

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 11, 2019

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
MICHAEL G. TURNBULL, Commissioner
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
ALEXANDRA CAIN, ESQ.
DANIEL BASSETT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT
JONATHAN KIRSCHENBAUM
STEPHEN J. MORDFIN
CRYSTAL MYERS
MAXINE BROWN-ROBERTS
KAREN THOMAS
ELISA VITALE

The transcript constitutes the minutes from
the Public Hearing held on December 11, 2019.

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

9:45 a.m.

1
2
3 BZA CHAIR HILL: All right, good morning,
4 everybody. The hearing will please come to order. We're
5 located in the Jerrily R. Kress Memorial Hearing Room at 441
6 4th Street NW. This is the December 11th Public Hearing,
7 2019, of the Board of Zoning Adjustment of the District of
8 Columbia.

9 My name is Fred Hill, Chairperson. Joining me
10 today is Carlton Hart, Vice Chair, Lorna John, Board Member.
11 And representing the Zoning Commission is almost the entire
12 Zoning Commission, which we're going to have first, Michael
13 Turnbull, then Rob Miller, then Peter Shapiro, and finally
14 Anthony Hood will be with us when we get to the rest of the
15 hearings.

16 Copies of the today's hearing agenda are available
17 to you and located in the wall bin near the door. Please be
18 advised that this proceeding is being recorded by a court
19 reporter and is also webcast live. Accordingly, we must ask
20 you to refrain from any disruptive noise or action in the
21 hearing room.

22 When presenting information to the Board, please
23 turn on and speak into the microphone, first stating your
24 name and home address. When you're finished speaking, please
25 turn your microphone off so that your microphone is no longer

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1 picking up sound or background noise.

2 All persons planning to testify either in favor or
3 in opposition must raise their hand and have been sworn in
4 by the Secretary. Also, each Witness must fill out two
5 witness cards. These cards are located on the table near the
6 door and on the witness table. Upon coming forward to speak
7 to the Board, please give both cards to the reporter sitting
8 at the table to my right.

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

15 The order of procedures for special exceptions and
16 variances as well as appeals is also listed as you come
17 through the door. The record shall be closed at the
18 conclusion of each case, except for any material specifically
19 requested by the Board. The Board and the staff will specify
20 at the end of the hearing exactly what is expected and the
21 date when the persons must submit the evidence to the Office
22 of Zoning. After the record is closed, no other information
23 shall be accepted by the Board.

24 The Board's agenda includes cases set for decision.
25 After the Board adjourns, the Office of Zoning, in

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

7 Although the Board favors the use of summary orders
8 whenever possible, an applicant may not request the Board to
9 issue such an order. The District of Columbia Administrative
10 Procedures Act requires that the public hearing on each case
11 be held in the open before the public, pursuant to Section
12 405(b) and 406 of that Act.

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

21 The decision of the Board in cases must be based
22 exclusively on the public record. To avoid any appearance
23 to the contrary, the Board requests that persons present not
24 engage members of the Board in conversation. Please turn off
25 all beepers and cell phones at this time so as to not disrupt

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1 the proceedings.

2 Preliminary matters are those which relate to
3 whether a case will or should be heard today, such as
4 requests for a postponement, continuance, or withdrawal, or
5 whether proper and adequate notice to the hearing has been
6 given. If you're not prepared to go forward with the case
7 today, or if you believe that the Board should not proceed,
8 now is the time to raise such a matter.

9 Mr. Secretary, do we have any preliminary matters?

10 SECRETARY MOY: good morning, Mr. Chairman, members
11 of the Board. I do have a brief announcement regarding the
12 cases on today's docket for the record. First, Case
13 Application Number 19819A, this is of Southern Hills LP, has
14 been postponed, rescheduled to January 15th, 2020.

15 And also Case Application Number 20157. This is
16 the application of Eugene Whong, postponed, rescheduled to
17 February 5th, 2020. Other than that, Mr. Chairman, there are
18 other preliminary matters. And staff would suggest that the
19 Board address those when I call the case.

