the Toast for  
10 three or four orders at a time, it might make the line less,  
11 but this is not a solution. It won't cut down on the number  
12 of people coming through, street traffic, trash, walking  
13 traffic, rats.

14           If anything, more people could potentially join  
15 the line, since it's shorter and moving faster, causing more  
16 trash and people. Even tourists and D.C. residents who visit  
17 Georgetown without a plan to get to-go food from Call Your  
18 Mother will often make their way there when it inevitably  
19 appears as the first-rated choice on websites like Yelp and  
20 TripAdvisor. We've talked about the recent national press,  
21 the 16 best new restaurants in America, only D.C. restaurant  
22 named. Bon Appetit magazine had it one of the 50 nominees  
23 for America's best new restaurants.

24           Again, the only restaurant named in all of D.C.  
25 Call Your Mother would be a welcome addition to Georgetown,

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1 as we've stated, if it was opened appropriately in one of the  
2 many available commercial properties that are vacant. Anyone  
3 who's seen the consistent line in the current location can  
4 certainly attest to the fact that they could not only afford  
5 one of these many available storefronts, but would thrive  
6 there.

7           The prong of hardship on the owner that was  
8 mentioned in converting or getting another tenant is wholly  
9 untrue. The property was never even put on the market. It's  
10 highly Instagram'd and a sought-out spot. Mr. Dana even  
11 stated that people come to ask to lease the building all the  
12 time.

13           The owner could have no idea what would thrive  
14 there, as he stated that the same shop operated there for 30  
15 years. There's no evidence, quite on the contrary, that this  
16 would need to be converted to residential use, even though  
17 we saw that it could be. It could operate as a retail store  
18 or have many other businesses that wouldn't require a  
19 variance. Thank you for your time. I'd like to say, in  
20 closing, that I've always rented before this year. I  
21 purchased my home earlier this year, and it was a major  
22 investment for me, also beginning a renovation. I bought  
23 relying on D.C. and this Board to preserve the character and  
24 integrity of the neighborhood and how it's currently zoned.  
25 We haven't hired an attorney, but we're a group of concerned

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1 citizens asking that you please deny the variance and protect  
2 the neighbors of this proposed location. Thank you.

3 CHAIRMAN HILL: Okay, thank you. Who's next?

4 MR. DIGNAN: I can go next, Mr. Chairman. Before  
5 my time starts, we took a PDF of this map and sent it to Mr.  
6 Moy. I don't know if you have the ability to bring that up  
7 on the screen.

8 MR. MOY: It's being processed on the record since  
9 he was.

10 (Simultaneous speaking.)

11 CHAIRMAN HILL: You want to put it up on the  
12 monitor so you can talk to it, or you just want to use what  
13 is on the placard? I'm a little confused. I'm sorry.

14 MR. DIGNAN: Yes, not just for the Board to see,  
15 but --

16 CHAIRMAN HILL: No, you can -- it's on a camera,  
17 meaning the public can see it.

18 MR. DIGNAN: Okay, now we can see it.

19 CHAIRMAN HILL: I forget the gentleman's name  
20 that's standing right there, but if he wants to just pull it  
21 back just a little bit, then everyone can see -- it's on --

22 MR. DIGNAN: I wanted to make sure Mr. Dana and  
23 his attorney would be able to see it, too.

24 CHAIRMAN HILL: Sure. If you want to stand up  
25 there, we have a microphone.

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1 MR. DIGNAN: Sure, I can stand up there.

2 CHAIRMAN HILL: Mr. Moy, do you have the  
3 microphone, the handheld? Okay, great, there you go.

4 MR. DIGNAN: You have to tell me where I'm not  
5 standing in front of this camera.

6 CHAIRMAN HILL: You can kind of see, probably,  
7 right? Can't you see the -- do you have a monitor in front  
8 of you? You don't have the monitor -- there's not a monitor  
9 here, in front, right here? Is there a monitor in front of  
10 you guys?

11 MR. DIGNAN: I can stand here. How about that?

12 CHAIRMAN HILL: You can see yourself.

13 PARTICIPANT: Yes.

14 MR. DIGNAN: That's fine.

15 CHAIRMAN HILL: Right, there you go. You can  
16 start whenever you like. Turn on the microphone.

17 MR. DIGNAN: Does this work now? Okay. Mr.  
18 Chairman and the Board, my name's Brandan Dignan. I live on  
19 the same block as the proposed bagel shop, here on N Street.  
20 As a District resident, I think that we have -- we fight an  
21 unfair stereotype of D.C. being a transient city. There are  
22 neighborhoods outside of the core of D.C., both on the east  
23 and the west side, north and south, that are true  
24 neighborhoods that not only need to be protected, but I think  
25 highlighted by the city as communities that last for

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1 generations, and we are one of those communities.

2 I want to talk about our neighborhood a little  
3 bit. We're a unique neighborhood. We're not like the big,  
4 huge homes in the rest of Georgetown that might be on tours,  
5 food or otherwise. We're a smaller, modest area of  
6 Georgetown. I had a key to my neighbor's house. Two days  
7 ago, we went over to another neighbor's house and had dinner.

8 We walk dogs. We take care of each other. This  
9 is also a neighborhood where people last for generations.  
10 Connor, here, grew up -- Mal (phonetic), you were here for  
11 a very long time. Most of the residents in this area have  
12 been here for 20, 30, 40, 50 years or more. When my family  
13 immigrated to the United States over 100 years ago, when they  
14 didn't speak English, they joined a parish.

15 It was right here. I'm still a member of that  
16 parish five generations later. My wife, when we decided to  
17 move back here because we love this neighborhood, she put her  
18 entire savings into our home, relying on the D.C. Government  
19 and this Board to protect our interests and to enforce the  
20 zoning laws. We've talked about lines quite a bit. The  
21 lines would zigzag right here. One thing that hasn't been  
22 talked about is the egress and ingress to this store. If you  
23 take out Google Maps anywhere on M Street, anywhere on  
24 Wisconsin Avenue, and you ask to go to this location, where  
25 does it go? It goes straight down our street.

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1           You've got hundreds and hundreds of tourists, foot  
2 traffic, going down our street, either this way or this way  
3 or this way. We've taken a snapshot here. I know the Board  
4 is interested in 200 feet. I live within 200 feet of this  
5 store here. We went even beyond that, just to see if there  
6 were others, because I know there were other letters from Mr.  
7 Dana that are wildly outside of our neighborhood.

8           Everything that's here in red are those that have  
9 signed a petition or written a letter to this Board saying  
10 that they oppose this. You might see a couple green, one,  
11 two, three. That one, I believe, is you, sir, who was on our  
12 petition, and then switched. This neighborhood does not want  
13 this store here. We put a lot of money into our homes to  
14 protect this neighborhood.

15           I didn't buy my home thinking that one day, I  
16 would have a quiet residential neighborhood, where I'd walk  
17 out and there are dogs and my neighbors can stand outside  
18 talking and, the very next day, I live on a major  
19 thoroughfare of tourists that are going to one of the most  
20 wildly popular fast food restaurants in the country. That  
21 just doesn't work. Thank you.

22           CHAIRMAN HILL: Okay, great, thank you. Who's  
23 next?

24           MR. SAVAGE: Good morning. As I previously  
25 stated, my name is Michael Savage, I am, along with the rest

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1 of my neighbors, here to express my serious concerns related  
2 to Call Your Mother bagel restaurant and request that you  
3 deny their request for variance. As we've discussed in great  
4 detail, Call Your Mother's one of the most popular  
5 restaurants in the District and is well known for its  
6 enormously long lines.

7 I refer you to Exhibit 50, which is a  
8 representation and a summary of a visit that I had made to  
9 the Georgia Avenue site. The line was incredible, 65 people  
10 long, with a very small interior of under 500 feet and no  
11 indoor seating, a queue can realistically run halfway up the  
12 block, all day, every day, before 7:00 a.m., with all the  
13 related noise and site pollution.

14 If approved, we will effectively have Georgetown  
15 Cupcake on our block. We've talked about Georgetown Cupcake  
16 a number of times today. The difference is that Georgetown  
17 Cupcake is on a major city street, surrounded by numerous  
18 parking options, while we are residential streets with very  
19 little parking and no infrastructure to support such a high  
20 impact restaurant. Call Your Mother will both destroy our  
21 quiet residential character, in violation of District zoning  
22 law, and cause substantial detriment to the public good. In  
23 addition, there are compelling reasons clearly described in  
24 the zoning rules to deny this application that the Applicant  
25 has clearly failed to overcome.

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1           The first has already been stated by the Citizens  
2 Association of Georgetown. There's a specific rule, outlined  
3 in detail in the statement of opposition and the zoning  
4 handbook, regarding corner stores, that disallows prepared  
5 food shops to be within 500 feet of another. As you've seen,  
6 as we've discussed many times, Saxbys Coffee Shop is an  
7 eating and drinking establishment and is right across the  
8 street from the subject property and well within this  
9 500-foot restriction.

10           The second is that as currently envisioned, Call  
11 Your Mother's not a prepared food shop. It is a fast food  
12 restaurant. The Office of Planning staff report recommends  
13 approval of the variance as a prepared food shop, predicated  
14 on the following assumption, and I quote, employees are  
15 permitted to sell bagels to customers, but not permitted to  
16 toast or prepare them. This extremely limited approval by  
17 the Office of Planning does not reflect how Call Your Mother  
18 will actually operate. Mr. Dana's testimony today  
19 continually referred to Call Your Mother as a restaurant.  
20 Applicant realizes, though, that he can't have a restaurant  
21 there. His only path forward, due to the zone, is to be  
22 categorized as a prepared food shop and is trying to contort  
23 itself to meet this very limited definition. This is clearly  
24 not the case.

25           As you have seen, Call Your Mother has a detailed

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1 menu, and an objective assessment shows that under the Zoning  
2 Regulations rewrite of 2016, Applicant, in fact, should be  
3 categorized as a fast food establishment. To allow it to  
4 open at the subject property is void ab initio. Drawing  
5 solely from the Applicant's prepared hearing statement,  
6 solely their statement, under the DCMR, all the  
7 characteristics of fast food establishments are met.

8 Under the DCMR definition, the new definition, of  
9 a fast food establishment, quote, food is prepared and served  
10 very quickly. To quote from the Applicant, the kitchen and  
11 menu also being adjusted to increase the speed of ordering.  
12 Second, a fast food restaurant has food that is typically  
13 made of preheated or precooked ingredients.

14 As stated today, daily deliveries around 6:00 a.m.  
15 of products from the main store. Finally, of the DCMR, 100  
16 percent of the food is served to the customer in a package  
17 for carryout take-away. There is no seating area. BZA cases  
18 support this argument that Call Your Mother is a fast food  
19 establishment. Most particularly, Einstein Brothers Bagels  
20 in upper Georgetown, on Wisconsin, with a nearly identical  
21 menu to Call Your Mother, was classified by the Office of  
22 Planning as a fast food establishment and had to seek a  
23 variance in a C2A zone. On H Street, a Blimpie's Deli was  
24 also found to be a fast food restaurant.

25 But of all the cases, and there are many more, the

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1 one most applicable to this case is the case of Philadelphia  
2 Pizza, a fast food establishment operating in west  
3 Georgetown, a few blocks from the subject property, but also  
4 in a C2A zone. Based on the arguments presented, ironically,  
5 by the Applicant's Counsel, Mr. Sullivan, the BZA found  
6 almost nearly identical circumstances, long lines, noise,  
7 entirely carryout to the applicant and concluded that  
8 Philadelphia Pizza was a fast food establishment.

9 In sum, Call Your Mother's a high impact fast food  
10 restaurant feet away from an existing eating and drinking  
11 establishment in the dead center of the R20 residential zone.  
12 For these compelling reasons, the variance request must be  
13 denied. Thank you.

14 CHAIRMAN HILL: Thank you. Who's next?

15 MS. CARAVATTI: Marie Louise Caravatti. I've  
16 lived at 35th and O Streets for 35 years. My property --

17 CHAIRMAN HILL: I'm sorry, Ms. Caravatti. Mr.  
18 Moy, could you make sure the timer starts, so I know where  
19 we're at? Thank you. Please, go ahead.

20 MS. CARAVATTI: Thank you. My property is within  
21 the 200 feet of the establishment seeking the variance and  
22 abuts the patios and alleyways of O Street houses and has an  
23 entrance and front yard on 35th Street. As such, I'll be  
24 doubly impacted by the negative consequences of a takeout  
25 food establishment directly opposite another corner café that

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1 essentially sells exactly the same items and already has  
2 frequent lines outside every morning.

3 In fact, they told me that their most busy times  
4 are from 9:00 to 3:00 p.m. I recognize the benefits of  
5 having one such establishment in a residential community, but  
6 two directly across from one another and selling the same  
7 items are just one too many. I know this area especially  
8 well.

9 I've lived in this intersection for 35 years. I'm  
10 a veteran of the campaign to get Georgetown University to  
11 address the noise, trash, parking, road problems stemming  
12 from the university's policy of increasing student enrollment  
13 without addressing student housing.

14 It took us over 20 years -- I want to stress that  
15 -- 20 years to obtain relief, and it was only as a result of  
16 the decision of the Board of Zoning. The final BZA ruling  
17 on Georgetown's campus plan incorporated specific conditions  
18 that addressed our concerns. Since the university has legal  
19 jurisdiction over off-campus student behavior via the code  
20 of conduct, the students can be held accountable for actions  
21 in the neighborhood. Thus, residents have a means of  
22 recourse. In this case, however, if a variance is granted,  
23 we will have no similar means of recourse.

24 While the managers of Call Your Mother may have  
25 every good intention, and they say they're going to do their

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1 best, they have absolutely no control over the behavior of  
2 their customers, the litter that invariably collects in the  
3 streets around takeout establishments -- in my front yard,  
4 I may add, right now, I already have people dropping litter,  
5 food wrappers, etc. -- the double parking and the scooters  
6 that already clog our streets and sidewalks, the rats that  
7 will thrive on cream cheese and lox wrappers.

8 I haven't been able to use my garden for a whole  
9 year because of the rats that are not going to live on the  
10 pavement around Call Your Mother or inside Call Your Mother.  
11 Their weekly cleanup is not going to help at all. The rats  
12 are very smart. They don't go into the traps, and they know  
13 about the poison. They prefer pizza and wrappers.

14 Call Your Mother markets itself extensively  
15 throughout the District and is also promoting itself to  
16 Georgetown students. In an interview published in the  
17 student newspaper, The Hoya, the Applicant states, quote, he  
18 is looking into allowing students to pay with their GOCards,  
19 either through debit or flex dollars. They may even expand  
20 into dinnertime. If only a small percentage of the 7,000  
21 plus students attending Georgetown stop by, the lines will  
22 dwarf those experienced in Georgia Avenue. Even customers  
23 of Call Your Mother complain about the lines and Ubers from  
24 across town. I found this on the popular blog popville.com  
25 that covers quality of life in D.C. neighborhoods.

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1           These concerns have been cavalierly dismissed by  
2 some, but the residents of 35th and O Streets have lived  
3 through this before. For the first time in 35 years, I've  
4 seen young families with children, strollers, moving into  
5 this area. They're attracted by the quiet residential feel  
6 of the neighborhood.

7           It's no accident that many of these families are  
8 also opposed to having a destination deli on their doorstep.  
9 I might add that 95 percent of the immediate neighbors  
10 oppose, and the letters of support come from people who live  
11 -- who are not going to be directly impacted and live outside  
12 this area.

13           People who have not lived here since before 2011,  
14 when the BZA ruled on the campus plan, really don't  
15 understand the problems that can arise with noise, trash, and  
16 so many people walking back and forth in our neighborhood.  
17 They say they want Call Your Mother, but they don't  
18 necessarily have to have Call Your Mother on the corner of  
19 35th and O Streets. I want to add one other thing. I'm an  
20 economist, so I did a break-even analysis, a really, back of  
21 the envelope break-even analysis. Interestingly enough --  
22 and I gave them the benefit of the most generous assumptions  
23 here. The average rent for Georgetown properties is around  
24 \$45 per square foot. I assumed \$30 per square foot. I  
25 assumed that they would --

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1 CHAIRMAN HILL: Ms. Caravatti, you've gone over  
2 your time. Do you want to just get to the conclusion?  
3 That's all right, you can -- you're trying to currently, now,  
4 give expert advice or status.

5 MS. CARAVATTI: Sorry.

6 CHAIRMAN HILL: That is testimony on your ability,  
7 as an economist, to give us rental cap rates and everything.  
8 Do you have a conclusion?

9 MS. CARAVATTI: 66.66 customers is the break-even  
10 number that I came up with. At any rate, my conclusion is  
11 please -- the BZA brought us a measure of relief back in  
12 2011, and we're enormously grateful for that. I hereby  
13 respectfully request that the BZA once again give precedence  
14 to the interests of the residents by denying this variance.

15 CHAIRMAN HILL: All right, thank you. Who's next?  
16 All right, Mr. Ruth, you've got three minutes up here, as  
17 well, so you can begin whenever you like.

18 MR. RUTH: It's mister, but thank you.

19 CHAIRMAN HILL: Didn't I say mister?

20 MR. RUTH: It's all right.

21 CHAIRMAN HILL: Mr. Ruth. I can clearly see  
22 you're mister. All right, Mr. Ruth.

23 MR. RUTH: That's how I identify.

24 CHAIRMAN HILL: Very good. Good for you. All  
25 right, please go ahead.

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1 MR. RUTH: I want to start by making the point  
2 that while I'm surrounded by my neighbors and members of our  
3 community, we feel like we are the David in this fight  
4 against Goliath because the investor has considerably deep  
5 pockets, and they've invested \$1.3 million, recently raised  
6 to open additional restaurants, in addition to their  
7 deep-seated connections.

8 So we feel like thought our voices are small,  
9 together, hopefully, they can be mighty. Again, I grew up  
10 on this block, and I went to school in the D.C. area, in D.C.  
11 I learned, at an early age, that if you want a project to  
12 succeed, you have to do your homework. It seems as though  
13 Call Your Mother hasn't really done that in this case.

14 They haven't done a market study. There are no  
15 hard evidence or statistics on customer volumes or timing of  
16 the rushes. There's really been no research on alternative  
17 uses for the property. That is news to me, and it's  
18 disappointing news. I'd like to touch on a point that  
19 Michael made about Georgetown Cupcake, that the lines there  
20 are obscene. As residents, we couldn't really imagine  
21 fighting through those lines to even get to our front doors.  
22 However, Georgetown Cupcake is not prepared food. Their food  
23 is already prepared. Bagel sandwiches, as prepared food,  
24 would take a considerable amount of time, time that customers  
25 would spend in the waiting area of the shop, except there's

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1 only space for five or six of those people to wait.

2           So where will they wait? With stanchions, with  
3 chalk lines, they'll wait on the sidewalks, where, as a  
4 resident, I can affirm that there is not enough space for a  
5 weekend, or even, perhaps, a weekday crush of customers. I,  
6 personally, have worked in the food service industry. I can  
7 attest that while POS technology might expedite lines, it's  
8 not going to shrink them.

9           Those people are still going to be waiting around  
10 for their orders, whether it only takes a minute or two, it  
11 takes considerably less to place an order. My personal fear,  
12 which is shared by our neighbors and members of the  
13 community, is that these customers will linger and leave  
14 their trash, etc., are not really alleviated by the  
15 presentation of new technology as a panacea.

16           Additionally, I'd like to add that Georgetown  
17 students my age would likely be placing a lot of delivery  
18 orders. Delivery orders require someone to be physically  
19 delivering that food to them, whether that would be via  
20 automobile, via moped, via bicycle. There will have to be  
21 delivery people occupying space in front of the building,  
22 with their vehicles. That is space that we have already, I  
23 believe, have adequately shown that there is not enough  
24 parking already, when you consider the schools and other  
25 organizations nearby. These delivery drivers will obstruct

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1 parking spots. They'll obstruct the sidewalks, and they'll  
2 obstruct active roadways. That's just another reason why  
3 this request to bend the rules must be denied.

4 CHAIRMAN HILL: All right, thank you, Mr. Ruth.  
5 There's two left, correct? Mr. Moy, if you could please set  
6 the clock again for three minutes, and you can begin whenever  
7 you like.

8 MS. CRUSE: Thank you for letting me speak. I'm  
9 Karen Tammany Cruse. I live at 1259 35th Street, about a  
10 block from the location for the proposed Call Your Mother  
11 establishment. I'm adamantly opposed to the variance for  
12 this deli.