20 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.
21 All right, good morning, everybody. If you plan on
22 testifying, please stand and take the oath administered by
23 the Secretary to my left.

24 (Witnesses sworn.)

25 SECRETARY MOY: Ladies and gentlemen, you may

1 consider yourselves under oath.

2 BZA CHAIR HILL: Okay. Once again, good morning.
3 We are going to be jumping around in the calendar today,
4 because we have a bunch of different things we have to do,
5 some of which is the fact that there are a whole bunch of
6 different zoning commissioners here, and we're trying to work
7 through them. So if you want to pull out your agenda, I can
8 at least tell you where I think we're going to end up for a
9 little while.

10 The first case is going to be Application Number
11 19978 which is currently listed. Then we're going to go down
12 to Application Number 20053, followed by 19984, followed by
13 20004.

14 We're then going to jump back up and go to
15 Application 20135. And I think that actually might, we
16 should get to that one relatively quickly. And then we're
17 going to go back on to the other page and go to 20154. And
18 then after that, we're going to follow the order starting
19 from Number 6 there, down through until dinner time.

20 Okay. Yes, so I don't do the next one. So, Mr.
21 Moy, huh? And then the expedited review decision case we'll
22 probably take after a break. Because there shouldn't be
23 anyone here for that. All right. Mr. Moy, you can call our
24 first case when you get a chance.

25 SECRETARY MOY: Thank you, Mr. Chairman. So if we

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1 can have parties to the table to Application Number 19978 of
2 775 Fairmont Street, NW, LLC, as amended for special
3 exceptions under Sub-title E, Section 51085204 from the rear
4 yard requirement, Sub-title E, Section 5104.1, side yard
5 requirement, Sub-title E, Section 5105.1, and pursuant to
6 Sub-title X, Chapter 10, for area variance from the height
7 requirements of Sub-title E, Section 5102.1 to alley, center
8 line setback requirements, Sub-title E, Section 5106.1,
9 minimum pervious surface provisions set forth under Subtitle
10 E, Section 5107.1, to construct a second-story addition to
11 an existing alley lot structure and convert it to a detached
12 principal dwelling unit, RF1 Zone, at 775 Fairmount Street
13 NW, Square 2885, Lot 862.

14 VICE CHAIRPERSON HART: Thank you very much, Mr.
15 Moy. Good morning, if you could introduce yourselves from
16 my right to left?

17 MR. BELLO: Good morning, Toye Bellow representing
18 the Applicant.

19 MR. JONES: Patrick Jones, the architect.

20 BZA CHAIR HILL: Mr. Hart, for the record, I've
21 read into this case. But since you started to lead it, I'm
22 going to let you go ahead. Thank you.

23 VICE CHAIRPERSON HART: Sure. Why thank you, Mr.
24 Chairman. So we had, this case has had a lot of odd stuff
25 going on. And I wanted to first make a couple of statements,

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1 and then we can kind of get into the case. And this is the
2 statement to really, just to kind of describe where we are.
3 And then I'll ask my fellow Board members if they have any
4 comments or questions.

5 So the first thing is that we had requested several
6 materials, several items during earlier preliminary hearings
7 on the case. One was about the tax record issue. And I'll
8 note that the Applicant has noted that it has been addressed
9 in several documents.

10 The second was addressing the relevance of Sub-
11 title C 303.3. And again, the Applicant has provided a
12 document kind of describing where they believe that they are
13 on the case. And then there was also a final request which
14 was a more fuller response for the special exception and
15 variance issue. And the Applicant had provided this.

16 And one of these I am pretty sure was a day late,
17 if I remember that correctly, or just some late filings. I
18 don't have a problem with the late filings. I would
19 recommend that we allow the late filings. So I didn't know
20 if any Board members had any questions on that. Okay. So
21 those were kind of, like, the three things that we were
22 looking for. And I'm just noting that we have received that.

23 So regarding the Sub-title 303 pertaining to the
24 frontage along a street or alleyway, and the Applicant has
25 said, with regard to the substance of this, they've noted

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1 that in Exhibit 62 on Page 4, that Sub-title C303.3 is not
2 applicable to the subject alley lot application that they
3 submitted to us.

4 I know that we've had some back and forth on this,
5 and I understand that the Applicant is not adding this relief
6 to what their request is. And this is a self-certified
7 application, and we are not here to opine what you should be
8 doing. We are asking to understanding how you are meeting
9 different aspects of the zoning regulations.

10 The Zoning Administrator will have to do their
11 separate review of the case in the future if this moves
12 forward. And the Applicant will, if they need to, the
13 Applicant will need to seek relief for this. But I wanted
14 to make sure that we understood kind of where we were on
15 that.

16 With regard to the third, the main issue, which is
17 the address of record issue, the Applicant has described that
18 this is an issue for later on in the review process for
19 others. And we understand that it is not in our purview
20 about the record issue. It's only how it pertains to the
21 zoning regulation. And in particular, that was in connection
22 with the Sub-title C303.3. And we're already saying that
23 this is a self-certified application. If you believe that
24 you do not need it, then you will have to deal with that
25 issue, and we'll deal with that issue in the future.

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1 And then the fourth issue is just kind of going
2 through the actual case, the relief that's being requested.
3 What I will ask is that you go through a presentation that
4 talks about how you believe you meet the regulations for
5 special exception for side yard and rear yard, and then the
6 variance relief for height, alley centerline setback, and
7 minimum surface provisions.

8 And I'll also kind of note, at the very end of this
9 very, somewhat long-winded explanation, if you could
10 describe, there was letter in the file that was in
11 opposition. Some neighbors had filed some information about
12 what they felt were some issues with the proposal. If you
13 could address some of those, in particular looking at things
14 like how this is not going to impact, you know, the kind of
15 views, or privacy, and light, and air of the neighbors. In
16 particular, I think it's the people that are to the south of
17 your property.

18 I know that's a lot, Mr. Bello, but I wanted to
19 make sure that we kind of set all this stuff up so that we
20 move through this as expeditiously as possible. So I'll
21 leave it there. I don't know if my fellow Board members have
22 any other comments to make at this moment? Okay. So the
23 floor is yours, and 15 minutes?

24 MR. BELLO: That's good enough.

25 VICE CHAIRPERSON HART: Okay. And you can begin

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1 when you'd like.

2 MR. BELLO: Thank you very much, Mr. Hart. So the
3 application seeks a special exception from the rear yard
4 provisions of E 5104.1 and the side yard provisions under E
5 5105.1.

6 And the special exception standards are
7 three-pronged, A, that the proposed project will be in
8 harmony with the general purpose and intent of the zoning
9 regulation on the zoning maps.

10 And the Applicant believes submits that this
11 application meets that test. Because the zoning relief
12 sought is to build a second floor on an existing building.
13 And it's to convert what has been used as a commercial
14 property to a one-family dwelling which is a use that is
15 permitted under the underlying zoning. The subject property
16 is located in the RF-1 zone.

17 So we believe that because the application is to
18 establish and use the lot as a matter right, converting the
19 use from its previous commercial use, that this property
20 meets that standard and that the use would be in general
21 harmony with the intent and purpose of the zoning
22 regulations.

23 B, that the use will not tend to affect adversely
24 the use of neighboring properties in accordance with the
25 zoning regulations and the zoning maps. While the

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1 predominant use in this property being, in this neighborhood,
2 being an RF-1 zone, is one-family dwellings and two-family
3 dwellings. So the proposed use is compatible.

4 And the alley lot is abutted by at least five
5 properties to the south of the property. And each of those
6 properties are removed at least 30 feet at minimum from that
7 property lot line. The proposed structure is one foot over
8 the allowed height in the underlying zone.