13 In the time that I have lived in this  
14 neighborhood, there have been at least four attempts to open  
15 a deli on or close to the 1300 block of 35th Street, at 1263,  
16 1300 and 1332 35th Street, and now at 3428 O Street. All  
17 four operations were opposed, and the Board of Zoning  
18 Adjustment denied special exceptions for non-conforming use  
19 in the first three of these cases. In its orders on each  
20 application, the Board gave, as reasons for its ruling,  
21 quote, the neighbors object to it, and there is a sufficient  
22 number of eating facilities already in the neighborhood. The  
23 deli, quote, would increase the amount of noise, traffic,  
24 vibration, and any other deleterious external effects.

25 The deli, quote, would not be in harmony with the

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1 general purpose and intent of the Zoning Regulations and  
2 maps. The fourth deli is now under consideration. It is  
3 interesting to note that although this operation is similar  
4 to the three prior businesses, the Applicant is not seeking  
5 a special exception for non-conforming use. Rather, he  
6 requests a use variance.

7           One must wonder if this is due to the fact that  
8 he is aware that he would automatically be prevented from  
9 acquiring a special exception because his operation fails to  
10 meet the criteria necessary for such a waiver, including its  
11 proximity to a similar establishment, Saxbys, directly across  
12 the street, and the intensification of use over the previous  
13 business, a florist shop.

14           By virtue of the fact that such a variance would  
15 be a deviation from the set of rules that safeguard  
16 residentially zoned areas, it should be granted only in  
17 special circumstances and where the granting would not cause  
18 substantial detriment to the public good and would not be  
19 inconsistent with the general intent and purpose of the  
20 Zoning Regulations. That's taken from D.C. Office of Zoning.  
21 As the letter from the Citizens Association of Georgetown  
22 submitted in opposition to the deli states, quote, a use  
23 variance would be in conflict with the intent of the zoning  
24 code to place express limitations on a corner store in a  
25 residential district, unquote, as reflected in the special

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1 exception requirements for a corner store.

2           The BZA has already ruled against a deli in this  
3 area three times, determining that it was not an appropriate  
4 location for this type of commercial operation. This fourth  
5 attempt is the same neighborhood. The challenges facing the  
6 neighborhood are the same. The opposition by the affected  
7 neighbors is the same.

8           I urge that your decision with regard to Call Your  
9 Mother also be the same. Since I have time, I'd like to add  
10 that the 1300 block of 35th Street already has -- supports  
11 five non-conforming uses, not including this particular  
12 location. I even went to the BZA to support one of them.  
13 We have no problem with commercial spaces, although it's  
14 getting to the tipping point.

15           Six commercial spaces on one block of  
16 residentially zoned, entirely residentially zoned, is a lot.  
17 Also, everybody talks about how popular this restaurant is  
18 and people in Georgetown who are supporting it. Zoning is  
19 not a popularity contest. So again, I ask you that you deny  
20 this application. Thank you.

21           CHAIRMAN HILL: Okay, thank you. Please.

22           MR. NEELEY: One more?

23           CHAIRMAN HILL: Yes, sure. I'm sorry. I thought  
24 your testimony was very well spoken. I was smiling because  
25 it isn't a popularity contest. That's the whole problem.

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1 Because no matter how many people show up here and how many  
2 votes and how many letters, we get stuck with it. Sir,  
3 please go ahead.

4 MR. NEELEY: I'll do this the easy way, since I  
5 think you all have said basically anything we could say to  
6 the argument. The discussion in my house has been probably  
7 a microcosm of what's going on here. We all have the same  
8 feeling. Yes, we love bagels. I want bagels. I want to get  
9 up and get a bagel. But it's not until you really pick  
10 through all of the details that you start to find the seedy  
11 underbelly of what is likely the outcome of it.

12 I thought to myself -- I used to live in Dupont  
13 Circle. I've lived this life before. At the end of the day,  
14 I think -- one of my colleagues made the comment the zoning  
15 code is here to create rule of law, to create order in which  
16 we operate, and ultimately, I moved out of Dupont Circle,  
17 living on 17th Street, because I was tired of the commercial  
18 zoning. It was zoned commercial. It was allowed to be  
19 there. But I moved into a residential neighborhood because  
20 I wanted it to be quieter. I made the investment with the  
21 assumption that the District would uphold the laws that they  
22 had put in place to protect me. I look at this and think  
23 it's really just a matter of rule of law. You look at -- go  
24 back to the prongs. We've talked about these ad nauseam, at  
25 this point.

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1 I get bored at night and sometimes do really  
2 tedious research. I found a couple of interesting facts.  
3 On the economic hardship aspect, for the owner, they bought  
4 this property in 1996, for \$217,500. It's currently valued,  
5 average price per square foot in Georgetown, at a little over  
6 \$800,000.

7 That's about \$600,000 in equity that they're just  
8 sitting on. When somebody tells me I can't change the use  
9 of my property, I sell it and I cash out. The same thing  
10 could be applicable to the owner. There's no hardship.  
11 There's a ton of equity that you could take. If half a  
12 million dollars is hardship, I'm really in the wrong  
13 business.

14 I apparently need to be a florist. Also, on the  
15 conforming use, I think we heard they never even really tried  
16 to find a conforming use for the property. Mr. Dana stated  
17 that the owner had spoken to him and said they gets lots of  
18 calls, but he just felt like this was the right answer. He  
19 didn't analyze the rule of law that says you must choose a  
20 conforming use first. That is what you must have. Only in  
21 exceptional circumstances do you turn to one of those other  
22 uses. He didn't know that. He wasn't an attorney. He  
23 didn't make a decision based on the rule of law. He did what  
24 he thought was right, but in this circumstance, it doesn't  
25 follow the Zoning Regulations.

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1           Also, on just traffic, I know we've done a little  
2 bit of analysis. The one thing that really bugs me about  
3 where I bought my house, which I never knew until I got  
4 there, that three blocks to the Key Bridge is killer because  
5 all the people in the neighborhood are not from the  
6 neighborhood. They're from Virginia.

7           They're from Maryland. They come through and grab  
8 coffee at Saxbys on the way to work. They drop their kids  
9 off, and then go. All the traffic that we get is because of  
10 our proximity. The other locations are -- Georgia Avenue,  
11 Capitol Hill, there's no other location to service Virginia.

12           Everybody coming in over the Key Bridge, their  
13 first stop is three blocks up to us. Finally, I know you  
14 picked up precedent, so I won't harp on it. I do have the  
15 BZA case numbers. So 1332 35th Street, BZA Case 10588,  
16 petition to change from a pharmacy and soda fountain to a  
17 deli was denied. Second case, BZA 12848, request for 1300  
18 35th Street to convert from a tailoring shop to a  
19 delicatessen. It was a great summary at the end. It said  
20 the Zoning Board concludes that under Subsection 8207.2, the  
21 proposed use would adversely affect the neighborhood and  
22 would not be in harmony with the general purpose and intent  
23 of the Zoning Regulations and maps. This is the same block  
24 --

25           CHAIRMAN HILL: What was the third case? You had

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1 a third case number.

2 MR. NEELEY: She found the third. I didn't  
3 remember.

4 CHAIRMAN HILL: That's all right.

5 MS. CARAVATTI: May I speak? Because I was  
6 involved in that. It was a huge campaign in the  
7 neighborhood. 1263 35th Street, I've gotten rid of all--

8 (Simultaneous speaking.)

9 CHAIRMAN HILL: You don't remember the -- did he  
10 mention one of the ones that you were talking about?

11 MS. CARAVATTI: He mentioned --

12 (Simultaneous speaking.)

13 CHAIRMAN HILL: Okay, that's fine.

14 MS. CARAVATTI: But the third one is not in your  
15 files.

16 CHAIRMAN HILL: Okay, that's fine.

17 MS. CARAVATTI: It's 1263 35th Street.

18 CHAIRMAN HILL: Say the address again.

19 MS. CARAVATTI: It's 1263 35th Street, the next  
20 intersection.

21 CHAIRMAN HILL: Okay. All right. Is that it?

22 MR. NEELEY: All I was going to say --

23 CHAIRMAN HILL: Okay, great.

24 MR. NEELEY: -- let precedent rule.

25 CHAIRMAN HILL: Okay. We're going to have some

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1 questions, I suppose, because I've got some questions.  
2 Before we have the questions, I'm going to say just a couple  
3 quick things. We've been doing this for -- I've been doing  
4 this for five years. This is not the first time that a bunch  
5 of people have come here. I've been living here since I was  
6 in the third grade, so I've seen a lot of things change.

7 I know exactly where you all live. I'm just  
8 letting you know that it's not like these are just -- we're  
9 all from a neighborhood. We've all been here. I'm looking  
10 at the Commissioner here. We just went through this whole  
11 thing earlier about an earlier property that was also not too  
12 far from where you were. I'm just letting you know that some  
13 of the things, like rule of law, precedent, all these things,  
14 we've heard a lot of them before. Does the Board have any  
15 questions?

16 VICE CHAIR HART: The only question I had was my  
17 understanding from the Applicant is that they have an ability  
18 to open up their business tomorrow, I mean right now. Your  
19 opposition is to the business and to this -- the variance  
20 that they're seeking. But if they don't get this variance,  
21 they're still able to open their business, so you'll still  
22 have these same issues. What I'm trying to understand is  
23 what is -- do you understand that aspect of it? Just one of  
24 you or two of you could respond to that. I'm just trying to  
25 understand that part of it.



1 MR. SAVAGE: I.

2 CHAIRMAN HILL: You can both -- this gentleman had  
3 his microphone on his first, but you guys can both respond.  
4 It doesn't matter. Go ahead.

5 MR. SAVAGE: It is our not understanding that is  
6 the case, despite Applicant suggesting that.

7 VICE CHAIR HART: Okay.

8 CHAIRMAN HILL: Okay.

9 MS. CARAVATTI: My understanding -- this is off  
10 the top of my head -- that if they didn't get this, they  
11 would be allowed to continue under -- as a special exception  
12 to non-conforming use, which they now have, if they don't  
13 have a variance.

14 VICE CHAIR HART: They have a variance now for the  
15 property --

16 (Simultaneous speaking.)

17 VICE CHAIR HART: Hold -- the existing use has a  
18 variance to be that, to be whatever the thing was before  
19 that.

20 MS. CARAVATTI: I thought they were non-conforming  
21 use.

22 VICE CHAIR HART: No, that was a variance to get  
23 that. That variance goes with the property. So that would  
24 be allowed to continue. You're making -- I understand the  
25 issues that you're raising. But what I'm trying to get to

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1 is the business will still be there. It is the ability for  
2 them to prepare the food versus them not being able to  
3 prepare it. So just selling bagels is one thing, and then  
4 somebody can do -- the people that buy them can do whatever  
5 they want to after, even in the store. That's what I'm  
6 trying to get to.

7 MS. ALLMOND: Could I say something to that? The  
8 popularity of the current restaurant hinges on the  
9 preparation. The bagels are just bagels, bagels and cream  
10 cheese. There's only so much, I think, variety within that.  
11 The popularity in it being a restaurant that is so widely  
12 known and renowned is in the preparation of the bagels, in  
13 the sandwiches, in the ingredients, in how it's cooked, as  
14 a restaurant.

15 If Call Your Mother opens as a retail shop with  
16 bagels and shmeat to go, I think a lot of the current  
17 concerns would be either alleviated or much better because  
18 the lines and the draw are not going to be there, as they  
19 would be in the current state.

20 VICE CHAIR HART: That's fine. I understood that.  
21 I just was trying to get the difference between those from  
22 your point of view. Thank you very much. No other  
23 questions.

24 MR. NEELEY: -- say something real quick. I think  
25 they're fundamentally different business models, which is

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1 exactly what you're getting to. A prepared food shop, if you  
2 deliver bagels, based on their menu, at 5:00 a.m. every  
3 morning to open by 6:00, by 8:00 a.m., nobody wants a bagel  
4 with a three-hour-old egg and some lox wrapped up in plastic.  
5 That's sketchy.

6 To operate as retail, what they would be allowed  
7 to do, yes, you could sell a bagel, which people would buy;  
8 you could sell some cream cheese, but the whole experience,  
9 the breadth of the menu and the thing that takes all the time  
10 and creates all the lines, it's not realistic. I wouldn't --

11 (Simultaneous speaking.)

12 CHAIRMAN HILL: I'm sorry, I'm going to interrupt  
13 you. You're assuming these things. I'm also assuming that  
14 it's just going to be as popular, but you're going to have,  
15 now, people toasting. I don't know what the number's going  
16 to be. You'll get 20 percent less. I'm just trying to kind  
17 of -- I don't know. You're just shaking your head. Mr.  
18 Murphy -- can you turn your microphone off?

19 MR. MURPHY: Chairman Hill --

20 CHAIRMAN HILL: Mr. Neeley, can you turn off your  
21 microphone. I'm sorry; I'm just getting some --

22 MR. MURPHY: Chairman Hill, in a nutshell, Call  
23 Your Mother has a brand. That brand is not unprepared bagels  
24 being handed over a counter. That's why they want the  
25 variance.

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1           CHAIRMAN HILL: Right. So, Mr. Murphy, I'm back  
2 to you here. They already have a variance. This is an  
3 increased use. My question to you is actually the one that  
4 Mr. Hart put out to everybody else. Is that, again, -- and  
5 you've been here testifying before, again, about retail and  
6 economy and other things that you are in favor of.

7           I understand it's completely different situation,  
8 but I'm still letting you know what you've already been on  
9 the record supporting. And so currently, as I understand it  
10 there's going to be more clarification from the witness, I  
11 believe, on this -- they can make a bagel, hand it to the  
12 customer. The customer can toast the bagel. I might even  
13 get into the weeds of this.

14           That's already something that is able to do within  
15 zoning within the current variance, and so we'll kind of  
16 figure that out and tease that out a little bit. What it  
17 seems to be from all this discussion is really, kind of,  
18 again, the adverse impact to the community, and not only  
19 that, to your SMD, to the immediate community. I guess I'm  
20 kind of just asking a question of your opinion, I suppose.  
21 And I don't necessarily think this is fair, but I'm going to  
22 ask it anyway; is, if they were able to do it in the same way  
23 that Boeymonger's doing it, there's just not a lot of  
24 people, there's no line. You just kind of pop in, pop out.  
25 Do you think that your SMD would also have been opposed to

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1 this?

2 MR. MURPHY: Well, Boeymonger's a bad example.  
3 I won't bore you with the ABRA issues around Boeymonger but,  
4 the answer is, I think, no. I think my constituents, many  
5 of whom are here, what they're opposed to is the Call Your  
6 Mother brand, which has attached to it the traffic, trash,  
7 and lines and everything else moving into this R20 zone.

8 CHAIRMAN HILL: Right, and we're going to look  
9 into -- I'm going to interrupt you. We are going to look  
10 into the zoning. I'm sure this is what -- everything that  
11 came up at the ANC meeting is whether or not they can  
12 mitigate the -- at least one part of the discussion was  
13 whether or not they could mitigate the adverse impact to --  
14 I'm just going to make a statement, which is, I think,  
15 probably what is getting to this, which is also Mr. Neeley  
16 and everybody else.

17 Is that if it were just a bagel shop that doesn't  
18 have a long line, there wouldn't necessarily be a problem  
19 with this. It's just this is something that is very popular  
20 right now and that you're very concerned about the adverse  
21 impacts to the immediate property. I'm just kind of making  
22 statements, but does anybody have any questions for the  
23 witnesses?

24 Okay, you all, thank you very much for your  
25 testimony. Could the Applicant please come back up?

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1 (Off-microphone comments.)

2 CHAIRMAN HILL: That's right. And Boeymonger,  
3 they have -- to the commissioner's thing, that's right, the  
4 ABRA issues there that still -- but they've been there a  
5 long, long time.

6 (Off-microphone comments.)

7 CHAIRMAN HILL: Right. I got my first fake ID at  
8 Boeymonger. That's now on the record forever.

9 Mr. Sullivan -- Mr. Dana, I'm sorry, I just have  
10 a couple of questions. So how did you end up at this  
11 location? What other location -- I understand that you did  
12 -- you drove around and you saw a location that you thought  
13 would work out well.

14 And to some of the testimony that we've taken thus  
15 far, they also are in agreement that this location is a good  
16 location, and that's what they're concerned about. How did  
17 you come to this location as opposed to one that was closer  
18 to campus or one that was over down closer to M Street?

19 MR. DANA: We actually looked for a location for  
20 over two years. We hired two separate brokers, John  
21 Asadoorian, and then I'm blanking on the other woman's name.  
22 We probably toured 20 locations throughout Georgetown, M  
23 Street, Wisconsin, some of the little side streets. The  
24 rents were too high. All in, the rents are between \$80 and  
25 \$120 a square foot. The economist, I believe, was talking

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1 about retail rents -- residential rents. Our retail at that  
2 space is almost \$70 a square foot, so they're apples and  
3 oranges. It's just what the rents were.

4 And so to sell bagels, a rent of around \$100 a  
5 square foot is not feasible. We looked for two years. We  
6 turned over every stone. And so when we met the owner of  
7 this place and he said, hey, I'd do it for \$60 a square foot  
8 or \$70 a square foot -- I'd have to look at the actual lease  
9 to see what it is -- we were like okay, this is --

10 CHAIRMAN HILL: So Mr. Dana, the lease, it's not  
11 conditional on the BZA approval? You guys signed for how  
12 long?

13 MR. DANA: We signed for ten years.

14 CHAIRMAN HILL: You signed for ten years.

15 MR. DANA: We got bad advice from an architect who  
16 didn't understand the zoning.

17 CHAIRMAN HILL: That's fine. So you got a  
18 ten-year lease right now that you're into to toast bagels.  
19 So if you toasted bagels -- I'm just getting into the weeds,  
20 again, a little bit -- how would you end up doing that? You  
21 don't know.

22 (Simultaneous speaking.)

23 CHAIRMAN HILL: If you got stuck with the zoning  
24 that you have now, which is what I understand -- and I have  
25 to -- I'm going to turn to the Office of Zoning, because they

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1 keep repeating the toasting bagels thing that is in, I think,  
2 the order somewhere. No? My Vice Chair is shaking it off.  
3 You have coffee, I assume. Can you talk me -- I'm just  
4 trying to understand what --

5 MR. DANA: If we didn't get the variance.

6 CHAIRMAN HILL: -- if you didn't get the variance,  
7 what the impact would be to the community. And don't blow  
8 it out of proportion. Just tell me what you think you would  
9 end up doing.

10 MR. DANA: First and foremost, we do not want to  
11 do that. We want to make bagels ourselves.

12 CHAIRMAN HILL: No, I understand.

13 MR. DANA: So we'd have to work through that.  
14 Basically, everything has to be self-service and create your  
15 own. So we would sell pre-packaged goods to create these  
16 bagel sandwiches. So , hey, I want the -- the menu's not up  
17 anymore -- I want the Craig D, and then you'd have a little  
18 packet of nectarines and a little cream cheese and a bagel,  
19 we'd give you some instructions on how to compile it, and  
20 then we'd send the person on their way home or to the  
21 toaster.

22 CHAIRMAN HILL: So you still possibly could -- you  
23 don't know what you'd do exactly.

24 MR. DANA: Correct.

25 CHAIRMAN HILL: You don't know what you'd do

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1 exactly, but you currently have a lease for this property for  
2 the use that you have, which is a non-conforming use that we  
3 have a variance for, for this retail use. And now, you have  
4 an attorney that's given you a little bit more detail as to  
5 what that use means. And so you don't have an out of that  
6 lease if you don't get the BZA approval.

7           And the only reason why I'm asking that is more  
8 for the community, is that they're in there for ten years.  
9 If this is accurate -- I can get the lease submitted into the  
10 record, but -- if they're here for ten years, they're going  
11 to do something with the property. And so I'm just trying  
12 to work through it in my head, but that's not -- it's, again,  
13 more the adverse impact within the third prong that's what  
14 I'm struggling with. Mr. Vice Chair.

15           VICE CHAIR HART: Yes. No, just this -- the OP  
16 question, or the OP statement that they made, on Page 2 of  
17 the OP report -- it's in the analysis section, so Section 4.  
18 In that, it says -- the OP report says -- and I'm just going  
19 to read the little portion of it -- a variance relief has  
20 been previously granted for commercial use of the space. The  
21 previous use, a flower gift shop, which was a retail use, was  
22 granted relief in 1973. Accordingly, the ZA, the Zoning  
23 Administrator, granted the current Applicant a permit to  
24 operate their bagel shop as a retail business in this space.  
25 Employees are permitted to -- sorry. Employees are permitted

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1 to sell bagels to customers, but are not permitted to toast  
2 and prepare them.