9 VICE CHAIRPERSON HART: Do you have any drawings
10 that just --

11 MR. BELLO: Oh.

12 VICE CHAIRPERSON HART: -- just for us to see where
13 this is? Thank you.

14 MR. BELLO: There you go. So --

15 VICE CHAIRPERSON HART: Yes, I was just looking to
16 see if there was a larger kind of showing the -- yes, the
17 context, just where the neighbors are in this. You can use
18 the arrows up here to, you know, make it larger. You can
19 continue, that's fine.

20 MR. BELLO: Okay. So as you can see, the site is
21 an alley lot. And it's been an alley lot since prior to May
22 12, 1958. It's the largest lot on this alley, for an alley
23 lot. So south of this property would be those properties
24 that face Fairmont Street. And so the perpendicular property
25 lot line that is shared actually constitutes the rear yard

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1 for those properties that are located on Fairmount Street.
2 And the existing buildings there are removed at least 30 to
3 40 feet from those property lot lines.

4 The property to the west also faced Fairmount
5 Street, so those lots also really are lots, and no building
6 is within 30 to 40 feet of this property. So the Applicant
7 believes that the use of neighboring properties will not be
8 unduly affected, because they are so far removed from the
9 other building.

10 COMMISSIONER TURNBULL: You're talking about a
11 house or a structure being 30 feet or more away, not the
12 properties themselves.

13 MR. BELLO: No, the structure, the buildings.

14 COMMISSIONER TURNBULL: But the properties are
15 right adjacent to that building.

16 MR. BELLO: Yes. In terms of its property lot
17 line, but there are no improvements is what I'm talking about
18 within 30 or 40 feet of any direction.

19 COMMISSIONER TURNBULL: No, but the people in those
20 houses use that entire lot. Am I correct?

21 MR. BELLO: They certainly do.

22 COMMISSIONER TURNBULL: Thank you, thank you.

23 MR. BELLO: The third prong is that the application
24 meets special conditions as may be specified. So other than
25 the special exception standards, there are no other special

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1 conditions specified for this application.

2 With respect to the area variance standards, there
3 are also three prongs there that the application needs to
4 meet. One is the uniqueness standard. And the Applicant
5 believes that the application meets the standards in three
6 ways.

7 One, it's the largest of all alley lots in that
8 alley. I think it's about 1,625 square feet. And it's about
9 75 square feet removed from a standard RF-1 lot which is
10 required to be 1,800 square feet. So it meets the standard
11 by its unique physical characteristics of shape and size.

12 The existing building covers about 92 percent of
13 the existing lot. And it's not set back from any of the
14 property lot lines. And then the property has a past zoning
15 history having been found to be unique in the previous BZA
16 case that approved a use variance for the property as
17 commercial use.

18 Peculiar and exceptional practical difficulties
19 upon the owner require that the property be demolished in
20 order to meet any of the reliefs that we're looking for under
21 the variance standards. The pervious surface requirement is
22 really not required, but we have filed for that relief over
23 an abundance of caution.

24 VICE CHAIRPERSON HART: Which relief is that?

25 MR. BELLO: The pervious surface.

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1 VICE CHAIRPERSON HART: Okay, thank you.

2 MR. BELLO: The property, the existing building
3 that covers 92 percent of the property and the eight percent
4 is actually a paved area, a concrete driveway to access what
5 used to be essentially a garage.

6 C, Section 501.2(b), that's the applicability
7 provisions for the pervious surface, only requires that
8 requirement if the addition is to exceed ten percent of the
9 existing building. Here the addition is under ten percent.
10 It'll be only eight percent.

11 The height, there are two constraints about meeting
12 the height provisions. One, the topography of the property
13 changes by about five to seven feet. The existing floor to
14 ceiling head room on the property is about 14, 15 feet. And
15 if the second floor is to be added, the construction code
16 requires that habitable space have a seven-foot ceiling
17 height.

18 VICE CHAIRPERSON HART: Can I ask a question at
19 this point?

20 MR. BELLO: Yes, sir.

21 VICE CHAIRPERSON HART: And this is actually for
22 Mr. Jones. What's the ceiling, what's the existing ceiling?

23 MR. JONES: Concrete.

24 VICE CHAIRPERSON HART: And you're going to retain
25 that existing ceiling?

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1 MR. JONES: Our goal is to retain it, yes.

2 VICE CHAIRPERSON HART: Or at least some portion
3 thereof?

4 MR. JONES: Yes.

5 VICE CHAIRPERSON HART: There are stairs in there
6 and other things that are proposed for this, so at some point
7 you've got to take out some of the --

8 MR. JONES: Exactly, yes.

9 VICE CHAIRPERSON HART: But you're looking at
10 retaining that. And it's sound enough to be able to carry
11 the load that we're talking about.

12 MR. JONES: We'll have to reinforce it. And the
13 bigger issue also is the existing window openings on the
14 north elevation. If we were to drop it, we would have to
15 alter all of the existing openings here.

16 VICE CHAIRPERSON HART: On the north facade?

17 MR. JONES: Exactly, yes. And that's the only
18 windows that are on that facade currently.

19 VICE CHAIRPERSON HART: Yes. I mean, you might be
20 able to drop it some, but you'd still have to deal with a
21 brand new roof too, a brand new first floor, I guess --

22 MR. JONES: Second floor.

23 VICE CHAIRPERSON HART: -- second floor -

24 MR. JONES: Correct. Yes.

25 VICE CHAIRPERSON HART: -- to be able to deal with

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1 that.

2 MR. JONES: Yes.

3 VICE CHAIRPERSON HART: And you didn't look at any
4 movement of that, and it's just because you're looking to
5 maintain that existing roof?

6 MR. JONES: Yes. Because the other issue is we put
7 the parking at the top of the property. And in order to get
8 the ceiling height for that, we have to, it's sort of a
9 building section, yes, in order to get that sort of ceiling
10 height, the ceiling height in this area needs to be kind of
11 maintained. Otherwise, if we dropped that down, the garage
12 wouldn't have the adequate ceiling height for a garage door
13 or anything that kind of shows in the elevation.

14 VICE CHAIRPERSON HART: What's the existing floor?
15 I mean, because currently you're digging out a portion of
16 this floor where the, I guess, powder room and some other
17 things that are sub, yes, they're the wine storage and all
18 that other stuff.

19 MR. JONES: Yes. So that's a partial, because the
20 garage is kind of --

21 VICE CHAIRPERSON HART: Is that, I was just
22 curious, is that existing?

23 MR. JONES: There's, like, a small little sub-area,
24 but it's nothing habitable. It's, like, three or four feet
25 below.

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1 VICE CHAIRPERSON HART: But currently, what I'm
2 just trying to understand is is there a slab across this
3 entire building, and you're kind of cutting into part of that
4 slab to go down to this? Or was there something already
5 there that's about this size?

6 MR. JONES: No, no. We're going to be excavating
7 this down.

8 VICE CHAIRPERSON HART: So that is new excavation
9 that's happening?

10 MR. JONES: Correct.

11 VICE CHAIRPERSON HART: Okay. I think that's it.
12 I just wanted to kind of understand that. I didn't see the,
13 I don't think you had existing plans in here for the first
14 floor which is fine. That's why I wanted to ask you.

15 MR. JONES: Oh. Well, the first floor is just,
16 it's literally that, it's an empty warehouse that they're
17 using for storage now.

18 VICE CHAIRPERSON HART: Yes. I was trying to
19 understand if this was an actual floor plan or just showing
20 this is the outline of the building.

21 MR. JONES: No.

22 VICE CHAIRPERSON HART: That was the hard part I
23 was trying to --

24 MR. JONES: Yes. It was a furniture shop for a
25 while, but all their stuff's been removed.

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1 VICE CHAIRPERSON HART: Thank you.

2 COMMISSIONER TURNBULL: Mr. Hart, I wonder if I
3 could just carry on with a question?

4 VICE CHAIRPERSON HART: Go ahead.

5 COMMISSIONER TURNBULL: I just want to confirm or
6 just repeat again for the record, the existing roof slab is
7 structurally sound to support a second floor habitable
8 building?