3 So the employees are not permitted to toast and  
4 prepare them. That's all that's saying. So we already had  
5 said that, but I think that the testimony was saying that,  
6 well, they can't -- the customers can't do that, but it's --

7 CHAIRMAN HILL: The customer can toast and prepare  
8 them.

9 VICE CHAIR HART: It's just saying that the  
10 employees are not able to do that, which we already know.  
11 I was just saying that it's just -- that's the entire piece  
12 of it.

13 CHAIRMAN HILL: Okay. Would that be an accurate  
14 statement, Office of Planning?

15 MS. MYERS: Correct. I would also like to add  
16 that the Office of Planning was recommending approval of the  
17 variance relief, just to make that clear.

18 CHAIRMAN HILL: Okay. I'm sorry, did that get  
19 confused somewhere? Okay. Mr. Sullivan, just before I  
20 forget, I'm going to have a bunch of stuff at the end and I  
21 might as well tell you, real quick. I'd like to see, I  
22 guess, some kind of diagram as to whatever this zigzag might  
23 be. I'd like to see if there's any kind of way to flip that  
24 door and how many people they might be able to get in there.  
25 I'd like to see a little bit about -- if you can get me a

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1 statement from the property owner, in terms of, you've got  
2 a ten-year lease, and you're in the ten-year lease, and this  
3 is not conditional on the BZA. Then those cases, those two  
4 cases, at least, I'm a little but curious about, Mr.  
5 Sullivan, 10588 and 12848, if you can just give me a little  
6 commentary on that.

7 VICE CHAIR HART: And for the diagram that shows  
8 what's happening in public space, if you could have, I guess,  
9 a to-scale version of that, so that we understand how much  
10 space we're talking about there. Because currently, we have  
11 something that looks like -- it's more diagrammatical, so  
12 it's just kind of showing that there's a sidewalk there, but  
13 I don't have an idea about, well, O Street is this and 35th  
14 Street is that. I don't know what that size is, so something  
15 that gives some sort of scale to it.

16 MR. DANA: Okay, got you.

17 CHAIRMAN HILL: Again, I don't know where we're  
18 -- I honestly don't know where I'm -- I honestly don't know,  
19 me, personally, where I am with this right now. I'm being  
20 very transparent and candid. And so I am going to mention  
21 just a couple of things that I would be curious of, in terms  
22 of conditions of approval. You guys already have a 7:00 a.m.  
23 to 3:00 p.m. condition from the Office of Planning, which you  
24 did agree to, correct?

25 MR. DANA: Correct.

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1 CHAIRMAN HILL: And so as part of the order, if  
2 there was a condition saying no outdoor seating and no  
3 outdoor music, you would be comfortable with that condition?

4 MR. DANA: Correct.

5 CHAIRMAN HILL: And then I don't know about my  
6 Board members, but again, if this -- there would be some kind  
7 of time frame probably thrown in with this, where you'd have  
8 to come back to see that everything's still working well.  
9 What we normally do is there's anywhere from three to five  
10 to ten years has been a time frame.

11 Basically, what happens is we grant a thing and  
12 if it turns out that the community -- what the community  
13 thought was going to happen actually does happen, and then  
14 they come back, and then at that point maybe then the ANC's  
15 fully opposed, but that you would be fine with some kind of  
16 a time limit. Sure, Mr. Sullivan.

17 MR. SULLIVAN: Can I have 20 seconds with him?

18 CHAIRMAN HILL: Yeah, sure.

19 MR. DANA: Yes, I'm cool with that.

20 CHAIRMAN HILL: Okay. All right, go ahead.

21 COMMISSIONER SHAPIRO: When did you sign the  
22 lease?

23 MR. DANA: We signed the lease last April.

24 COMMISSIONER SHAPIRO: And how long did you say  
25 you were looking for spaces in Georgetown?

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1 MR. DANA: For over two years. The original  
2 business plan was to open in Georgetown before Parkview, but  
3 it was so hard to find a space because rents were so high  
4 that we pivoted and opened the first location in Parkview.

5 COMMISSIONER SHAPIRO: Okay. I'd be curious what  
6 the conversations would be like with you and neighbors in  
7 opposition if the conversation was around how you would  
8 manage this if this order were not granted and you had to run  
9 a food shop, where you were simply providing pre-prepared  
10 food in some way, shape, or form, if there was no -- was  
11 there any hint of that conversation with the ANC?

12 Because this piece around -- Mr. Chairman, I hear  
13 what you're saying and that really triggers me around what's  
14 going to happen if we don't take this action. And it's not  
15 a popularity contest, it's about, does it fit within the  
16 rules? If we don't, what I'm hearing from you is you're  
17 likely to move forward anyhow. You're not getting out of the  
18 lease.

19 MR. DANA: There are leases. It's a year's rent  
20 or something that we wouldn't want to pay, and we've sunk in  
21 a couple hundred thousand dollars into this project through  
22 architects and doing --

23 (Off-microphone comments.)

24 CHAIRMAN HILL: Excuse me.

25 (Simultaneous speaking.)

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1 CHAIRMAN HILL: Excuse me. That's okay. I'm here  
2 every Wednesday. I'm used to Wednesdays. Again, we're not  
3 going to have people talking outside, and you definitely  
4 don't have to turn around to talk to them. Okay, go ahead.

5 MR. DANA: My apologies.

6 COMMISSIONER SHAPIRO: The hardship argument, in  
7 part, that you're making -- and again, this is the hardship  
8 for the property owner versus you, which means at some level,  
9 your hardship is less relevant -- is that you've already put  
10 a lot of money into it and you're going to have to get out  
11 of a lease, which is a year's rent, you're saying.

12 MR. DANA: Yes.

13 COMMISSIONER SHAPIRO: I'll leave it at that.  
14 Thank you, Mr. Chair.

15 CHAIRMAN HILL: Okay, anybody got anything else  
16 they want to hear from the Applicant -- or, get from the  
17 Applicant, I suppose. I don't know. I don't know if we're  
18 going to do a continued hearing, I don't know if we're going  
19 to do a decision, we'll see. Back to you, Mr. Sullivan. You  
20 can either do rebuttal and conclusion at the same time, if  
21 that works for you, and then you can go ahead.

22 MR. SULLIVAN: Yes, I think we would like to have  
23 some rebuttal testimony in response to some of what we heard.  
24 I'll turn it over to Mr. Dana for that.

25 MR. DANA: Apologies. This isn't super organized.

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1 I was just taking notes through the people, so I just wanted  
2 to address a couple things. There was multiple comments  
3 about delivery drivers. We don't do any of that. That's  
4 just a non-issue. We don't partner with Uber Eats or Caviar  
5 or do any deliveries.

6 COMMISSIONER SHAPIRO: But from what I understand,  
7 your partnership wouldn't matter if folks wanted to just come  
8 in and pick up food.

9 MR. DANA: You have to partner with Uber Eats or  
10 Caviar. You have to sign a contract for them to be able to  
11 place orders through the app and have the delivery drivers  
12 come.

13 COMMISSIONER SHAPIRO: For some of the apps, but  
14 not all the apps.

15 MR. DANA: All the apps -- I mean, maybe you could  
16 hire a Task Rabbit or something, but the main apps you do  
17 have to have a partnership with.

18 COMMISSIONER SHAPIRO: Okay, thank you.

19 MR. DANA: I just want to state, there was a  
20 quote, all day, every day, the line. We don't have that  
21 currently. We've never had that. There's not a line all  
22 day, every day.

23 COMMISSIONER SHAPIRO: I'm sorry, I'm going to  
24 interrupt you again, if I can, Mr. Chair.

25 CHAIRMAN HILL: Sure.

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1 COMMISSIONER SHAPIRO: That also is something that  
2 you would put in the order.

3 PARTICIPANT: What?

4 COMMISSIONER SHAPIRO: About not signing  
5 agreements with Uber Eats or --

6 MR. DANA: Yes, I'm happy to put that in,  
7 absolutely.

8 CHAIRMAN HILL: Mr. Sullivan, if you can kind of  
9 keep note of some of these conditions that we're putting  
10 together, and you can maybe put a summary at the end.

11 MR. SULLIVAN: I'm always prepared for you to test  
12 me.

13 CHAIRMAN HILL: No, I'm just letting you know.

14 MR. SULLIVAN: I do go back and check the  
15 transcript, yeah. Thanks.

16 CHAIRMAN HILL: Okay, great, thanks.

17 MR. DANA: Parkview is a residential neighborhood,  
18 and our line does go down a residential block, and we've had  
19 zero noise complaints, zero trash complaints. As busy as it  
20 has been, which it has been busy, we have had zero trash,  
21 zero noise complaints there. So I just wanted to put that  
22 on the record.

23 As for the market -- for the shop never being on  
24 the market, I just want to say a retail shop can be on the  
25 market without being posted on a website. People quietly

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1 shop locations all the time, which is what this guy was doing  
2 for a year. Just because it wasn't posted on a website  
3 doesn't mean it wasn't being shopped. I never, on the  
4 record, said sweetheart deal. Again, the rent is almost --  
5 it's just south of \$10,000 month. It is not insignificant.  
6 You do have to sell a lot of bagels to do that.

7 Keshawn Putah (phonetic) just tweeted out support  
8 from the ANC, so just wanted to put that on the record.  
9 There was a couple things about -- I don't know. He texted  
10 me that. Then I just wanted to -- about this map, there's  
11 a lot of locations that are just empty. So if we're going  
12 to have maps, let's fill in all the locations. We did look  
13 up the occupancy. It's 21 is the occupancy for the building,  
14 so we can fit a couple more people in there if we wanted to.

15 Then there was a couple comments about our  
16 investor and how much money we raised. Just to be clear,  
17 that was money raised for more future locations. We do have  
18 a set budget here. We, unfortunately, do not have unlimited  
19 pockets. That's all my rebuttal.

20 Then, lastly, I touched on this earlier, we really  
21 do think we're going to cannibalize our own business by  
22 opening new locations, and we are looking, actively, in  
23 Virginia and in Maryland, so the comment that there's no  
24 serving of Virginia, we've already talked to Eden's about  
25 opening in some of their locations in Mosaic or something

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1 like that. So we're actively looking in Virginia to sort of  
2 hit all these different neighborhoods, cannibalizing the  
3 traffic that they're saying we'll attract.

4 COMMISSIONER SHAPIRO: There was a comment from  
5 the opposition around the conversion of the first-floor  
6 retail and the examples of conversion. Mr. Sullivan, this  
7 is probably, maybe, more a question for you, but how do you  
8 respond that? You're touting that as an example of a  
9 hardship, and they're showing examples where it's actually  
10 not a hardship, that it's done fairly frequently.

11 MR. SULLIVAN: I think we could provide some  
12 further information on that from the owner if it would be  
13 helpful for the Board, but I don't think there's a lot of  
14 precedent on the record that the Board hasn't required a lot  
15 of information in that regard to make the decision that it  
16 is a hardship to have to do that. That's actually the only  
17 case --

18 COMMISSIONER SHAPIRO: I triggered this with my  
19 question being a double negative, but there were a lot of  
20 double negatives there, so reframe what you're saying.

21 MR. SULLIVAN: So this Board, in other cases, has  
22 determined -- and mostly in recent cases -- actually, the  
23 only area of use variance that I typically show up here for  
24 is this exact use, where you had a use that cannot be  
25 continued as non-conforming, and cannot be converted to

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1 residential. It's actually the only use that I bring for use  
2 variance because it's a situation of a building that was  
3 built from -- was built as commercial from the beginning.  
4 The difficulty is not just the marketability of it, but also  
5 the expense of doing so.

6 COMMISSIONER SHAPIRO: But that's what I'm curious  
7 about, because the folks who are testifying in opposition  
8 were showing examples of what clearly were originally  
9 designed as residential first floors -- I mean commercial  
10 first floors that are now converted to residential.

11 What they were showing us was more related to the  
12 exterior, which is how you handle the window treatment, how  
13 you handle the doors. I don't know what goes on inside. And  
14 so if you're saying that the cost -- that the hardship is  
15 more about the interior conversion, then I'd need to hear  
16 that, as well.

17 MR. SULLIVAN: Okay. We could provide more  
18 information on that. Also, I would just add that the fact  
19 that it's been done doesn't necessarily mean that it's not  
20 still an undue hardship. It doesn't have to be impossible.

21 COMMISSIONER SHAPIRO: No, but it certainly helps  
22 make the case that it might not be.

23 MR. SULLIVAN: Correct. Understood.

24 CHAIRMAN HILL: Can I ask the commissioner to come  
25 back up here a second? Commissioner Murphy, I know that

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1 you're here as your own self, although you technically do  
2 represent the ANC in the letter. What I was just curious of  
3 -- and again, there are the standards with which -- and  
4 you're very familiar with all this, right, that the Office  
5 of Planning goes through, in terms of how they are  
6 determining what they think is their analysis.

7           Currently, what seems to be at least a little bit  
8 of the discussion is the increased use. It is the  
9 discussion, right? For clarification what we've already  
10 gotten from the Office of Planning, that they can basically  
11 do a -- whatever. They can sell bagels. I'm a little bit  
12 interested how the business model would work, in terms of,  
13 I think, putting together their sandwich or what have you  
14 and/or it ends up just being what the community thinks might  
15 be less of a burden if it were just a bagel shop with coffee.

16           Who's to know, right? I guess my question is  
17 would the ANC take this -- I'm trying to understand how we  
18 would know from the ANC -- and you don't think their vote  
19 would necessarily change, now that I think about it, because  
20 you already lost 6 to 2 -- is that if you don't think that  
21 there's any futility in coming back before the ANC and  
22 explaining that what they can do still might have a lot of  
23 adverse impact to it, and they can already to it without  
24 having to deal with us. There's no need for them to go back  
25 to the ANC, I suppose, and explain what they can do.

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1 MR. MURPHY: You hit me kind of cold with that,  
2 Chairman Hill. I don't think that would much -- make much  
3 of a difference because --

4 CHAIRMAN HILL: Yes, because they already got the  
5 vote for doing what they're getting --

6 (Simultaneous speaking.)

7 CHAIRMAN HILL: -- they just have to convince you  
8 and the other commissioner.

9 MR. MURPHY: I think that's right. The tenor of  
10 the discussion at the ANC -- and I'm just a witness, now; I'm  
11 carefully saying that -- was this is a really cool bagel  
12 shop. We need businesses in Georgetown, apropos what I was  
13 here last testifying about, and we don't want to be rejecting  
14 this really cool business.

15 CHAIRMAN HILL: Okay, thank you, Commissioner.  
16 To clarify, just again, with the Office of Planning, that's  
17 an accurate statement. They could -- again, I'm getting  
18 beyond even whether or not we think they're meeting the  
19 criteria, because I don't know. I don't know what my  
20 thought's going to be, but in terms of conditions and things  
21 like that, they can do what has been proposed, which is toast  
22 -- the customer can toast their own bagels, and then that  
23 would qualify within what they already have a variance for,  
24 correct?

25 MS. MYERS: Correct. We talked with the Zoning

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1 Administrator, and that was the understanding that we  
2 received from them, as well, is that what they are proposing  
3 to do -- what they can do now is to operate as a retail shop  
4 currently. That's what they've been given a permit to do by  
5 the Zoning Administrator. What they are proposing to do now,  
6 it was determined that it would be a prepared food shop use.  
7 So that's our understanding of what they're doing.

8 CHAIRMAN HILL: All right and not I've got you.  
9 How is that different than from a fast food use?

10 MS. MYERS: So I just took a look at the Zoning  
11 Regulations, just step back again. The Zoning Administrator  
12 is the one that would make the determination. But from my  
13 understanding of the Zoning Regulations, a prepared food shop  
14 would be more preparing food via microwave or toaster.  
15 Actually, one of the examples is coffee shop, sandwich shop.

16 A fast food establishment would be anything else  
17 that's considered a fast preparation of food, but not  
18 necessarily confined to that requirement of toaster and  
19 microwave. But that's my understanding of the regulations.  
20 Like I said, the Zoning Administrator determined that it was  
21 a prepared food shop.

22 CHAIRMAN HILL: Got it. And just so -- at like  
23 Chipotle, they have to cook things, they have to prepare it.  
24 McDonald's, they have to cook things, have to prepare it.  
25 Anybody else have any questions for the Office of Planning?

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1 Mr. Sullivan, can you can review everything that we're trying  
2 to get from you?

3 MR. SULLIVAN: Sure. You asked for information  
4 on the management of a line and a diagram showing how that  
5 might work, both inside and out, and to look into whether or  
6 not it's possible to the flip door, if it's necessary to flip  
7 the door, or if there's some internal configuration for a  
8 line.

9 In addition to that, I think we could provide  
10 some, what we think are expected numbers and what that  
11 expected line might be and how -- and show how it would fit  
12 with the dimensions and the scale of the sidewalk and all the  
13 area around there.

14 A statement from the property owner regarding the  
15 lease, and I think that would also provide additional  
16 information from the property owner on the undue hardship  
17 aspect of this in response to Board Member Hart's earlier  
18 questions today. You would like us to respond to the  
19 precedent cases from the '70s on the other uses, which were  
20 apparently denied.

21 Board Member Shapiro asked for conversation -- if  
22 there was any conversation, or there would be conversation,  
23 around how we would manage the traffic of the use if matter  
24 of right, if this were denied. Then we would agree to a  
25 condition that no agreements with Uber Eats or any other such

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1 app that would provide for delivery pickup.

2 CHAIRMAN HILL: And a condition with no outdoor  
3 seating and no outdoor music.

4 MR. SULLIVAN: Yes.

5 CHAIRMAN HILL: Other than the hours that are on  
6 there, that are already there with the Office of Planning.

7 MR. SULLIVAN: Of course, yes.

8 CHAIRMAN HILL: Commissioner, you had -- you have  
9 to come forward to the microphone, Commissioner. You have  
10 to speak into the microphone.

11 MR. MURPHY: I don't know if it was a condition,  
12 but the Applicant also agreed to a re-look on a certain  
13 schedule, as well.

14 CHAIRMAN HILL: Right. I appreciate it. That's  
15 what I was actually just confirming. That's something that  
16 we would throw out. I don't think that they would  
17 necessarily -- I think three's too short, I think ten's too  
18 long. So I'd be kind of in the five-year thing, myself. We  
19 can talk about that when we get to that.

20 Thank you, Mr. Murphy. I don't know, again,  
21 whether we're going to get there. There's nobody else that  
22 wants to say anything? Okay, so, Mr. Sullivan, if you could  
23 go ahead and submit all that into the record, and then, I  
24 guess, we would leave the record open, Mr. Moy, for all that,  
25 correct? Yes?

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1 MR. MOY: Yes.

2 CHAIRMAN HILL: Then we would leave the record  
3 open for -- I guess you would leave the record -- we're going  
4 to have a continued hearing on the items that we've asked for  
5 from you guys. It's going to be a limited scope hearing just  
6 about the things that we're talking about.

7 I suppose I wouldn't mind something, Mr. Dana --  
8 and I know that you wish that you'd found a better location  
9 for yourself -- that speaks to what you think you might do  
10 if this were denied. Okay? Because again, if I can get --  
11 this is now for the people here in the audience -- if the  
12 Board does get through the hoops, in terms of the variance,  
13 I'm now trying to figure out what actually is the impact  
14 after that.

15 By the way, I'm just -- you can -- anyway, so the  
16 -- I'm trying to clarify what my position is. I'm just  
17 trying to clarify. That is that if we can get through those  
18 hoops, or we don't, I'm just curious what's going to happen  
19 to you guys. That's all I'm trying to understand. That  
20 means that something's already there and they can do whatever  
21 they're going to do.

22 So something's going to happen, or they're going  
23 to get approved and something's going to happen. That's all  
24 I'm trying to understand. At the same time -- and I'm just  
25 clarifying for people in the audience -- then there's the

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1 issue at hand, which is whether or not they meet the test.  
2 Right? There are a bunch of hoops. I know you all's  
3 position. You all testified. And you don't know -- we don't  
4 know where we are, just to let you know. That's the whole  
5 point. That's it, right?

6 (Off-microphone comments.)

7 CHAIRMAN HILL: No, you can't, sorry. Is that --  
8 I'm sorry, you can't talk in the audience. You had your  
9 opportunity to testify. We will come back here for continued  
10 hearing. And at that time, I suppose, if we want to take  
11 public testimony on the items that are within the limited  
12 scope of the public hearing, you're welcome to come talk  
13 about that.

14 That doesn't mean you come talk about, again, all  
15 the other things you've talked about. That means you can  
16 come talk about the things that are going to get submitted  
17 into the record at the public hearing. If somebody --  
18 somebody has a lot of questions. The two -- that's okay.  
19 You can come up and ask your questions. If they're questions  
20 and not asking testimony or reiterating everything that I  
21 just said, that's fine.