9 MR. JONES: We have not had an engineer come in to
10 verify that. But it's a solid concrete slab that we are
11 anticipating adding some steel supports. Because right now
12 it's probably designed for a roof load. And we would need
13 to have it designed for a live load. So there would probably
14 need to be sort of, there would need to be some
15 reinforcement. But our goal is to kind of retain the sort
16 of height and texture of the existing concrete slab to kind
17 of get that industrial loft feel.

18 COMMISSIONER TURNBULL: Okay, thank you.

19 VICE CHAIRPERSON HART: Go right ahead, Mr. Bello.

20 MR. BELLO: So the alley lot provisions is kind of
21 silent on where a building height measuring point is. So one
22 would reasonably believe that, then would differ to the
23 general provisions of how height is measured.

24 So the height can either be measured, if we look at
25 the two alleys involved in this property, almost similar to

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1 a corner lot, the height would either have to be measured at
2 the west elevation or the north elevations where the two
3 alleys are.

4 And if you look at the elevation drawings you would
5 see that the more we approach the middle of the front of the
6 wall on the north alley, the site slopes. And at that point,
7 I think we have approximately about 21 feet of height which
8 exceeds the maximum 20-foot height allowed for alley
9 buildings.

10 So the point is that the project is compelled to
11 construct a second story which would exceed the height limit.
12 Because the construction codes again, require the head room
13 of seven feet for a habitable space. And that's just about
14 all the relief we're asking for. So the relief is kind of,
15 the condition is kind of imposed upon the application, in a
16 way.

17 VICE CHAIRPERSON HART: And you have the, the issue
18 that was looking at regarding the, kind of, the neighbors in
19 terms of the height, you know, you're not requesting, I
20 guess, a significant change, but it is a variance of about
21 a foot and a half maybe. I don't know exactly the number
22 that you're --

23 MR. BELLO: It's about one foot, it's --

24 VICE CHAIRPERSON HART: A little more than a foot
25 --

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1 MR. BELLO: Yes.

2 VICE CHAIRPERSON HART: -- that we're talking
3 about.

4 MR. BELLO: Yes, just a little more.

5 VICE CHAIRPERSON HART: And so the question is
6 really how do you, do you think that that is impacting the
7 neighbors? And how can you kind of do something to mitigate
8 against that?

9 MR. BELLO: Okay. So clearly, light and air is not
10 affected. So we're really talking about privacy and use of
11 the adjoining properties. Yes, I'll have the architect walk
12 you through what the suggestions have been.

13 MR. JONES: Yes. So I actually reached out to the,
14 one of the people who started to oppose it had actually
15 emailed me, like, months ago when we first started. And I
16 tried to explain to her. And then she seemed a little bit
17 more okay with it.

18 And then as the months went along, and the
19 neighbors talked, I think they, you know -- It got approved
20 by the ANC pretty quickly. And I don't think they realized
21 what was going on. And I actually reached out to that one
22 neighbor and offered to meet with all of them to kind of
23 discuss the project.

24 And one of the things I wanted to emphasize to them
25 was that this facade back here, the only fenestration we have

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1 is over the stair which is not going to be a window that
2 actually has a view. It's more to get that sort of southern
3 light into the space.

4 VICE CHAIRPERSON HART: What's the material of the,
5 I know it's glass, are you looking at translucent glass?

6 MR. JONES: Well, that was, so when I reached out
7 to them, you know, one of the things I wanted to talk to the
8 about was, you know, we can make that a translucent glass.
9 We're just looking to get light. It could be, like, glass
10 block, you know, whatever. It's not a view we, no one wants
11 to see inside someone's neighbor's house.

12 And one of the things I really wanted to reiterate
13 with them that, if we were to do this as a sort of matter of
14 right, we would actually have to create a sort of wedding
15 cake design to the property. Because the setbacks would
16 require these five-foot sort of terraces.