22 The other lady -- and I'm sorry, I don't have the  
23 name off the top of my head. If you want to come forward,  
24 you had a question, as well. Not further testimony,  
25 questions about any of the things I just talked about.

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1 MS. ALLMOND: Since we weren't granted party  
2 status today, so obviously, we haven't had the chance to have  
3 a rebuttal and they've had a lot more back and forth, is it  
4 possible for the continuation to have representation on our  
5 end, so we feel that we're more fairly represented?

6 CHAIRMAN HILL: Sure. So you're granting for a  
7 weird party status thing that I've never heard of before, so  
8 I doubt that's going to be possible. So that's your  
9 question. Is that your question?

10 MS. ALLMOND: If we could have an attorney for the  
11 next hearing.

12 CHAIRMAN HILL: Yes. No, that would definitely  
13 -- we've already passed the party status part. I'm sorry,  
14 your name is so nice, but I can't remember how to say it.  
15 Cavatelli? No. That's wrong.

16 (Simultaneous speaking.)

17 (Laughter.)

18 MS. CARAVATTI: My question is, is it possible for  
19 us to submit evidence contradicting some of the claims that  
20 have been made here? I know specific things that they have  
21 said are simply not true.

22 CHAIRMAN HILL: Okay, that's fine. I understand  
23 what your question is. You can turn off your microphone, if  
24 you wouldn't mind. Now I'm looking at OAG. I don't know how  
25 to do this. We've had party status, party status has been

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1 denied, and I know that Mr. Sullivan is not -- this is a  
2 weird thing. I'm not saying we're going to do this. What  
3 you could do -- and I'm kind of asking OAG is there any way  
4 to get something from people about the things that are  
5 submitted, but not turning it into a whole party status  
6 situation? I don't know if OAG has a thought, or Mr.  
7 Sullivan, if you have a thought. Mr. Sullivan, I'll go with  
8 ---

9 (Simultaneous speaking.)

10 MR. SULLIVAN: -- we've had an hour of testimony  
11 already and we haven't said anything since then, really,  
12 much. They've had an hour ---

13 (Simultaneous speaking.)

14 CHAIRMAN HILL: I'm not talking about anything  
15 that we've already gone through. I'm just talking about the  
16 new submissions.

17 MR. SULLIVAN: I don't see how you -- party status  
18 or not, you are cutting it off, and you made that decision  
19 based on that criteria.

20 CHAIRMAN HILL: OAG?

21 MS. CAIN: Yeah, I mean typically, you're only  
22 allowed responses on additional submissions by the Applicant  
23 from a party. In this case, the only other party, at this  
24 point, is the ANC. I would not be inclined to let any other  
25 submissions into the record, other than the ones that you've

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1 specifically requested from the Applicant.

2 CHAIRMAN HILL: Right. So the ANC would have to  
3 comment -- yeah, sure.

4 COMMISSIONER SHAPIRO: This is a continued hearing  
5 -- it's a limited scope continued hearing. There's certainly  
6 -- please correct me if I'm wrong, but somebody can certainly  
7 submit whatever they want to submit for the record, in  
8 support or opposition, with any information associated with  
9 that, if it's relevant to what the limited scope public  
10 hearing is about.

11 CHAIRMAN HILL: But then my question -- and we're  
12 struggling with this, I suppose -- is how do you know how --  
13 whether or not you're limiting the scope? How do you know  
14 if you're limiting the scope or not as to what's being  
15 submitted?

16 COMMISSIONER SHAPIRO: Our scope isn't that  
17 limited, I think, because of the things we asked for. That's  
18 part of the problem.

19 CHAIRMAN HILL: Right, but then how would you keep  
20 things out of the record that were outside of the scope that  
21 was being limited?

22 MR. SULLIVAN: Mr. Chair, if I might say one other  
23 thing. If there was nobody here to speak in opposition, but  
24 you left the record open, I think it would be clear that the  
25 record was left open for the Applicant, only, and nobody else

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1 would be able to submit. I think that needs to be the same  
2 situation here. Whether or not somebody showed up as a  
3 person in opposition doesn't give them the right to then  
4 submit if they otherwise wouldn't have that right.

5 CHAIRMAN HILL: Okay. So this is what we've done  
6 in the past. I'm going to go ahead and -- we're going to  
7 close the record, except for the things we've asked for from  
8 the Applicant. We are going to do a limited scope hearing.  
9 Oddly enough, nobody ever shows up, so this is the problem.  
10 I have asked before if there's anybody here in support or  
11 opposition to the items that are within the limited scope of  
12 the hearing.

13 So if people want to show up during the limited  
14 scope hearing and speak to the items that have been proposed  
15 in the limited scope hearing, then you're welcome to come and  
16 speak, but you'll, again, get your three minutes, and you  
17 can, again, speak to -- this is where I will remember and be  
18 very tight on it. It's only about the things we're talking  
19 about, not rearguing the case. Okay? So Mr. Sullivan, when  
20 can you get all that stuff to us, Mr. Moy? Mr. Shapiro's  
21 back here on --

22 MR. MOY: December 4th.

23 CHAIRMAN HILL: December 4th. So if we came back  
24 -- and this is where I'm just trying to figure it out because  
25 everyone wants to finish this as quickly as possible, one way

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1 or the other -- that means that you, Mr. Shapiro, you're back  
2 on the 4th. Best case, we get all the information we want  
3 and then you get a decision the following week. That would  
4 be December 11th. So you guys are in the process of your  
5 buildout, right?

6 MR. SULLIVAN: Correct.

7 CHAIRMAN HILL: Okay. And -- you guys are in the  
8 process of your buildout. When, Mr. Sullivan, can you get  
9 us back all the things we're talking about?

10 MR. SULLIVAN: If we're working --

11 CHAIRMAN HILL: Forget about the December 3rd  
12 thing. We're going to try to get Mr. Shapiro back just to  
13 have this -- we can have this hearing first.

14 MR. SULLIVAN: Two weeks.

15 CHAIRMAN HILL: You think you can get the  
16 information in two weeks, which gives me -- where am I, Mr.  
17 Moy?

18 MR. MOY: Two weeks would be November 13th, sir,  
19 if the Applicant submits --

20 (Simultaneous speaking.)

21 CHAIRMAN HILL: So you're saying you're going to  
22 give us the information by the 13th of November, Mr.  
23 Sullivan?

24 MR. SULLIVAN: Correct. And we could do the 12th,  
25 if that gives the ANC their seven days.

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1 CHAIRMAN HILL: Oh, that's right. Right, the ANC  
2 would have seven days to submit anything for the 20th.

3 MR. SULLIVAN: I actually wouldn't mind giving the  
4 ANC the opportunity to have their meeting, which is either  
5 the end of November, or early December.

6 MR. MURPHY: December 2nd.

7 CHAIRMAN HILL: December 2nd, apparently, is the  
8 -- so we're back here --

9 MR. SULLIVAN: If we could submit more than seven  
10 days before that.

11 CHAIRMAN HILL: We're back to December 4th here  
12 with Mr. Shapiro, and then you're saying you'd like the ANC  
13 to have at least an opportunity to look at all the  
14 information you're going to submit?

15 MR. SULLIVAN: Yes.

16 CHAIRMAN HILL: Because they were in support.

17 MR. SULLIVAN: Absolutely.

18 CHAIRMAN HILL: Right, sure. All right. Mr. Moy,  
19 then we're back here on the 4th, so you can work backwards  
20 from that date, then, for submittal.

21 MR. MOY: Okay, well I think you've already gone  
22 through that. If we hold the continued hearing on December  
23 4th, the Applicant files the additional information by  
24 November 13th, and --

25 CHAIRMAN HILL: You don't really need it that

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1 fast, then, Mr. Sullivan.

2 (Simultaneous speaking.)

3 CHAIRMAN HILL: You could do it until the 20th.  
4 You can pick out another number, then. What number works for  
5 you guys?

6 MR. SULLIVAN: I guess the Friday before  
7 Thanksgiving.

8 CHAIRMAN HILL: The 22nd?

9 MR. SULLIVAN: The 22nd. That should give the --  
10 yes, that's --

11 (Simultaneous speaking.)

12 CHAIRMAN HILL: Mr. Moy, is that good?

13 MR. MOY: November --

14 CHAIRMAN HILL: 22nd, submittal from the  
15 Applicant, and then we're back here on the 4th.

16 MR. MOY: Back here on the 4th.

17 CHAIRMAN HILL: And we will take public testimony  
18 for the limited scope of the items that are submitted.

19 MR. MOY: Okay. And should the ANC meet on this  
20 application, then perhaps ANC may have, if they choose to  
21 file an additional letter to the BZA

22 (Simultaneous speaking.)

23 CHAIRMAN HILL: Yes, it would be necessary by the  
24 3rd, right. We need to get anything from the ANC by at least  
25 the 3rd. Because then they'll have the 29th to see

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1 everything. They're going to meet on the 2nd, and then they  
2 can submit one way or the other on the 3rd. Okay. Hold on  
3 one second. I'll let you ask a question.

4 MR. MOY: Mr. Chairman, before you move on, would  
5 you want or need any additional response from OP?

6 CHAIRMAN HILL: I don't know if the Office of  
7 Planning has anything they'd like to add, in terms of  
8 supplemental, then you're welcome to do so.

9 MS. MYERS: Understood. So if we have something  
10 to add, we will submit.

11 CHAIRMAN HILL: I would be kind of curious, I  
12 suppose, in terms of some of the things that they're putting  
13 forward for, again, adverse impact, as to what you all think  
14 about it, in terms of the line and the configuration and  
15 things like that. Okay. Sure, go on.

16 COMMISSIONER SHAPIRO: This gets to this issue of  
17 what the limited scope public hearing is going to be about.  
18 This is the piece that I -- I think, in our conversations,  
19 what we're hearing, but what I'm a little bit lost around is  
20 what we're really talking about is the difference between a  
21 permitted use and an intensification of that permitted use.

22 I mean that's the only distinction, really, that  
23 we're working with here. For maybe obvious reasons, we've  
24 had a whole lot of conversation, myself included, around a  
25 whole lot more than that, but I'd like to find a way for us,

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1 when we continue this, to get back just to that distinction.

2           And I'd be curious for OP to weigh in about just  
3 that narrow difference and to keep the Applicant focused.  
4 If we hear anything else and the ANC whatever, just around  
5 that. Because so many of the issues related to neighborhood  
6 impact, I don't know how to evaluate what the different  
7 neighborhood impact is going to be between what they can do  
8 by right versus that intensification beyond what they can do  
9 by right. The bagel shop versus the bagel shop dot two.

10           VICE CHAIR HART: I'm not sure if I would call it  
11 by right. I would probably call it that's already an  
12 approved variance versus what they would -- the  
13 intensification of this. Because --

14           COMMISSIONER SHAPIRO: That's a better way of  
15 putting it. Thank you. But what they're going to be able  
16 to do, the way they're going to be able to do it is by the  
17 approved variance.

18           CHAIRMAN HILL: I was smiling because, again, what  
19 confuses me even about that, then, is -- and I agree. It's  
20 that what the approved use is, is X. Then what the Applicant  
21 is proposing is Y, and there's a difference and an  
22 intensification of X. What I don't understand, and this is  
23 where I'm not clear on what we're going to determine and  
24 decide, is whether or not, in this particular -- and this is,  
25 again, getting past the variance, in terms of how the

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1 property owner is affected.

2           If we get past that, is how is X feasible? That's  
3 the thing that I also -- now the community is saying. The  
4 community is saying that X is either not going to be --  
5 right. I don't understand the community impact between X,  
6 if it's feasible, meaning a bagel shop, or if they just go  
7 out of business or they just pay the \$100,000 and they just  
8 walk away. That's what I'm kind of confused with if we get  
9 to the point where it's more about community impact.

10           COMMISSIONER SHAPIRO: I'm with you. So imagine  
11 a scenario where -- I can't imagine why the Applicant would  
12 do this, but where the Applicant came to us and said look,  
13 if I can't get what I want, then I'm going to eat my \$100,000  
14 and all the sunk costs, and I'm out of here. The  
15 complication is that should not be part of our deliberations.  
16 That's not a factor for us.

17           CHAIRMAN HILL: Yeah, no, that's fine. Again,  
18 what I was -- yes. What I was just trying to understand was,  
19 again, the difference between the delta is you're saying the  
20 increased -- what is the difference between the increased  
21 use? And what I was questioning was whether or not even --  
22 we're more in kind of a deliberation discussion right now --  
23 whether or not even -- I'm just trying to understand whether  
24 the current variance relief use is even possible within this  
25 business model. That's what I was kind of speaking to.

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1           COMMISSIONER SHAPIRO: I'm also wondering if we  
2 have all the correct information -- this is for the Office  
3 of Planning to help us with this. Are we interpreting -- or  
4 are we reading the tea leaves around the Zoning Administrator  
5 on this? There's information that I want to make sure is  
6 absolutely clear and accurate from the Zoning Administrator  
7 -- what the Zoning Administrator's interpretation is around  
8 the use. The distinction between the more limited bagel shop  
9 versus the more intensive-use bagel shop. Vice Chair Hart,  
10 you've laid out a piece of that, but what I heard from the  
11 Office of Planning was that some of this is up to the ZA  
12 interpretation.

13           MS. MYERS: Just as a rule, the Zoning  
14 Administrator's the one that interprets the Zoning  
15 Regulations. I had a conversation with him and was explained  
16 that this is a prepared food shop use, is what is being  
17 proposed. But I think the Applicant actually had a more  
18 detailed response on that.

19           CHAIRMAN HILL: By the way, Mr. Sullivan, before  
20 you go to that, you had one question, or somebody in the  
21 audience -- by the way, there was just somebody in the  
22 audience, if it's just a question, please come forward and  
23 ask your question. Please sit down.

24           MR. SAVAGE: Michael Savage. My question is  
25 purely administrative in nature, so not related to testimony

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1 in any way. If you could, for the lay people in this room  
2 who are still interested in this important issue, can you  
3 walk through that timeline with us? That is to say, my  
4 understanding is there's a submission by the Applicant by the  
5 22nd of November. There would be a hearing, then, in  
6 December. Are we entitled to react to whatever is submitted  
7 by the 22nd? In what manner --

8 (Simultaneous speaking.)

9 CHAIRMAN HILL: Sure, I understand your question.

10 MR. SAVAGE: Then, finally, probably, at this  
11 point, we'll probably get representation, and so we'll have  
12 to figure out how that works.

13 CHAIRMAN HILL: You guys don't have party status.  
14 You can turn off the microphone now, if you don't mind. What  
15 that means is that you came forward and testified as to all  
16 of the different issues within your neighborhood that we also  
17 understand. Now, what we're going to have is a continued  
18 hearing on all of the items -- I think we've been very clear,  
19 by the way, in all this.

20 I completely understand everyone's position in it.  
21 Again, not that I -- I live in the city. I got a club next  
22 door to me. And so what I'm just trying to say is that I  
23 understand all the things that you guys are talking about.  
24 I think that you've had an opportunity to clarify all those  
25 things.

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1           The ANC has voted one way. The Office of Planning  
2 has voted one way. The SMD has voted one way. I'm  
3 clarifying all that which is to say on December 4th, we'll  
4 be here to take testimony on any of the things that are  
5 presented to us in this limited scope. So you will have your  
6 three minutes. All the people here will have their three  
7 minutes to go ahead and speak to the information that will  
8 be put forth into the record at that point.

9           MR. SAVAGE: Understood. So just, again, for  
10 avoidance of doubt, between the 22nd of November, when  
11 documents are due from the Applicant, and December 4th -- in  
12 advance of this hearing, we had the ability to put up  
13 exhibits and have discussion about it, just as you rightly  
14 stated. Will we have that same ability to --

15                   (Simultaneous speaking.)

16           CHAIRMAN HILL: Sure. No. The only people that  
17 have an opportunity to reply are parties. And so the ANC is  
18 a party. I don't know if the ANC wants to reply to something  
19 that's in there. They're a party, they can go ahead and do  
20 that. That would be up to the ANC. Normally -- and this is  
21 where I kind of -- this hasn't happened before.

22                   When I say it hasn't happened before, I usually  
23 take testimony from people on the limited scope because, to  
24 me, it seems equitable. I don't know if I'm trying to get  
25 outside of the regulations. Again, for the limited scope,

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1 the only people within the regulations that are allowed to  
2 submit anything to the record are parties.

3           That's it. You're not a party. So I'm letting  
4 you know that when you come here, when the limited scope  
5 hearing is on December 4th, the way that I've handled things  
6 in the past -- and I've just been the chair for five years,  
7 meaning -- or not that long, thank God. The way that I've  
8 done things in the limited scope hearing is I've listened to  
9 people in the audience. And I'm going to check with OAG as  
10 to how that even works, as to whether or not that is within  
11 the regulations. I'm just saying that's what I've done.  
12 Therefore, you can come -- there's nothing else to add.  
13 Therefore, you can come on December 4th and you can speak to  
14 the testimony that they're going to give on December 4th,  
15 okay?

16           MR. SAVAGE: How do we get access to that  
17 information? Will that be posted up?

18           CHAIRMAN HILL: It will be posted. Everything  
19 will go onto the -- it'll be in the record.

20           (Simultaneous speaking.)

21           CHAIRMAN HILL: On the 22nd, there'll be  
22 additional exhibits from the Applicant. And actually --  
23 okay, I'm sorry, I was just trying to clarify whether or not  
24 I was doing things wrong, and I'm apparently not.

25           Again -- and I'm just clarifying for the people

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1 here that is here in opposition. By the way, this has gone  
2 on a really, really long time, which is totally fine, but I'm  
3 just saying we've got other people here. And the joy that  
4 happened in the beginning of the day with the Nationals is  
5 far gone. I feel like that's okay, we'll worry it back  
6 around, I suppose. I don't know.

7           The Applicant is putting stuff into the record.  
8 The only people that can respond to the things that are in  
9 the record, per the regulations, are party status people.  
10 Nobody has party status but the ANC.

11           However, the way that I run the hearing for  
12 limited scope hearings is that if they come and testify, if  
13 there are people in the audience who want to testify, then  
14 they have their opportunity to testify in support or  
15 opposition of the limited scope hearing. This is the same  
16 thing, support or opposition of the limited scope hearing.  
17 Limited scope hearing. Okay. Does Mr. Sullivan have any  
18 questions?

19           MR. SULLIVAN: No.

20           CHAIRMAN HILL: Okay. Does the Applicant have any  
21 questions?

22           MR. DANA: No.

23           CHAIRMAN HILL: Okay, we're adjourned for this  
24 case. We'll see you guys on December 4th. We're going to  
25 try to squeeze one more in before lunch, but it's not

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1 probably going to be the one that's going to be difficult.  
2 There's going to be one that's easy, hopefully, before lunch  
3 -- or, easy-ish. Let's see.

4 VICE CHAIR HART: Mr. Moy, you can call -- I guess  
5 we're going to do Case No. 20104. Mr. Moy, if we could do  
6 20104 of Zeta Phi Beta Sorority.

7 MR. MOY: I see the parties at the table. This  
8 is 20104 of Zeta Phi Beta Sorority, as amended, for a special  
9 exception under the use provision, Subtitle U, Section  
10 320.1(b), to permit a community service use in an existing  
11 semi-detached principal dwelling unit. This is an RF-2 Zone.  
12 This is at 1461 S Street, Northwest, Square 206, Lot 25.

13 VICE CHAIR HART: Thank you. Welcome. Appreciate  
14 you staying. I know this has been --

15 CHAIRMAN HILL: Mr. Vice Chair, if I just might  
16 interrupt. I've read into the record, and so I'm capable of  
17 participating, thank you. But I'd still prefer if you led,  
18 if you wouldn't mind, since you started.

19 VICE CHAIR HART: Yes, since I started it, that's  
20 not a problem. Welcome, both of you. If you could, please  
21 introduce yourselves, and then we'll go from there.

22 MS. THEMAK: Thank you for squeezing us in. Tracy  
23 Themak, I'm with Donohue & Stearns, and we are land use  
24 counsel for the Applicant, Zeta Phi Beta. And I'll let  
25 President Hollingsworth-Baker introduce herself.

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1 MS. HOLLINGSWORTH-BAKER: I'm Valerie  
2 Hollingsworth-Baker. I'm president of Zeta Phi Beta  
3 Sorority, Incorporated. Thank you so much for squeezing us  
4 in. I appreciate it.

5 VICE CHAIR HART: Thank you for -- I know that was  
6 kind of a long morning and part of the afternoon.

7 Ms. Themak, if you could, just talk about what the  
8 changes were from when we first heard this. I'm just trying  
9 to remember when we actually did first hear this. It was a  
10 couple of weeks ago.

11 MS. THEMAK: October 4th, I think.

12 VICE CHAIR HART: If you could just kind of step  
13 us through that.

14 MS. THEMAK: Absolutely. Very simply, I don't  
15 have another PowerPoint. I don't think one was necessary.  
16 We spoke a lot with staff, and then we also met with the  
17 Zoning Administrator to see what the best vehicle was. Then  
18 I believe Ms. Brown-Roberts also spoke with the ZA, as well.  
19 So what we arrived upon was to come back with a request for  
20 a special exception relief under U-320.1(b), the community  
21 service use, in the RF-2.

22 We believe we meet all of the prongs of that. The  
23 most specific change, though, here, was to ask that the  
24 Applicant designate specific employees of the sorority that  
25 would be dealing primarily with the charity efforts that are

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1 specific to D.C. and D.C. residents. The biggest of that is  
2 really the Stork's Nest charity that they partner with Unity  
3 Health, March of Dimes. The Applicant was okay with that in  
4 designating the five to six employees that will be utilizing  
5 this space as D.C. specific and not nationwide. That was a  
6 suggestion from Matt LeGrant. We took that to staff, and we  
7 provided a few more pieces of information to staff. Really,  
8 now, we just -- we agree with staff's report. We appreciate  
9 the additional time they've spent on this, and we believe we  
10 meet the requirements of the community service use here.

11 VICE CHAIR HART: If you could, give me a little  
12 bit of information around one aspect of the zoning relief.  
13 That is, the use shall reasonably necessary or convenient to  
14 the neighborhood in which it is proposed to be located. Is  
15 this connected because of the proximity to the headquarters?

16 MS. THEMAK: It is. We want to keep this  
17 particular building and this office space as administrative.  
18 That part pairs well with the minimal impact to the  
19 neighborhood -- to the residential nature of this  
20 neighborhood. But charities like Stork's Nest require places  
21 for donations to be made, places for fundraising events to  
22 be held. Those events will not be taking place at this  
23 location. They will be taking place at the national  
24 headquarters.

25 But there are other proximity considerations here,

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1 too. Unity Healthcare has an office that is, I think, less  
2 than half a mile from this location. So the administrative  
3 office will not only be close, specifically, to the -- or  
4 will be close to the national headquarters to allow for  
5 meeting spaces, fundraising events, donation of supplies for  
6 this charity, as well as near one of the partners that they  
7 partner with specifically for the D.C. related charity,  
8 Stork's Nest, which is Unity Healthcare.

9 VICE CHAIR HART: Okay. So the connection is that  
10 --

11 MS. THEMAK: There's two, really, connections to  
12 this particular location.

13 VICE CHAIR HART: Okay. Do the other Board  
14 members have any questions for the Applicant?

15 COMMISSIONER SHAPIRO: Sure. It feels quite  
16 clear. I think this is a pretty healthy resolution.

17 VICE CHAIR HART: Thank you all. It doesn't seem  
18 like we have any other questions. Let's turn to the Office  
19 of Planning.

20 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman  
21 and members of the BZA, Maxine Brown-Roberts from the Office  
22 of Planning. I'm going to stand on the record, where we  
23 explained that the Applicant has met the requirements of  
24 Subtitle U, Section 320.1(b). We also included some  
25 conditions of approval. I would like to maybe add another

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1 one, which would be that the basement and the -- will be  
2 retained as residential use. That was not something that was  
3 included in my recommendation, but that is --

4 COMMISSIONER SHAPIRO: The basement of the  
5 accessory building? Is that what you said?

6 MS. BROWN-ROBERTS: Yes, those would be retained  
7 for residential use.

8 VICE CHAIR HART: Thank you. I don't have any  
9 questions, and I appreciate the clarification on that, I  
10 guess, fifth condition. Any other questions from the Board  
11 members? Does the Applicant have any questions on this?

12 MS. THEMAK: No, we're fine with that additional  
13 condition.

14 VICE CHAIR HART: I was going to ask you about  
15 that, in particular, as well. I didn't know if you had any  
16 questions for the Office of Planning outside of that.

17 MS. THEMAK: No.

18 VICE CHAIR HART: Let's get to -- if there is  
19 anyone here wishing to speak in support of the application?

20 Is there anyone here wishing to speak in  
21 opposition? Just to make sure, is the ANC here?

22 I didn't see any hands, I just wanted to  
23 double-check all of that. Ms. Themak, do you have any final  
24 conclusion that you'd like to provide?

25 MS. THEMAK: No, we'd just like to express

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1 gratitude to the Planning staff, and also to the Zoning  
2 Administrator, for working us to a workable solution here.  
3 I think everybody understood that the neighbors were very  
4 much in support, and I'm glad we could arrive at a conclusion  
5 that was acceptable to all parties. I appreciate the time.

6 VICE CHAIR HART: We appreciate you walking  
7 through this. I think that the time -- you used the time  
8 very wisely to be able to get to a resolution like this  
9 because I think this is very helpful and will be very helpful  
10 for the community with having this facility there.

11 So I'll close the hearing -- close the record.  
12 Does anybody have any comments that you'd like to --

13 COMMISSIONER SHAPIRO: No comments, Vice Chair.

14 VICE CHAIR HART: After reading the record and  
15 listening to the Applicant's now-revised application, which  
16 is really looking for a special exception under the use  
17 provisions under Subtitle 320.1(b), which would permit a  
18 community service use in an existing semi-detached principal  
19 dwelling unit in an RF-2 zone, I thought that they met the  
20 requirements.

21 I had difficulties with the variance, and I think  
22 we kind of talked about this at the last meeting,  
23 difficulties with the approval of the variance relief. And  
24 this, I think, is a much more -- a better relief that they  
25 are seeking for this particular property. I'd be in support

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1 of the conditions that the Office of Planning put forward,  
2 which deal with the hours of operation being Monday through  
3 Friday, 9:00 a.m. to 5:00 p.m., that there would be a maximum  
4 of six staff members at this location. There would be no  
5 events at the property, and that the property would not be  
6 rented for any third party purposes. Then the final, which  
7 would -- the office use would be confined to the first and  
8 second floor, with residential use in the basement and in the  
9 carriage house.

10 I think that I'd be -- I know I'd be in support  
11 of all of that, and I will make a motion to approve  
12 Application No. 20104 of Zeta Phi Beta Sorority, as amended,  
13 as I read earlier. Do I have a second?

14 COMMISSIONER SHAPIRO: Second.

15 VICE CHAIR HART: All those in favor say aye.

16 (Chorus of ayes.)

17 VICE CHAIR HART: Any opposed? Motion carries,  
18 Mr. Moy.

19 MR. MOY: Staff would record the vote as 3-0-2.  
20 This is on the motion of Vice Chair Hart to approve the  
21 application with the four conditions, as he has cited in his  
22 motion. Seconding the motion is Zoning Commissioner Peter  
23 Shapiro. Also in support, Chairman Hill. We have no other  
24 Board members with us today.

25 VICE CHAIR HART: There are five conditions on

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1 this.

2 MR. MOY: Five. Oh, that's right. It's the fifth  
3 one that you added. Very good, thank you.

4 VICE CHAIR HART: That's it. Thank you all very  
5 much and good luck to you in the future. With that, I --

6 CHAIRMAN HILL: We're going to take a quick break,  
7 and then we're going to do one case, which is 20127. Are the  
8 people from the appeal here, by any chance? Okay, great.  
9 That's okay. I'm not saying that. I'm just saying that  
10 we're going to take a break first, and then we're going to  
11 have -- but thank you. Then we're going to have 20127.  
12 Thank you.

13 (Whereupon, the above-entitled matter went off the  
14 record at 1:45 p.m. and resumed at 1:55 p.m.)

15 CHAIRMAN HILL: I'm going to call Application No.  
16 20127 of David Boggs, pursuant to 11 DCMR, Subtitle X,  
17 Chapter 9, for a special exception under Subtitle C-1504 from  
18 the penthouse setback requirements of Subtitle C-1502.1(b)  
19 and (c), and pursuant to Subtitle X, Chapter 10, for the area  
20 variance from the penthouse requirements of Subtitle  
21 C-1500.4, the floor area ratio requirements of Subtitle  
22 F-302.1, the lot occupancy requirements of Subtitle F-304.1,  
23 and the non-conforming structure requirements of Subtitle  
24 C-202.2, to construct a one-story addition to expand the  
25 existing penthouse structure and to convert an existing

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1 apartment house to a flat in the R-2 Zone at premises 1204  
2 Q Street, Northwest, Square 277S, Lot 7. Could the Applicant  
3 please introduce themselves for the record?

4 MR. BOGGS: My name is David Boggs, I'm the owner  
5 at 1204 Q Street.

6 MS. MAZO: Samantha Mazo of the law firm of Cozen  
7 O'Connor. I represent the Applicant.

8 MR. BRENNEMAN: Dean Brenneman with Dean Brenneman  
9 Architects. I'm the architect for the project.

10 CHAIRMAN HILL: All right, Mr. Brenneman, can you  
11 spell your last name for me?

12 MR. BRENNEMAN: Certainly, it's B-R-E-N-N-E-M-A-N.

13 CHAIRMAN HILL: Okay. Ms. Mazo, I assume you're  
14 going to present to us.

15 MS. MAZO: Yes. No. Thank you. We're very  
16 excited to be here. Thank you for allowing us to move  
17 forward.

18 CHAIRMAN HILL: Can I interrupt you one second?  
19 I just want to -- did everybody get sworn in?

20 MS. MAZO: Oh, yes. I was going to mention that.  
21 We've been in and out, so I like to make sure everyone gets  
22 sworn.

23 CHAIRMAN HILL: Did you all get sworn in?

24 MS. MAZO: No.

25 CHAIRMAN HILL: Oh, great. If there's anyone here

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1 who wants to testify who hasn't been sworn in, if you could  
2 please stand. It doesn't have to be in this case. It's in  
3 any case today. If you could please stand and take the oath  
4 administered by the secretary to my left.

5 (Witnesses sworn.)

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

7 CHAIRMAN HILL: Okay, Ms. Mazo, just give me one  
8 second. If the people are here for the appeal, I just want  
9 to make sure everybody knows we're probably going to take  
10 lunch before the appeal. In fact, I know we're going to take  
11 lunch before the appeal. However, I'd like to get through  
12 a couple of preliminary matters, so just if you could stick  
13 around before we go to lunch.

14 Okay. So, Ms. Mazo, I know -- if you could kind  
15 of walk us through what, exactly, you're trying to do. I  
16 know that there are -- it's been a long morning already. I  
17 know that there are a few issues with your application that  
18 the Office of Planning has. I don't know whether any of  
19 those issues have been addressed. I do know where -- from  
20 the record, we know exactly where the approval is and where  
21 the denial is. And so you could start speaking to some of  
22 those, or you can walk through your presentation, however you  
23 had planned on doing so. I'm going to put 15 minutes on the  
24 clock, Mr. Moy, so I know where we are, and you can begin  
25 whenever you like.

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1 MS. MAZO: Sure. Again, thanks very much. I  
2 would like to just take two minutes to have the property  
3 owner speak to the purpose of this renovation, and just as  
4 a general matter, to set the tone. This has -- I think  
5 someone said it's complicated. It's really not a complicated  
6 case. Unfortunately, we've got a site that is incredibly  
7 unique and is already non-conforming.

8 And adding even one square foot to this site would  
9 trigger the need for FAR, lot occupancy, a whole slew of  
10 relief. So we have a site here that already has  
11 non-conformities in terms of its FAR, in terms of an existing  
12 converted garage, on which there's an accessible terrace that  
13 is being used. And so we also already have an existing  
14 non-conforming penthouse.

15 We're not looking to add anything new here. In  
16 fact, we are significantly improving the property, as has  
17 been identified by HPRB. With that, I'm going to turn it  
18 over very quickly to Mr. Boggs, to the property owner, to  
19 explain how this is going to be his family's forever home.  
20 And then I will put it through to Mr. Brenneman to talk  
21 through -- to kind of talk through, very briefly, the  
22 uniqueness of the property, but really to focus in on the  
23 practical difficulties associated with that first story FAR  
24 and lot occupancy relief which are the main questions that  
25 OP has raised. Just to set the stage, we have -- we prepared

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1 this PowerPoint. It's in the record at Exhibit No. 50, it's  
2 in the record. Also, we have provided it to the Office of  
3 Planning. With that, I'll give it to Mr. Boggs.

4 MR. BOGGS: Okay, thanks very much. So we  
5 purchased this house in February 2017, after looking for five  
6 years. My wife and I have been overseas for the last 15  
7 years and wanted to come back to D.C., where I grew up and  
8 where she has friends from the Foreign Service. We love this  
9 house, the art deco style and the unique history. It was  
10 built in the 1880s as a two-story Victorian.

11 Then in 1939, it was converted by Howard Mackey,  
12 who was the architecture dean at Howard, for a prominent  
13 Black doctor in the area in 1939. They added a third story.  
14 He had a motorcar, so they built a garage and put his  
15 doctor's office in the basement. So that's why it has this  
16 unique setup.

17 We purchased the house, it had been a group house  
18 for many, many years. We've maintained the tenants, then  
19 started looking at how to renovate this house. Initially the  
20 build design firm we hired proposed a three-story addition  
21 above the garage, which was rejected by the ANC. We went  
22 back to the drawing board and realized we needed to work with  
23 people who have experience with historic homes in this area  
24 and the zoning. That's why we work now with Samantha and  
25 Dean, who have great experience with this. We've worked

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1 very, very hard with the neighbors and HPRB and the ANC to  
2 come up with a design which is now scaled back significantly,  
3 so it's just a one-story addition for our family, which is  
4 going to be myself, we have a 3-year-old son, who's very  
5 active. He just broke his arm last week, which is why I'm  
6 a little bit tired because he's not sleeping well, so I don't  
7 sleep well -- then my in-laws. My wife is an only child, so  
8 our in-laws spend a lot of time with us. We anticipate  
9 they'll spend more time as they get older. We want to age  
10 in place.

11 My wife, after many years in the Foreign Service,  
12 said she doesn't want to move again, so we want to put an  
13 elevator in the house, so we will age in place and have space  
14 for the in-laws. And so it's been a two and a half year  
15 process already for us. I'm happy with where we are now.  
16 We have support -- it's in the record -- from all the  
17 neighbors, unanimous support from the ANC and the HPRB, and  
18 we look forward to your consideration.

19 MR. BRENNEMAN: Thank you. This property is  
20 unique for a number of reasons. It was originally built to  
21 the property lines, with the exception of where the garage  
22 is. It has no backyard at all because it's a corner lot.  
23 It does have a lot of public space surrounding it on two  
24 sides because it's a corner lot. The only part of the lot  
25 that was ever vacant was the part that became the garage in

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1 1939. It's hard to see from this picture, but there is a  
2 small -- let's back up.

3 There's a small addition on top of that garage  
4 already. It's a pantry off of the kitchen. There is another  
5 anomaly right next to it, which is a raised area that we're  
6 informed was a pond or a fountain. It's a foot raised area  
7 of concrete slab there, with no other explanation. The  
8 nature of that first floor terrace above the garage is that  
9 it has always been used as accessible space.

10 It's been used as casual dining space. There is  
11 currently a fence around it. This picture here really shows  
12 the nature of this makeshift fence around it. It's been part  
13 of the space that's being used every day. There's been some  
14 contention about that from one particular neighbor who was  
15 adjacent and didn't like that it was this outdoor space that  
16 they entertained. Our enclosure of that space has resolved  
17 her problem with that. Moving on, at the penthouse level,  
18 we are -- you can see the very narrow space behind the  
19 penthouse --

20 CHAIRMAN HILL: Mr. Brenneman, Brennan?

21 MR. BRENNEMAN: Yes.

22 CHAIRMAN HILL: Brennan?

23 MR. BRENNEMAN: Brenneman.

24 CHAIRMAN HILL: Brenneman, sorry. Ms. Mazo, I  
25 know -- I've got a hard stop over here at 4:00. I've still

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1 got to have lunch. Then I have to go to an appeal. Mr.  
2 Boggs, I'm kind of cutting to chase on some of these things.  
3 Ms. Mazo knows what the Office of Planning is opposed to.

4 Just speak to the items that the Office of  
5 Planning is opposed to right now. Mr. Boggs, by the way,  
6 it's a frickin' awesome house. I don't know how I can feel  
7 bad for you in any way, at this point, but I'm trying my  
8 best. I know where it is. It's an awesome house. It's a  
9 huge project. It's a big undertaking, but it's an awesome  
10 house. Ms. Mazo.

11 MS. MAZO: Yes, thank you very much for that  
12 direction. To that point, I do just want to very quickly  
13 have Mr. Brenneman walk through the problems that we're  
14 trying to address through the renovation, and then I will get  
15 to the practical difficulties associated with the first floor  
16 and with the FAR. If you want to just quickly talk through  
17 these problems.

18 MR. BRENNEMAN: We'll move on past the current  
19 state of that exterior space (Simultaneous speaking.)

20 MS. MAZO: One of the problems is that we want to  
21 repurpose that first-floor terrace area because there are  
22 concerns from the neighbors, one particular neighbor, who had  
23 filed for party status, and she no longer is requesting party  
24 status. We want to appropriately design a single-story  
25 repurposing (Simultaneous speaking.)

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1 CHAIRMAN HILL: I understand. That's where the  
2 increased FARs that the Office of Planning (Simultaneous  
3 speaking.)

4 MS. MAZO: Correct.

5 MR. BRENNEMAN: The problem there has been with  
6 noise generated from this outdoor eating space. We're  
7 proposing -- there is no breakfast room in this house or  
8 casual eating space. We're proposing to enclose part of that  
9 space to make that. We also have a very difficult kitchen,  
10 currently, functionally obsolete, very awkwardly laid out.  
11 We'll see that as we progress.

12 CHAIRMAN HILL: If you can maybe drill down to  
13 just -- I'm going to cut to the chase, as well, if you don't  
14 mind, which is that there's the elevator. You're trying to  
15 put the elevator in. What you're trying to argue is that you  
16 need the elevator. It's not an ADA requirement, correct?

17 MR. BRENNEMAN: Right.

18 MS. MAZO: Correct. Also, just -- yes, the  
19 elevator is important, but also, Mr. Brenneman is going to  
20 explain that our practical difficulties are not only  
21 associated with the elevator. Even if the elevator is  
22 removed, which we don't want to have happen, even if it's  
23 removed, there's no way to fit this kitchen within the  
24 confines of the structure, itself.

25 CHAIRMAN HILL: Maybe you can speak to that, Mr.

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1 Brenneman.

2 MR. BRENNEMAN: Right. Let me move forward to  
3 that. This existing kitchen, you will see, has a lot of  
4 circulation space through it. It ends up -- and a window  
5 here, as well. You end up with a very awkward -- these are  
6 better color. You end up with a very awkwardly shaped space  
7 between the dumbwaiter and such in this zone, the entrance  
8 to the dining room, this path through this narrow place here  
9 to the pantry.

10 You have very short run of space usable for normal  
11 kitchen layout and a very truncated space on the other side.  
12 Let's clear that and let's back up a second to the existing  
13 -- let's go forward. We have it illustrated. In the  
14 proposed, you will see a helical stair. That is not driving  
15 any of our problems.

16 We are staying within the existing stair walls,  
17 and we're actually bringing the stair into compliance. The  
18 current stair does not comply. The elevator is the minimum  
19 size that will work in this. The bathroom/powder room is  
20 also a minimal size. We have essentially taken the space of  
21 the kitchen and shifted it over. Let's move on. I think  
22 what's really -- this slide really tells a story. The  
23 kitchen, as it is, if we put a powder room in only in this  
24 area, and we do not try to put an elevator in, then we're  
25 left with two 7-foot sections of kitchen and all circulation

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1 back to that pantry space, really not enough room for a  
2 decent kitchen for a house of this size.

3           We have got, then, continuing to use the outdoor  
4 space as the casual dining area and the noise that that  
5 generates and the disagreement about that from the next-door  
6 neighbor, who would rather that there was no activity  
7 outside. This slide shows you, in red, the existing kitchen  
8 area and the new kitchen area in yellow.

9           They're virtually the same area; they're just  
10 configured and shifted. Let's move forward. If we were to  
11 take that whole thing and stay within the footprint and turn  
12 that kitchen sideways, we wind up with so little dining room  
13 it's not even a suitable breakfast room.

14           By the time you have three-foot circulation around  
15 the table, you have only 28 x 48 inches left for a table in  
16 that room. This is without the elevator. This is just  
17 getting in the powder room, and that's minimum width, the  
18 powder room. It seems like a large house from the outside,  
19 but it's very vertical. It's actually very small on the  
20 first floor.

21           CHAIRMAN HILL: What's the floor plan on the first  
22 floor?

23           MR. BRENNEMAN: Floor print on the first floor is  
24 700 something, 750 now.

25           CHAIRMAN HILL: That's the floor plate going all

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1 the way up then.

2 MR. BRENNEMAN: That's right. We'd like to expand  
3 this to match the basement plate. Let's move on. We even  
4 looked at what happens if we were just to cut back a bay of  
5 this sun room. It really doesn't do anything for us. We  
6 have a very tight area for the breakfast table, and we've got  
7 this leftover space in the front that is really just nothing  
8 space, another place to collect leaves.

9 There doesn't seem to be any real advantage to  
10 trimming it back slightly. The main issue here is that the  
11 kitchen that is there is functionally obsolete and it does  
12 not -- within its current configuration cannot be  
13 reconfigured to be an acceptable kitchen for a house of this  
14 nature. Adding the normal request for a powder room pushes  
15 us over the line quickly. The elevator --

16 CHAIRMAN HILL: Can you show me the floor plate  
17 above the floor plate that you're trying to get relief for.  
18 So whatever that would be, the second floor?

19 MR. BRENNEMAN: Yes. Let's back up.

20 CHAIRMAN HILL: There's how many floors, again?  
21 I forget.

22 MR. BRENNEMAN: There are three floors above a  
23 basement.

24 CHAIRMAN HILL: Right. You've got the first  
25 floor, the second, and the third floor. This is the second

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1 floor.

2 MR. BRENNEMAN: This is the second floor.

3 CHAIRMAN HILL: The 750 square feet.

4 MR. BRENNEMAN: The next-door neighbor, Ms. Shower  
5 (phonetic), filed to be a party -- for party status because  
6 she was concerned that we had a tall parapet wall on this and  
7 a door going out to it. She was afraid that we were just  
8 moving the noise up a level.

9 CHAIRMAN HILL: I'm going to interrupt you guys.

10 MR. BRENNEMAN: We got rid of that.

11 CHAIRMAN HILL: I'm going to interrupt you guys  
12 just a little bit because I have to kind of move through  
13 this, to a certain extent, so I don't know how much we're  
14 going to -- I want to make sure we get through a good portion  
15 of this today, again, knowing that I have an appeal and I  
16 have a hard stop at 4:00.

17 Do you guys have any questions -- because I --  
18 anyway, do you guys have any more questions for the Applicant  
19 at this point? I just want to hear from the Office of  
20 Planning. I might have to have a decision about this later,  
21 just to let you know. Ms. Mazo.

22 MS. MAZO: I'm sorry. I just want to clarify and  
23 make sure that the Board is clear that we amended our plan.  
24 These are the current plans that are in the record, but to  
25 explain that we're removing any sort of door from the second

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1 story to the roof over the first floor addition, so there  
2 will be no way to access that space. That was the issue that  
3 had been raised by the adjacent neighbor.

4 PARTICIPANT: Is there something being removed  
5 from there that you can draw --

6 CHAIRMAN HILL: You need to put the microphone --

7 PARTICIPANT: Let's back up to the elevations.

8 CHAIRMAN HILL: Go back. Right, I'm saying --  
9 you've gotten rid of the patio? What?

10 MR. BRENNEMAN: No. We've gotten rid of the  
11 second-floor terrace. There was going to be a patio on the  
12 second floor.

13 CHAIRMAN HILL: Can you show us the door that got  
14 removed? This is because of the neighbor in opposition.

15 MR. BRENNEMAN: We also have cut -- I'm sorry;  
16 that's not accurate. Let me redo that. It's hard to do on  
17 this little screen.

18 MR. BOGGS: We also removed the parapet down from  
19 three feet to one foot.

20 (Simultaneous speaking.)

21 CHAIRMAN HILL: When you say you removed, you  
22 removed what the existing parapet is like.

23 MR. BRENNEMAN: No, there is --

24 CHAIRMAN HILL: The design.

25 MR. BRENNEMAN: Right. Let's go back a slide to

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1 the existing -- that same side existing. You see here, the  
2 pantry -- red maybe works better. The pantry here had a door  
3 going out to it. We were going to leave that door and make  
4 a terrace on top of the second floor. The neighbor objected.  
5 We've changed that door into a window to match the adjacent  
6 window.

7 CHAIRMAN HILL: I got it.

8 MR. BRENNEMAN: We have lowered our parapet, which  
9 had been three feet --

10 CHAIRMAN HILL: Right. I'm sorry to keep  
11 interrupting you. Those were in objections to the neighbor,  
12 right? It still didn't solve any problem with the Office of  
13 Planning and the increased FAR.

14 MS. MAZO: It did not, no. It did not decrease  
15 our FAR.

16 CHAIRMAN HILL: Okay. I'm going to turn to the  
17 Office of Planning.

18 MR. MORDFIN: Good afternoon, Chair and members  
19 of the Board. I'm Stephen Mordfin. The Office of Planning  
20 recommends partial approval of this application and partial  
21 denial. Office of Planning recommends approval of the  
22 penthouse side and rear setbacks, approval of the penthouse  
23 general regulations for the habitable penthouse on the roof,  
24 subject to a condition that the Applicant submits adequate  
25 justification documentation to the file for the additional

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1 area that the Applicant has requested.

2 Also, the Office of Planning recommends denial of  
3 the enlargement of a non-conforming structure and also for  
4 the increase in floor area ratio and lot occupancy, both of  
5 which result from the enclosure of what is currently that  
6 roof patio that the Applicant showed off the kitchen into the  
7 expanded kitchen or partially relocated kitchen and also a  
8 sun room or an eating room off the kitchen.

9 We look at that and we see, well, the Applicant  
10 is adding an elevator. That's also causing part of the  
11 problem with the shifting of the kitchen because it ends up  
12 in the kitchen. What we had requested that the Applicant do  
13 is document why this needs to be done. Why do they need an  
14 elevator, which seems to be driving the need for the increase  
15 in FAR and the increase in lot occupancy?

16 CHAIRMAN HILL: Okay. Did the Applicant submit  
17 what was necessary for the penthouse approval?

18 MR. MORDFIN: Since we filed our report, I don't  
19 believe the Applicant has added anything to the file.

20 MS. MAZO: The Applicant -- on the penthouse  
21 issue, we are including additional -- we have included  
22 additional designs in justification for the penthouse in this  
23 PowerPoint, which we're happy to (Simultaneous speaking.)

24 CHAIRMAN HILL: I just want to get through the  
25 first hoop. Has the Office of Planning received all of the

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1 necessary information from the Applicant?

2 MR. MORDFIN: This penthouse presentation, which  
3 the Applicant uploaded last night, I think, so the Office of  
4 Planning has not reviewed all of this yet.

5 CHAIRMAN HILL: Does the Board have any questions  
6 for the Office of Planning?

7 VICE CHAIR HART: The only question that I had  
8 would be does the Office of Planning have an opinion of what  
9 has been submitted, or is it just too much information --  
10 you'd rather look at this in more detail before giving that  
11 opinion?

12 MR. MORDFIN: Yes, or hearing from the Applicant  
13 how they have addressed it and explaining the drawings that  
14 address it.

15 CHAIRMAN HILL: The reason why -- what I recall  
16 from reviewing the record is that, again, it's the increased  
17 FAR that we're having the issue with. Mr. Boggs, again, kind  
18 of -- I understand that the floor plate is smaller than it  
19 appears from the outside of the building, which it does look  
20 like it's a bigger floor plate, so 750 square feet. However,  
21 I'm still having difficulty understanding how you can't fit  
22 a kitchen in there, as well as getting what you need from  
23 there, to the point where a variance needs to be approved.  
24 That's where my own little struggle is right now.

25 I guess if there's more information -- I can't

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1 believe we're going to push this off or not, or have a  
2 continued hearing, but if there's more information that the  
3 Office of Planning just got that might justify or provide  
4 more time for the Office of Planning to give their opinion  
5 as to whether or not that added elevator does create the  
6 practical difficulty necessary or if the core is some kind  
7 of way that that additional FAR above that first floor could  
8 be approved, then I would say we postpone it until the Office  
9 of Planning has had time to look at that.

10 MS. MAZO: Again, we're happy to work with the  
11 Office of Planning. Quite frankly, our application was filed  
12 in July. I had significant conversations with Mr. Mordfin  
13 throughout the process. There was additional information  
14 that he asked for, which we provided, and then at the last  
15 minute, there was an additional change at the Office of  
16 Planning. We understand we are where we are. I would like  
17 to remind the Board that we're here on behalf of a  
18 residential homeowner and that for good or for bad, all of  
19 this, including additional time, costs money. He's renting  
20 another home so that he can start his process. They won't  
21 even allow them to go forward through a PDRM to get building  
22 permits until we get through the BZA case. With that, we're  
23 happy to provide additional information and have another  
24 discussion with the Office of Planning, but my concern is  
25 that I am not sure, knowing the Office of Planning and having

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1 seen, on many other cases, that we're going to get to a  
2 position where the Office of Planning can support this  
3 additional FAR variance. I just don't know if we can.

4 CHAIRMAN HILL: That's fine. Like I said, I'm  
5 also trying to be somewhat frank about this, as well. I  
6 don't see how you can't get a kitchen in there.

7 MR. BOGGS: In terms of -- can you go to the  
8 summary slide? The floor plan -- our lot is 1,000 square  
9 feet. We have a huge amount of public space around us, but  
10 our lot is 1,000 square feet. That's why we're over all the  
11 ratios is because our lot is so tiny. The floor plate. If  
12 you look at it, we have public land on all sides. It's not  
13 that the house is massive on the lot.

14 CHAIRMAN HILL: Okay. Does anybody have any  
15 questions for the Applicant? I don't know what we're doing.  
16 The Applicant seems -- I'm proposing that the Applicant work  
17 with -- I'm at a no right now as to how you're getting that  
18 variance for the first -- to increase that first floor. I've  
19 read the record. I've heard the argument. I understand the  
20 argument. I'm just letting you know where I am. Go ahead.

21 VICE CHAIR HART: No, I just was wondering -- I  
22 understand that the Applicant has gone through a couple of  
23 years' worth of process that is before we got here, but  
24 that's partially because trying to deal with this -- these  
25 issues, there was, I guess, a different avenue that you were

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1 going down, and then having to go through various agencies,  
2 like HPRB, that caused some issues.

3           What I'm trying to get to is the Office of  
4 Planning provided their -- Ms. Mazo, I understand that you  
5 had said that you had started meeting with the Office of  
6 Planning back in July or sometime in the summer. OP has  
7 submitted a report as of the middle of this month. Taking  
8 all that information into consideration, they are partially  
9 with you and partially in denial of this.

10           This would be a full order for this because it is  
11 -- the Office of Planning is in denial of this allegation?  
12 I'm just trying to get to a -- that full order may take  
13 longer than a summary order, so I'm trying to get to that  
14 point. I know you all understand all that stuff. I'm just  
15 making sure all of that is (Simultaneous speaking.)

16           MS. MAZO: No. I absolutely appreciate your  
17 sensitivity to that. Again, we are willing to work with the  
18 Office of Planning and to meet with them if that's what the  
19 Board directs us to do to try to find a way to get to support  
20 from the Office of Planning. If that's what the Board is  
21 asking us to do, then clearly we will do that. In terms of  
22 the full order issue, the Board would have to discuss with  
23 counsel. I'm of the opinion, of reading the regulations,  
24 that it's not required for the Board to issue a full order  
25 if there's a disagreement with the Office of Planning.

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1 VICE CHAIR HART: But that's a decision that we're  
2 going to have to make internally.

3 MS. MAZO: Absolutely.

4 VICE CHAIR HART: I was just bringing up that  
5 might be an alternative for this. I think that what we're  
6 looking for is one, to have the Office of Planning look at  
7 what you've already -- what you have now submitted, as of  
8 Exhibit 50, to understand if they are farther along in their  
9 thinking.

10 Right now, we're somewhat at a disadvantage, in  
11 that we haven't gotten the Office of Planning's look at this  
12 most recent submittal. I don't know if that will change or  
13 not, but that may be an avenue to go down. Those are my  
14 thoughts.

15 CHAIRMAN HILL: We could -- a couple things.  
16 First of all, did we get the affidavit of maintenance?

17 MS. CAIN: Yes, it did come in.

18 MS. MAZO: It came in on Monday.

19 CHAIRMAN HILL: Great, thank you. Then, Mr.  
20 Brenneman, you're not admitted as an expert in our book, is  
21 that correct?

22 MR. BRENNEMAN: That is correct.

23 CHAIRMAN HILL: Just from the Board, again, I  
24 looked at the exhibit in terms of his expertise. I don't  
25 have any issues with him being admitted as an expert. Does

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1 the Board?

2 COMMISSIONER SHAPIRO: No objections.

3 CHAIRMAN HILL: Then, Mr. Brenneman, we've  
4 introduced you as an expert into this hearing. I guess --  
5 I don't know what the Applicant would like to do. I think  
6 that the record is relatively clear, in my opinion, in terms  
7 of what's in there, in terms of providing the analysis to  
8 what the Applicant has proposed, as well as the analysis that  
9 the Office of Planning has proposed.

10 I understand, from just this discussion a little  
11 bit, whether or not the Applicant thinks it's necessarily  
12 worth it or not to talk with the Office of Planning anymore.  
13 I don't even know if that would necessarily change my opinion  
14 one way or the other because the Board is tasked with  
15 determining what it thinks is the relief.

16 Unfortunately -- and we've had a lot of variances  
17 today. This is a special exception. It's like what is it  
18 that you -- what is being, basically, taken away from you to  
19 not be able to do what you want to do, not because you want  
20 an elevator, not because you want a bigger kitchen. I guess  
21 what I'm kind of -- throwing this out again, is either --  
22 I'll even just kind of throw it out for the Applicant, which  
23 is that I don't know if I would vote for this one way or the  
24 other today.

25 I might want to take a look at the record again

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1 and take a look at the testimony that was provided here a  
2 little bit, and then have a decision case. Or we could go  
3 ahead and have lunch. There's a couple of things that I need  
4 to do with the preliminary hearing for the appeal. Then,  
5 unfortunately, we've got a hard stop at 4:00. I need to  
6 start the hearing, whatever it is.

7           So the Applicant could consult with counsel over  
8 lunch, determine whether or not they would like to postpone  
9 -- not postpone, continue to try to work with the Office of  
10 Planning or they'd like to go with it the way it is and just  
11 see wherever the Board ends up today with the application  
12 that you get or, now, just to talk this through hoops again  
13 -- I'm just kind of discussing things -- is, again, pull part  
14 of the relief requested and get as far as the summary order,  
15 full order, all that stuff goes.

16           You can talk with your counsel. So the discussion  
17 here that I'm having is does the Applicant want a little bit  
18 of time to speak with counsel while we move through some  
19 other things and come back at the end of the day?

20           MS. MAZO: Just so I'm aware, if this were to be  
21 a decision on a continued hearing, what date would we come  
22 back on?

23           CHAIRMAN HILL: It would be a continued hearing.  
24 I guess we would try to come back as quickly as we can. If  
25 the Office of Planning just got information yesterday, that's

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1 going to take them a little while to look at. Don't know.

2 If you have an opportunity to talk with the Office  
3 of Planning and see what their thoughts are on, again, the  
4 expansion of the FAR on that floor, then you might want a  
5 little time. I don't know. We'd try to get you back as soon  
6 as possible. You know that we're jammed up all the time, as  
7 you can tell. We haven't had lunch at 2:00-2:30. I wish  
8 those bagel people were here, to be quite honest.

9 MS. MAZO: I know. Hearing about those bagels  
10 made me really hungry the whole day.

11 CHAIRMAN HILL: Right, I was like where are the  
12 frickin' bagels? Anyway, you want to think about it and come  
13 back to us?

14 MS. MAZO: Come back right after lunch and let you  
15 know?

16 CHAIRMAN HILL: Yes, come back after lunch.  
17 You're going to come back after the appeal. If you lose your  
18 architect, that's fine. I don't think you need your  
19 architect if we're coming back after the appeal. We can come  
20 back before the appeal. We'll come back after lunch, before  
21 the appeal.

22 MS. MAZO: Right, then we can just give the  
23 decision about whether or not we're --

24 CHAIRMAN HILL: That's fine.

25 MS. MAZO: Okay, thank you (Simultaneous

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1 speaking.) I appreciate it.

2 CHAIRMAN HILL: That's fine. Mr. Moy, we're going  
3 to come back to 20127 after lunch, and we're going to quickly  
4 hear preliminaries for the appeal. If the current Applicant  
5 wouldn't mind stepping away. Okay, Mr. Moy, if you wouldn't  
6 mind calling the appeal so we can just deal with a couple of  
7 preliminary matters.

8 APPEAL NO. 20132

9 MR. MOY: With pleasure. Thank you, Mr. Chairman.  
10 If I can have parties to the table to Appeal No. 20132 of  
11 Concerned Citizens of Woodridge. This is an appeal from the  
12 decision made on June 4, 2019, by the Zoning Administrator,  
13 Department of Consumer and Regulatory Affairs, to issue  
14 Building Permit No. B1900996, permitting the installation of  
15 a ground-mounted, grid-tied solar array, consisting of 5,072  
16 solar modules in the R1B zone at 2800 Otis Street, Northeast,  
17 Square 4302, Lot 828.

18 CHAIRMAN HILL: Okay, great, thank you. Could  
19 everyone please introduce yourselves for the record, from my  
20 right to left.

21 MR. GREEN: Good afternoon, Chairman, Hugh Green,  
22 G-R-E-E-N, attorney for the D.C. Department of Consumer and  
23 Regulatory Affairs.

24 MR. LEGRANT: Good afternoon, Matthew LeGrant,  
25 Zoning Administrator, DCRA.

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1 MS. BATTIES: Good afternoon, Leila Batties with  
2 the Law Firm of Holland & Knight, on behalf of Catholic  
3 Charities of the Archdiocese of Washington.

4 MS. CHANDLER: Joyce Chandler, 2870 Perry Street,  
5 Northeast, for the Concerned Citizens of Woodridge.

6 CHAIRMAN HILL: Okay, Ms. Chandler, welcome. I  
7 just want to do a couple of preliminary things before we  
8 break for lunch. First of all, there was a late filing by  
9 DCRA. They were a day late. The filing deadline -- okay.  
10 I don't have an issue with the filing deadline because I want  
11 the information that came from DCRA so we are able to take  
12 a look at things. It was one day late, so I don't think it  
13 is of concern. Does the Board have any issues with that?

14 PARTICIPANT: No.

15 CHAIRMAN HILL: Then I'm going to waive the filing  
16 deadline for DCRA. The Concerned Citizens of Woodridge,  
17 CCOW, is asking for a postponement. Ms. Chandler, I've  
18 looked at the request for the postponement. In my opinion,  
19 the issues that you're raising are not necessarily pertinent  
20 to this appeal, meaning the additional information that you  
21 guys are alleging kind of obtained to non-zoning issues, like  
22 storm water, environmental. Can you speak a little bit more  
23 as to why you think we should grant a postponement?

24 MS. CHANDLER: We believe that you should grant  
25 the postponement because the information that we're looking

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1 for, even for the zoning, it's for -- we didn't get clear  
2 images and information to determine if they're meeting with  
3 the zoning requirements, as far as the setback.

4           The information -- I've been trying to obtain  
5 information from the D.C. regulatory agencies and it hasn't  
6 come to me. It hasn't come to us, so we haven't been able  
7 to make -- to get the information to prosecute the case to  
8 address why we're appealing it. Because it's basic  
9 information on it that we haven't been able to get from the  
10 agencies.

11           COMMISSIONER SHAPIRO: What specific information  
12 related to zoning were you asking for that you didn't get,  
13 again?

14           MS. CHANDLER: The information we were asking for,  
15 the final plans that were sent out, as far as how it was  
16 going to be developed and the borders and other parameters.  
17 The information we received was from the very beginning, but  
18 what has come -- what was approved was different. There was  
19 less panels. There have been changes as we see it being  
20 constructed. Those are the things that we're asking for.  
21 We need that information to make decisions -- I mean to find  
22 where the conflicts are.

23           CHAIRMAN HILL: One second; I'm sorry. Isn't that  
24 all part of the public record already?

25           MR. LEGRANT: Yes. The building permit that was

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1 approved includes a plan set, which is all available from  
2 DCRA. It's all public information.

3 CHAIRMAN HILL: Okay. So you should already have  
4 that within the record.

5 MS. CHANDLER: I requested it. I don't --

6 CHAIRMAN HILL: Mr. Moy -- sorry.

7 VICE CHAIR HART: I think part of this is, Ms.  
8 Chandler, do you have specific -- do you have a drawing set  
9 that has a specific date on it? You're saying that there are  
10 more current drawings, but we're trying to understand how  
11 those new drawings are relating to the zoning questions that  
12 you're raising. What's the connection that we're trying to  
13 get to? The Zoning Administrator is saying that there are  
14 drawings, and they are publicly available, but you're saying  
15 that you can't get them. Something is not being -- is  
16 incorrect there.

17 MS. CHANDLER: The ones that I have, that I've  
18 been able to get from exhibits and from the presentations  
19 that were made through our VCA and the presentations that  
20 they made to the community are different from what's -- they  
21 aren't the latest ones. They were from back in April and  
22 May, not even May. When we had our hearing or our ANC  
23 meeting, what was presented -- our ANC meeting was in May.  
24 A week later, when they came and they said -- they presented  
25 information and said that they would work with us, a week

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1 later, they came and they said we've got an emergency  
2 exemption.

3 Everything was gone. Then at that point, getting  
4 information, requesting it, it wasn't -- we couldn't get the  
5 information. Even with the things that are related to --  
6 although they aren't specific for the zoning, even the ones  
7 that -- when the DCRA approved it, we were asking for  
8 involvement in the process.

9 Because what we're seeing now is after the zoning  
10 has taken -- after they're starting to build/construct, we're  
11 running into these problems that if we had had the special  
12 exceptions and the information, we would have been able to  
13 address them.

14 VICE CHAIR HART: There are no special exceptions  
15 that they needed. They went directly to -- they're doing  
16 this as a matter of right because it's allowed under zoning.  
17 It was, at one point, a case that was going to be before us,  
18 but because of the zoning change, that negated that  
19 necessity.

20 MS. CHANDLER: Under the zoning there, it was a  
21 limitation that if it was under a certain size, that it was  
22 a matter of right, but over a certain size, then there was  
23 also supposed to be special exception. But we can't  
24 determine that it should have been special exception  
25 consideration because we don't have the information to make

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1 that determination, such as the distance from the nearest  
2 residence.

3           It's a new measurement that they came upon the  
4 aggregated face panel area, which is not available and is  
5 only determined by, I believe, DCRA. It's not -- because  
6 right now, the panels are located on five acres of land. The  
7 aggregated panel face area is 1.5 and a half -- yes, one and  
8 a half acres. We don't know what that acreage is because you  
9 have to measure each panel and the number of panels.

10           That information, as citizens and lay people, we  
11 don't have. That's the type of information that we're  
12 interested in, so we can see if they meet the cut off because  
13 it's such a large facility. This isn't a small -- on your  
14 rooftop or something the size of this room. It is expansive.

15           CHAIRMAN HILL: Okay, may I just interrupt you?  
16 Ms. Chandler, what I'm trying to figure out -- and I'll let  
17 my fellow Board members understand. We're just trying to get  
18 through the postponement issue. What I'm trying to figure  
19 out is whether or not you had enough information, meaning  
20 your organization had enough information to argue this case.  
21 I guess where I'm still trying to understand, again, is that  
22 there was a violation that you all are saying that the Zoning  
23 Administrator had done. What I understood the violation to  
24 be is that they had a text amendment with the zoning  
25 commission to do, by right, the community renewable energy

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1 facility.

2 I believe that you haven't made enough of an  
3 argument to me now that I think a postponement is necessary  
4 for you guys to make the argument as to why this isn't a  
5 CREF. I would be opposed to this postponement, at this time,  
6 and I'd be looking to my Board members to give me their  
7 opinion. I can be convinced otherwise, but I just want to  
8 know where Board members stand.

9 COMMISSIONER SHAPIRO: I agree, Mr. Chair.

10 CHAIRMAN HILL: Okay.

11 VICE CHAIR HART: Yes, I think it's somewhat hard  
12 to understand what additional information that they're  
13 seeking. I think that we have seen enough information that  
14 has been submitted to us that it seems like the Applicant --  
15 that the Appellant had enough information to be able to say  
16 that they were appealing the case. I'm not exactly sure what  
17 other information would be required for this.

18 CHAIRMAN HILL: Okay. Then I'm going to make a  
19 motion to deny the request for postponement. I don't think  
20 I have to ask for a second. I would make a motion that we  
21 deny the postponement because I think we should go ahead and  
22 move forward with this appeal today. Is there any other  
23 thing that the Board would have to say to that?

24 PARTICIPANT: No.

25 CHAIRMAN HILL: Okay. Ms. Chandler, I just wanted

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1 to mention, so we're going to move forward with this today.  
2 I wanted to talk through this preliminary matter, either one  
3 way or the other, so that we knew what we were going to do  
4 after lunch. We are going to hear this case after lunch,  
5 this appeal.

6           What I wanted to then specify for everyone, in  
7 terms of what we would like to know, is that I think this is  
8 a pretty straightforward issue now, which is whether or not  
9 the Zoning Administrator has made an error in issuing this  
10 permit under the new text amendment, which was allowing the  
11 CREF as a matter of right.

12           When you're presenting your case, it would be how  
13 is the Zoning Administrator in error of presenting -- of  
14 giving this permit as a CREF? Because I know there was what  
15 the regulations were prior to the text amendment, but the  
16 text amendment happened, so no longer -- they're not here for  
17 a special exception anymore. The Zoning Administrator issued  
18 his permit under the new emergency -- the new text amendment.  
19 That's what we're going to be looking at, just the text  
20 amendment.

21           MS. CHANDLER: Okay.

22           CHAIRMAN HILL: I wanted to mention that again so  
23 you can kind of look at that while we go to have lunch.

24           MS. CHANDLER: Okay. That's the information we're  
25 looking for is what's under the text amendments for the

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1 special exception. To subsection --

2 CHAIRMAN HILL: Can OAG just help me clarify this  
3 a little bit for the Applicant?

4 MS. CAIN: Yes. Part of the confusion seems to  
5 be what emergency text amendment this came in under. On  
6 February 11, 2019, the Zoning Commission passed emergency  
7 legislation approving the CREFs as a matter of right in all  
8 zones. There were not any additional requirements on that,  
9 in terms of sizing or distance from neighboring properties  
10 that would require a special exception.

11 On June 10th, the Zoning Commission passed an  
12 amended, again, emergency text amendment, which did add in  
13 those requirements. That is what the Appellant is citing to  
14 with the special exception provisions, but those were not the  
15 ones that were in place at the time the permit was issued.

16 CHAIRMAN HILL: Right. So what would we refer the  
17 Applicant back to look at?

18 MS. CAIN: She would need to look at the original  
19 emergency text amendment that was approved on February 11th.

20 CHAIRMAN HILL: Where do you go to find that? Ms.  
21 Chandler, can you turn off your microphone for a moment?  
22 Thank you. I'm sorry; it's feeding back.

23 COMMISSIONER SHAPIRO: The June 10th amendments  
24 don't apply to this.

25 MS. CAIN: No, they do not.

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1 MR. GREEN: Mr. Chairman, I have a copy of the  
2 February 11th that I can certainly tender if --

3 CHAIRMAN HILL: Okay. Ms. Chandler, at lunch, if  
4 you could please take a look at what DCRA has from the  
5 February 11th text amendment. That's what we'll be looking  
6 at, in terms of what this pertains to, in terms of what the  
7 Zoning Administrator approved this under. What happened, I  
8 guess, was in February 11th, they approved a text amendment.  
9 These regulations applied. Then June 10th, there was another  
10 amendment to that text amendment.

11 MS. CAIN: The June 10th emergency legislation  
12 added in a requirement that if you were over a certain size  
13 or you were not meeting certain criteria, you would still  
14 have to get that special exception.

15 CHAIRMAN HILL: Right, but that's not what is  
16 currently before us. It's the February 11th.

17 MS. CAIN: No, it's the February 11th.

18 CHAIRMAN HILL: If you can take a look at what  
19 DCRA has -- I thought this was -- I'm sorry, Ms. Chandler.  
20 I thought this was going to be kind of smooth before lunch.  
21 It's not. I don't want to do this quickly. In terms of the  
22 impact to the property owner, if this were to be postponed,  
23 can you tell me how the postponement would affect the  
24 property owner and when and how? Could you please speak to  
25 that?

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1 MS. BATTIES: I would need to -- we have our  
2 partners represented by counsel here, but it does affect  
3 their financial partner's timeline. I would need to consult  
4 with Marty Sullivan on that. There is an impact, in terms  
5 of time.

6 CHAIRMAN HILL: Okay, if you could just take a  
7 look -- because I guess what I'm trying to understanding, in  
8 jumping around with this, is that the Appellant came forward  
9 with an application. It is the Appellant's responsibility  
10 to be prepared in the way that they can argue the  
11 application. I am understanding of the building -- the  
12 property owner's situation, in terms of timeline.

13 However, I can see that Ms. Chandler is here by  
14 herself, representing this organization. Now, I'm going to  
15 give a regulation to her from DCRA to take a look at at  
16 lunch. I'm going to try to get this done by 4:00, whatever  
17 that is. It could possibly be a continuation anyway. I just  
18 want to make sure that the Appellant understands what the  
19 Appellant is arguing, which is, again, the text amendment  
20 from February 11th, not the amendments to the text amendment  
21 by June 10th. That being the case -- I don't know if Mr.  
22 Sullivan has something now that he stepped forward, or if  
23 after lunch is fine with you to talk? Ms. Chandler, what I'd  
24 like you to do, please, is take a look at the regulation that  
25 DCRA is going to give to you, which is the regulation that

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1 you're arguing, which is about the February 11th text  
2 amendment.

3 We're going to take a lunch break, and then we're  
4 going to come back and see if there is some additional time  
5 that we might be able to give the Appellant, which is  
6 yourself, to put this argument together a little bit more,  
7 in terms of clarity. However, and I am just going to state  
8 this, it's that it is kind of your burden, because it's your  
9 case, to -- this would have come through during the hearing,  
10 that it is your -- it's your appeal.

11 It's your burden to come forward arguing the  
12 correct thing that you're supposed to be arguing. I'm going  
13 to kind of move forward with this. I'm going to let DCRA  
14 talk with the Appellant, and we're going to come back after  
15 lunch. Ms. Chandler, go ahead.

16 MS. CHANDLER: I just wanted to say that they're  
17 building all along -- it's basically almost, what, 70 percent  
18 built, the solar panel field. Giving me more time to go  
19 through the regulations and figure out what -- I thought that  
20 the ones that were promulgated were the ones that were  
21 applicable -- that the burden on Catholic Charities, they  
22 have -- they're constructing right along.

23 CHAIRMAN HILL: Ms. Chandler, I'm not -- we hear  
24 appeals all the time. Not all the time. Actually, we hear  
25 appeals all the time. If they are wrong, they have to tear

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1 it down. It doesn't matter what they've built or what  
2 they're building. But they did get a permit to build  
3 something.

4 They have the right to build whatever they want  
5 to build. You, as an Appellant, have the right to put  
6 forward an appeal within a certain time frame, which you did  
7 do. Now, I just want to make sure that you're arguing the  
8 correct thing within your appeal. Go ahead and take a look,  
9 at lunch, as to the regulation that you need to argue about.

10 Then I'm going to come back to the property owner,  
11 in terms of the timeline or determining what we're going to  
12 do. Again, what, at least, this does is that this drills  
13 down and clarifies what the argument is. It's not about  
14 drainage or storm water or environmental concerns. It's  
15 about the zoning requirements to this particular regulation,  
16 okay? You looked like you were going to say something.

17 MS. CHANDLER: I was also told that for the DCRA  
18 approval of it, that the way to contest that was to go  
19 through the zoning.

20 CHAIRMAN HILL: No, you're in the right place.  
21 You're in the right place to contest this. This is the  
22 appeal process. You are appealing the Zoning Administrator's  
23 decision to issue a building permit. You have to argue why  
24 the Zoning Administrator erred. What did he do wrong?

25 MS. CHANDLER: It's only -- the building permit,

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1 I was assuming anything in the building permit that was not  
2 -- because if the argument's against whether they issued the  
3 building permit properly, that's where --

4 VICE CHAIR HART: For each appeal that we get, the  
5 appeal has to be -- you have to describe where that -- first,  
6 what you're appealing, and you have to, in that description,  
7 also talk about what the error was. You have to say it's  
8 this building permit, it's this determination, whatever, and  
9 then say it's this aspect of that determination or building  
10 permit or whatever that is.

11 As the Appellant, the Appellant, as the Chairman  
12 said, their responsibility is to -- your responsibility is  
13 to determine and is to describe what that error is. You have  
14 to use the zoning that is applicable to that particular  
15 property at that particular time. You can't go back and say  
16 zoning -- the ZR58, Zoning Regulations from 1958, are  
17 applicable when, in actuality, it may be the Zoning  
18 Regulations from 2016, which are the most up to date Zoning  
19 Regulations. In this case, you're looking at a particular  
20 aspect of this, and we're trying to understand whether or not  
21 you are having -- you're stating the error is with the Zoning  
22 Regulations, the emergency text amendment from February of  
23 this year, February 11, 2019, or are you saying that it's the  
24 June 10, 2019?

25 We're saying that it should be the February 11,

1 2019 that you should be -- that's what you should be focusing  
2 and saying this is the error because this is what that zoning  
3 says, and this is the error that the Zoning Administrator has  
4 made. We just are not there yet.

5 MS. CHANDLER: All right, thank you.

6 CHAIRMAN HILL: All right. Do you have a timeline  
7 for me already? You don't know. Okay.

8 MS. BATTIES: No, we'll come back.

9 CHAIRMAN HILL: Okay. It is ten of 3:00. We're  
10 going to jump around here a little bit because, again, we  
11 have a hard stop. I want to make sure this is efficient.  
12 In other words, what we're going to do is we're going to take  
13 a break here for a moment. I'm going to let DCRA share with  
14 the Appellant U-201.1(c), which is, I believe, what the  
15 Appellant is going to need to argue about.

16 The only thing -- my fellow Board member, here,  
17 is like -- the Appellant is here to argue about U-201.1(c).  
18 Go ahead and take a look at that. If we can allow the  
19 Appellant a little bit more time to come and do this in a way  
20 that's not going to harm the property owner, we might try to  
21 give them a little bit more time. However, again, back to  
22 the Appellant -- and this is the clarity -- it's to  
23 U-201.1(c), which is the regulation that the Zoning  
24 Administrator approved this building permit under.

25 VICE CHAIR HART: I think, Ms. Chandler, part of

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1 what we're hearing, based on the information that you  
2 provided, that you're looking -- your appeal was based upon  
3 Subtitle U-203.1(p), requiring the special exception for  
4 basic utility use. That's just not this case. Talk to them.  
5 Look at the information they have related to U-201.1(c).

6 CHAIRMAN HILL: Why don't you guys just break for  
7 me, okay? Just go ahead and talk with the Appellant. Find  
8 a little corner. See if you can get to something. Then I'm  
9 going to -- I see the person from the previous case before  
10 us. We're just going to keep moving along with jumping back  
11 and forth.

12 Because if I can get through this, then we can --  
13 yes, because if we can get through this, then we would maybe  
14 take lunch or -- just so the Appellant knows, we're going to  
15 take ten minutes or so after we hear this. You have about  
16 ten minutes to talk amongst yourselves. Mr. Moy, if you  
17 would call the previous case back before us again when you  
18 have a chance.

19 CASE APPLICATION NO. 20127

20 MR. MOY: That would be Case Application No. 20127  
21 of David Boggs, B-O-G-G-S. I'm not going to read the rest  
22 of the caption.

23 CHAIRMAN HILL: Could you reintroduce yourselves  
24 for the record, please?

25 MR. BOGGS: I'm David Boggs, Applicant.



1           CHAIRMAN HILL: I lost OP. We'll see if I need  
2 OP. Everybody's like we were supposed to have lunch. We're  
3 not having lunch. I didn't know what we were doing, either.  
4 I can't believe it's game seven today and this is not fun.  
5 Ms. Mazo, would you mind introducing yourself again for the  
6 record?

7           MS. MAZO: Samantha Mazo of the Law Firm of Cozen  
8 O'Connor. I am actually wearing red today because of game  
9 seven.

10          CHAIRMAN HILL: Nice. Still not any fun. Mr.  
11 Brenneman, could you please introduce.

12          MR. BRENNEMAN: Dean Brenneman, Dean Brenneman  
13 Architects. I have a red tie in my briefcase if that will  
14 help.

15          CHAIRMAN HILL: No, it won't. Ms. Mazo, did you  
16 guys clarify where you might want to be with this?

17          MS. MAZO: Yes, we just had a very fruitful  
18 discussion with the Office of Planning. There are a few  
19 things that we would like to go through that were questions  
20 that the Office of Planning had raised during our  
21 conversation outside, that Mr. Brenneman can talk through.

22                 Without wasting any more time, I will do that.  
23 It may help if I ask Mr. Brenneman questions, in order to  
24 direct this. When we were talking with Mr. Mordfin outside,  
25 we clarified for him that the amount -- can you clarify what

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1 is the size of the existing kitchen?

2 MR. BRENNEMAN: The existing kitchen is 125 square  
3 feet.

4 MS. MAZO: What is the size of the proposed  
5 kitchen?

6 MR. BRENNEMAN: One hundred and thirty-five square  
7 feet -- actually 34.

8 MS. MAZO: So in total, the kitchen is only  
9 expanding by ten feet.

10 MR. BRENNEMAN: Ten square feet.

11 MS. MAZO: Ten square feet. The next thing that  
12 we clarified with Mr. Mordfin was that the -- to clarify that  
13 the outdoor space, the existing 211 feet of outdoor space is  
14 currently being used. Therefore, although while not covered,  
15 while not considered gross floor area, it is considered to  
16 be part of the habitable part of the structure.

17 MR. BRENNEMAN: Usable area.

18 MS. MAZO: Usable area. Is that correct, Mr.  
19 Brenneman?

20 MR. BRENNEMAN: Yes, it is. It's been heavily  
21 used.

22 MS. MAZO: It's been heavily used. And if this  
23 FAR relief is not granted, there would be -- a strict  
24 application of the Zoning Regulations would impose a  
25 practical difficulty on the property owner because this 211

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1 square feet outside, which has always been used as part of  
2 the property, would essentially not be usable anymore, in  
3 light of the objection from the adjacent neighbor.

4           We have an adjacent neighbor who does not -- has,  
5 for a long time, had a strong objection to the use of this  
6 outdoor space. She agrees with this particular project  
7 because it was going to enclose that outdoor space and that,  
8 in so doing, it will resolve her issues, which emanate from  
9 noise coming off of the use of that outdoor space.  
10 Essentially, if that area is not enclosed, in order for Mr.  
11 Boggs and his family to move forward, they would essentially  
12 lose that usable space out there.

13           CHAIRMAN HILL: Mr. Shapiro.

14           COMMISSIONER SHAPIRO: Why would they lose it?  
15 They would just have a noisy neighbor, and she would be  
16 annoyed.

17           MS. MAZO: Yes, that's true, but these are people  
18 who want to live here long term. They don't want to have to  
19 worry about the police being called every time they go  
20 outside.

21           COMMISSIONER SHAPIRO: I'm not suggesting what is  
22 or isn't polite or neighborly. I'm just saying I'm not sure  
23 it's accurate to say they would lose access to the space.

24           MS. MAZO: I think functionally, it would be a  
25 loss of access to the space. You may agree or disagree, but

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1 I think functionally, it would certainly be a loss of access  
2 to that space.

3 MR. BRENNEMAN: From a --

4 COMMISSIONER SHAPIRO: Let it go. We're fine.  
5 Thank you.

6 MR. BRENNEMAN: In meeting with the Historic  
7 Preservation Review Board and the ANC, they were all looking  
8 forward to getting rid of having any first-floor outside  
9 terrace space that is street front like this because there  
10 is none in the surrounding squares.

11 COMMISSIONER SHAPIRO: I appreciate that. I'll  
12 take back the question and (Simultaneous speaking.)

13 CHAIRMAN HILL: Keep going forward, Ms. Mazo.

14 MS. MAZO: The other thing that we clarified for  
15 -- in our discussion with Mr. Mordfin is the actual design  
16 of the first floor addition, in terms of the fenestration.  
17 That's one thing that I want Mr. Brenneman to talk through.

18 MR. BRENNEMAN: We have made the front corner of  
19 this building virtually all glass. That is why we called it  
20 a sun room instead of a breakfast room. The concern with the  
21 neighborhood was let's not let this thing look too heavy, at  
22 this point.

23 Let's enclose the space, get rid of this oddity  
24 of exterior first floor terrace space on the streetscape and,  
25 instead, enclose it with something that's more diaphanous.

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1 Glass, you can see through it. It's not blocking all the  
2 view and light shed. It was through careful back and forth  
3 with the neighborhood that we arrived at this specific  
4 design.

5 MS. MAZO: The other thing -- and I'm getting back  
6 to it. The other thing that we clarified with Mr. Mordfin  
7 was the fact that even without the elevator and purely  
8 through the addition of a powder room on that ground floor  
9 -- I'm sorry for the -- that, in itself, would require that  
10 the kitchen not fit within the existing -- sorry, within the  
11 existing footprint.

12 There are many reasons to have a ground floor --  
13 a first floor powder room. Obviously, it's nicer for guests,  
14 but the other thing that I identified is that Mr. Boggs does  
15 have young children. Anybody who has young children knows  
16 that you spend a lot of time running them back and forth to  
17 the bathroom. It is very, very helpful to have a first-floor  
18 powder room for that and for, obviously, all other reasons.

19 MR. BRENNEMAN: Just shifting -- just adding the  
20 powder room further reduces the utility of that kitchen. If  
21 we simply took that kitchen and shifted it outward, we would  
22 be where we propose, without any substantial increase in  
23 area.

24 Then what is left is this terrace area in the  
25 front, which is, frankly, as much as a desire of the clients

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1 to have breakfast space as it is a desire of the community's  
2 to be rid of first-floor, street front accessible  
3 entertaining space. If we took that same kitchen and just  
4 rotated it within the house, there isn't room.

5 It's a small footprint. It's only 750 square  
6 feet. It's a small plate to work with. After our  
7 conversation with planning, they felt that these were  
8 important things to point out, that the leftover space  
9 becomes kind of an attractive nuisance, and that this is more  
10 helpful to the community at large.

11 MS. MAZO: The other thing is that we did review  
12 with Office of Planning to clarify the need for the  
13 additional square footage in the penthouse, which was part  
14 of the OP report. With that, Mr. Brenneman, if you wouldn't  
15 mind talking through some of the rationale --

16 CHAIRMAN HILL: Wait, hold on. I kind of  
17 understand what you're talking about, and I kind of -- not  
18 kind of understand. I understand what you guys are talking  
19 about, and I understand the rationale. Are the plans that  
20 you have in the record the plans that you currently are still  
21 trying to do? If so, where are they?

22 MS. MAZO: Yes, the plans that we have in the  
23 record are the ones that we are requesting approval. They  
24 are at Exhibit No. --

25 PARTICIPANT: They're in your presentation.

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1 There's three pages.

2 MS. MAZO: No, I'm sorry; they're at Exhibit No.  
3 45A.

4 CHAIRMAN HILL: Okay, 45A, those are the plans  
5 that are the revised plans. Then these are the plans that  
6 have gone through the ANC.

7 MS. MAZO: Correct.

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

10 MR. MORDFIN: Again, I'm Stephen Mordfin with the  
11 Office of Planning. The Office of Planning reviewed the  
12 plans and discussed with the Applicant the changes that they  
13 have made. The Applicant did point out that -- and the  
14 Office of Planning is aware of the neighbor that is in  
15 opposition to the use of the outdoor area, although the  
16 Applicant has every right to continue to use that area. But  
17 by enclosing it -- part of the reason for the bulk  
18 regulations is to minimize the appearance of bulk of the  
19 buildings, the floor ratio. They did put glass across the  
20 front to minimize that, which was accepted by HPRB.

21 But also, it allows the Applicant to continue to  
22 use an area without disturbing the adjacent neighbors,  
23 although that doesn't directly relate to floor area bulk  
24 regulations. It does impact the way this building relates  
25 to the adjoining buildings. I know there's not a direct line

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1 to that.

2 We also discussed with them with the roof deck,  
3 or rather with the penthouse on the roof, on top of the  
4 building, above the third floor. The Applicant is replacing  
5 the staircase with a code compliant staircase. It wasn't --  
6 it's not just to put in a different kind of staircase, but  
7 one that has risers that are code compliant. What that does  
8 is that pushes the staircase to the back of the building.

9 Right now, the stairs are steeper than what you  
10 could put in today, although they could keep that because  
11 it's grandfathered in. That shifts it back, and that also  
12 allows the Applicant to redesign the penthouse and shift the  
13 load, which is right now in the middle of the building. The  
14 architect has informed us that does cause structural problems  
15 on the roof. It would shift it to the party wall, which  
16 would better support that and take some of the pressure off  
17 of the roof. The Office of Planning also supports that  
18 rationale for expanding the size of the penthouse to  
19 accommodate the steps and to transfer the load of the  
20 penthouse.

21 CHAIRMAN HILL: Okay, so now, in terms of the area  
22 that the Office of Planning was opposed to, the Office of  
23 Planning is now comfortable with the design.

24 MR. MORDFIN: Yes.

25 CHAIRMAN HILL: So the Office of Planning is now,

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1 currently, in approval of the proposed design.

2 MR. MORDFIN: Yes.

3 CHAIRMAN HILL: Does the Board have any questions  
4 for the Office of Planning?

5 Does the Applicant have any questions for the  
6 Office of Planning?

7 MS. MAZO: No.

8 CHAIRMAN HILL: Is there anyone here wishing to  
9 speak in support?

10 Is there anyone here wishing to speak in  
11 opposition?

12 Is there anything you'd like to add at the end,  
13 Ms. Mazo?

14 MS. MAZO: I really thank everybody's assistance,  
15 in particular Mr. Mordfin. We really look forward to getting  
16 underway and really rehabbing and making this home a lovely  
17 home for the Boggs.

18 CHAIRMAN HILL: What about thanking the  
19 expeditious nature of the Chair?

20 MS. MAZO: I very much thank -- I am sorry about  
21 that. I do. I thank you guys for staying here and going  
22 through lunch. I really, really appreciate it. Thank you.

23 CHAIRMAN HILL: Okay. I'm going to close the  
24 hearing. Is the Board ready to deliberate?

25 PARTICIPANT: Yes.

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1           CHAIRMAN HILL: I think we could have dug down in  
2 even deeper as to why or how the Office of Planning was going  
3 one way or the other on the expansion of the FAR on that  
4 first floor. I think that I could, again, have gone either  
5 way because even though it is a small footprint, the 750  
6 square feet, I still think an argument could have been made  
7 to keep it the way it was.

8           However, I will agree with the analysis that the  
9 Office of Planning is now giving, after working with the  
10 Applicant, in terms of the rationale for that expansion. I  
11 was in agreement with the analysis the Office of Planning had  
12 provided on all of the other areas of relief. I am happy or  
13 glad to see, I suppose, that the ANC was also in agreement  
14 and that the Applicant has worked so much with the neighbors,  
15 in terms of getting the approval. DDOT did have a question,  
16 in terms of -- I guess I'm just kind of pointing it out to  
17 the Applicant, not necessarily needing to re-open the record  
18 about it, but that there was something about DDOT's concerns  
19 about a curb cut that might need to be taken care of.

20           Again, I'm not re-opening the record to talk about  
21 that with the Applicant. I'm just kind of mentioning that  
22 for their information. Is there anything else anyone here  
23 would like to discuss?

24           VICE CHAIR HART: No, I think that I would be in  
25 agreement with you, Mr. Chairman. I appreciate the Office

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1 of Planning working with the Applicant to understand this  
2 further. I understand that -- we have these cases where  
3 there is an existing building. I think these are fairly  
4 modest additions to it, but it is an existing building, an  
5 existing structure, which does make -- an existing structure  
6 that is already non-conforming.

7           It does it make it difficult to really do that,  
8 do many things. In this case, we have a very small lot. At  
9 1,000 square feet, that's pretty tiny. I would be in support  
10 of the application. I'm assuming, from OAG, I'm assuming we  
11 don't need to have an updated report from OP. They gave  
12 their --

13           MS. CAIN: I think it would be better to have  
14 something in writing from OP, not to throw off this rhythm  
15 that we're on, but (Simultaneous speaking.)

16           CHAIRMAN HILL: That's fine. We can keep the  
17 record open for a report from the Office of Planning,  
18 correct, OAG? Right.

19           VICE CHAIR HART: (Simultaneous speaking.)

20           CHAIRMAN HILL: That won't be a problem for you  
21 guys?

22           MR. MORDFIN: No.

23           CHAIRMAN HILL: Okay. Do you know when we might  
24 be able to get an updated report? I'm not trying to put you  
25 under the gun. Just give me a guess.

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1 MR. MORDFIN: Could you give us -- usually, we  
2 file things ten days in advance, could we have two weeks to  
3 (Simultaneous speaking.)

4 CHAIRMAN HILL: Sure, that's fine, two weeks. I  
5 just want to make sure it's in the record, so Mr. Moy, you  
6 can keep your eye out for it. Anyone else? I'm going to  
7 make a motion to approve Application No. 20127, as captioned  
8 and read by me, and ask for a second.

9 VICE CHAIR HART: Second.

10 CHAIRMAN HILL: Motion has been made and seconded.  
11 All those in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN HILL: All those opposed.

14 Motion passes, Mr. Moy.

15 MR. MOY: Staff would record the vote as 3-0-2.  
16 This is on the motion of Chairman Hill to approve the  
17 application for the relief being requested. Seconding the  
18 motion, Vice Chair Hart, also in support, Zoning Commissioner  
19 Peter Shapiro. We have no other Board members. My  
20 understanding is the Board is allowing the Office of Planning  
21 to file their revised report to the record within two weeks.

22 CHAIRMAN HILL: Yes, thank you. Thank you all  
23 very much.

24 (Whereupon, the above-entitled matter went off the  
25 record at 3:10 p.m. and resumed at 3:31 p.m.)

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1 CHAIRMAN HILL: All right, Mr. Moy, if you could  
2 please call us back.

3 APPEAL NO. 20132

4 MR. MOY: Thank you, Mr. Chairman. The Board is  
5 back in session. It's about 3:31 p.m. This is to the Appeal  
6 No. 20132 of Concerned Citizens of Woodridge.

7 CHAIRMAN HILL: Okay, great, thank you, Mr. Moy.  
8 I'm sorry. Can we reintroduce ourselves for the record,  
9 please, from my right to left?

10 MR. GREEN: Good afternoon, Chairman, Hugh Green,  
11 attorney for the D.C. Department of Consumer and Regulatory  
12 Affairs.

13 MR. LEGRANT: Matthew LeGrant, Zoning  
14 Administrator, DCRA.

15 MS. BATTIES: Leila Batties with the Law Firm of  
16 Holland & Knight, on behalf of Catholic Charities of the  
17 Archdiocese of Washington.

18 MS. CHANDLER: Joyce Chandler for the Concerned  
19 Citizens of Woodridge.

20 CHAIRMAN HILL: Okay. Ms. Chandler, did you get  
21 a little bit further clarification in terms of your argument  
22 for your appeal?

23 MS. CHANDLER: Yes, I was given quite a bit of  
24 information. I will look at -- I didn't get a chance to  
25 review it (Simultaneous speaking.)

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1           CHAIRMAN HILL: That's fine. It's U-203.1(p), as  
2 in Paul. That's what we're looking at. No, I'm sorry. Even  
3 I got confused. It's U-201.1(c). That's what the permit was  
4 issued under. That's what we're going to end up discussing,  
5 in terms of whether or not the Zoning Administrator made an  
6 error under U-201.1(c). In terms of the property owner, you  
7 were going to talk about financing and time and everything.

8           MS. BATTIES: We did discuss that. We're going  
9 to ask the Board to proceed. Today, we have a number of  
10 partners for this project. As you know, Catholic Charities  
11 isn't in the business of energy, so they have a lot of  
12 partners. Any delay will affect a major contractual  
13 obligation. We'd ask the BZA to move forward today.

14           CHAIRMAN HILL: We'll see where we get. I'm going  
15 to lose somebody at 4:00. Ms. Chandler, I suppose -- I'm a  
16 little torn here, I suppose. Ms. Chandler, I'm going to go  
17 ahead and let you -- we'll see where we get. I'm going to  
18 go ahead and let you start, in terms of your argument as to  
19 why you think the Zoning Administrator erred.

20           What I believe you started with was that you  
21 believe that the Zoning Administrator erred under U-203.1(p),  
22 as in Paul. That's where you started. The new issue -- or  
23 not new issue. This was actually done under U-201.1(c), as  
24 in Charlie. But you can argue it either way. I just want  
25 to see whether or not we can get to something as to why you

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1 think the Zoning Administrator erred.

2 MS. CHANDLER: All right, thank you. I'm still  
3 looking. The errors that I was basing it on before, it seems  
4 like there's -- it's under this new -- the old rule. I have  
5 not had a moment to look at it to clarify why. Before, it  
6 was -- we were basing it on other limits and other parts of  
7 it. Right now, it's just -- I'm sorry.

8 VICE CHAIR HART: We understand that this is  
9 somewhat overwhelming. The issue that we're trying to get  
10 to is that you're saying that this is under -- you originally  
11 submitted this as an error under 203.1(p), correct?

12 MS. CHANDLER: Mm-hm.

13 VICE CHAIR HART: You understand that's what you  
14 were saying that this is a special exception.

15 MS. CHANDLER: Right.

16 VICE CHAIR HART: You're saying that this should  
17 have been treated as a special exception, as opposed to  
18 something that was just a matter of right under the Zoning  
19 Regulations.

20 MS. CHANDLER: Yes.

21 VICE CHAIR HART: You're saying that there was an  
22 error.

23 MS. CHANDLER: Right.

24 VICE CHAIR HART: What we're trying to understand  
25 is that the error that you're bringing forward is about the

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1 Subtitle U-203.1(p). The problem with that is that that's  
2 not the actual -- what the owner and DCRA has stated is that  
3 they were looking at this case under a different regulation  
4 in the Zoning Regulations.

5 You had a case that you submitted some  
6 documentation for. While I understand that there was a  
7 change, in terms of the change in that the owner and DCRA is  
8 saying it's actually under this -- you're looking in the  
9 wrong location, you were saying that this was an error --  
10 there were some errors that were in 203.1(p). You were going  
11 to make an argument today.

12 MS. CHANDLER: I was going for the continuance  
13 today. That's why I was asking for the information, so that  
14 our group could review it and then be able to argue it. But  
15 we were waiting -- we were hoping, at this place, to say can  
16 you please give us this information, so we can do the review.

17 It seems like they've given me a lot of the  
18 information that we were looking for and explaining some of  
19 the information that we were looking for that Mr. LeGrant  
20 says does not exist, as far as the letter of determination  
21 and things like that.

22 VICE CHAIR HART: In some ways, I think that maybe  
23 what we -- I don't know, Mr. Chairman. Maybe what we look  
24 to do is to give you time to look at this, and then make the  
25 determination -- you may make a determination that you want

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1 to proceed with this or make a determination that you realize  
2 that you cannot -- that you are not moving forward with this.

3           It's just difficult for -- we have to base the  
4 appeal on something. There has to be some error that you --  
5 an appeal is really an error that you're saying that the  
6 Zoning Administrator made or someone else made that is --  
7 that we're trying to figure out or resolve. If we can't find  
8 an error, then it's going to be very difficult for us to  
9 grant the appeal.

10           MS. CHANDLER: I understand that. Thank you  
11 (Simultaneous speaking.)

12           VICE CHAIR HART: That's kind of where we are  
13 right now.

14           MS. CHANDLER: Yes. I would appreciate if the  
15 Board would allow me some additional time, a couple of days  
16 to look at this and to get back with you. Preferably, I  
17 would like a week, but I know that there's -- they said their  
18 financial partners and contractual obligations, they want to  
19 move forward and have a decision today.

20           If I could get some additional time to process  
21 this or go through it and look through it to get back with  
22 you, our Concerned Citizens of Woodridge would greatly  
23 appreciate it. I can speak with them, and then also go  
24 through this and get back to you as soon.

25           CHAIRMAN HILL: Okay. Ms. Batties, I'm going to

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1 postpone this because this is going nowhere. I don't know  
2 whatever is happening. I'm trying to see. There are a  
3 couple of different things that I know, in terms of -- Mr.  
4 Moy, what do we have next week, in terms of an appeal? Do  
5 we have an appeal next week?

6 MR. MOY: Next week would be November 6th. We do  
7 have an appeal with five, actually, six applications.

8 CHAIRMAN HILL: What about the week after that?

9 MR. MOY: We have an appeal with four  
10 applications.

11 CHAIRMAN HILL: Ms. Batties, I don't want to drill  
12 down into this. You guys can wait two weeks?

13 MS. BATTIES: Yes.

14 CHAIRMAN HILL: Ms. Chandler, thank you, I'm  
15 sorry. Ms. Chandler, we're going to come back here in two  
16 weeks. If you could please take the time to understand all  
17 the information that was given to you, specifically  
18 U-201.1(c). Again, was my understanding this was what we're  
19 going to end up drilling down -- this is going to be a very  
20 quick appeal because as I understand it, the Zoning  
21 Administrator has given this permit under U-201.1(c), which  
22 allowed this as a matter of right.

23 Then it wasn't until the June 10th amendment that  
24 it changed it to where you needed to have some kind of  
25 special exception. Is that correct? Right, the special

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1 exception. This was a matter of right under U-201.1(c). I'm  
2 sorry. Mr. Shapiro.

3 COMMISSIONER SHAPIRO: When the Zoning  
4 Administrator gave that approval, then that's whatever zoning  
5 was in place at that time. That's the previous one. I think  
6 that's where the confusion's coming in for you. It is true  
7 that the special exception that's allowed, that is now in  
8 place, but it doesn't apply to this case, unless you can make  
9 an argument somehow that it does. That's the only thing that  
10 is relevant to this. The rules are quite straightforward,  
11 which is that the decision is -- when the decision is made,  
12 it's whatever zoning is in place at that time. The Zoning  
13 Administrator, when it made its decision, what was in place  
14 at that time? That's what's relevant, and only that.

15 MS. CHANDLER: Thank you, Mr. Shapiro.

16 VICE CHAIR HART: I think there's another piece,  
17 which is, Ms. Chandler, we're not able -- you're not able to  
18 change or expand any errors that you see at this -- at any  
19 point now because you are to have submitted what it is -- the  
20 error when this appeal was filed. You can't make it bigger,  
21 like say this is an issue now. We're really trying to focus  
22 on this aspect of it.

23 MS. CHANDLER: Thank you, Mr. Hart.

24 CHAIRMAN HILL: You basically said what OAG was  
25 pointing out for me, which was, again, that -- right, Ms.

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1 Chandler, you can't expand your argument. You can't bring  
2 in new things into your argument. I'm going to throw another  
3 subtitle at you, which is Y-302.13, which is going to  
4 prohibit you from expanding the appeal that you've already  
5 put forward, okay? Again, we'll see you in two weeks and see  
6 where we get, okay? Is there anything you guys need to talk  
7 about?

8 (No audible response.)

9 CHAIRMAN HILL: Then, Mr. Moy, we will come back  
10 to this in two weeks. What's the date on that again, please?

11 MR. MOY: It's November 13. May I ask a question?

12 CHAIRMAN HILL: Sure, of course.

13 MR. MOY: Does the Board care to set a deadline  
14 for Ms. Chandler to file a prehearing statement or not?

15 CHAIRMAN HILL: Sure, yes, please. When would be  
16 the normal deadline for that, Mr. Moy, so that the Applicant  
17 would have an opportunity, if they needed to, to respond to  
18 anything?

19 MR. MOY: I was going to say two weeks, but I  
20 don't think that's going to work.

21 CHAIRMAN HILL: No, we're back here in two weeks,  
22 so in a week?

23 MR. MOY: If the Applicant can file something  
24 within a week's time, ma'am, that would be November 6th.

25 MS. CHANDLER: I will do my best.

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1 MR. MOY: Do you care for any responses from the  
2 other parties?

3 CHAIRMAN HILL: Sure, if they have anything to  
4 respond to, they're welcome to, by what date, Mr. Moy?

5 MR. MOY: They're going to need some time, so  
6 let's say Monday, November 11th. They can work over the  
7 weekend.

8 CHAIRMAN HILL: Okay. Why not? We do. You guys  
9 have a nice day. Mr. Moy, is there anything else before the  
10 Board?

11 MR. MOY: Not from the staff, sir.

12 CHAIRMAN HILL: Thank you. We stand adjourned.

13 (Whereupon, the above-entitled matter went off the  
14 record at 3:46 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: 10-30-19

Place: Washington, DC

was duly recorded and accurately transcribed under  
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