17 And those would have windows on them or, you know,
18 some doors out to a terrace. And then it would kind of
19 overlook their backyard. So this design actually is a little
20 bit more private for them. And it doesn't have any, you
21 know, views from our building into theirs.

22 VICE CHAIRPERSON HART: Are you talking about where
23 the parapet is?

24 MR. JONES: No. So, like, if --

25 VICE CHAIRPERSON HART: I'm trying to figure out

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1 the wedding cake reference. I wasn't quite sure I understood
2 that.

3 MR. JONES: So if we were to design this as a
4 matter of right, which would mean we would have to have
5 setbacks on the alley and then the property line, it would
6 kind of create these five-foot areas which we could legally
7 create terraces on. And then, so I should have brought a
8 drawing.

9 VICE CHAIRPERSON HART: No, no. I'm trying to
10 follow it with this. I guess the question was you would only
11 do one story then.

12 MR. JONES: No.

13 VICE CHAIRPERSON HART: As a matter right, I was
14 just tripping up on the issue that you were, when you were
15 saying that this was going to be a matter of right, there's
16 a matter of right for certain aspects of the relief. There
17 are still variances that you would need if you're trying to
18 get the same height. So that's the part that I was trying
19 to connect to. Because --

20 MR. JONES: If we sort of had to lower the height
21 for whatever reason, and had to get rid of the ceiling, and
22 deal with the windows, and all that -

23 VICE CHAIRPERSON HART: I understand that. I was
24 just trying to make sure I understood all of the pieces that
25 you were saying.

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1 MR. JONES: Yes. So I just, you know, and the one
2 thing I was going to sort of offer, I mean, we're looking not
3 to, you know, tick anyone off, we want to be good neighbors,
4 is to actually introduce landscaping along the whole back
5 wall of this to kind of create a level of privacy. Because
6 the only areas that I feel like would threaten their privacy
7 would be the roof terrace. And we're definitely open to, you
8 know, working with the neighbors to mitigate that area.

9 VICE CHAIRPERSON HART: Somehow deal with that
10 area?

11 MR. JONES: Exactly.

12 VICE CHAIRPERSON HART: That is, and it's funny,
13 because it was, as I was looking through this, it was one of
14 the things I was thinking. Maybe there's some sort of, and
15 this is a fairly significant size for a terrace, and not
16 having that aspect of it, and maybe making it some sort of
17 green roof or something --

18 MR. JONES: Right.

19 VICE CHAIRPERSON HART: -- that could help to push
20 that back away from the neighbors. But you could still leave
21 the parapet wall up there. It's just that the people that
22 are in the building wouldn't be able to access.

23 MR. JONES: Yes. And, you know, and the person,
24 whoever owns this building, is going to want that privacy as
25 well. So we're, again, we're very open to that. It's just

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1 a matter of taking this green area and extending across the
2 whole width of the property.

3 VICE CHAIRPERSON HART: Thank you. So are you
4 finished, Mr. Bello?

5 BZA CHAIR HILL: Mr. Bello?

6 MR. BELLO: Yes.

7 BZA CHAIR HILL: As far as the C303.3 issue, did
8 you have any comments about it?

9 MR. BELLO: Well, I submitted a brief on it. But
10 I can summarize exactly what my position is. Sub-section C
11 of 303, I think, is very instructive. That section
12 essentially says that if alley lots existed, any alley lots,
13 be they record lots or tax lots, were in existence prior to
14 May 12, 1958, that those alley lots did not need to meet the
15 provisions of the requirements of the preceding sections, A
16 and B. And those preceding sections have to do with alley
17 width, and minimum area.

18 And then I cited other sections of the code which
19 actually makes reference to 303.3 as having to do with new
20 alley lots to be created, not existing alley lots. So the
21 controlling provision for the conversion of the tax lots to
22 record lots is actually under A304.1. Another --

23 BZA CHAIR HILL: That's all right. I was just kind
24 of curious. All right.

25 MR. BELLO: Well, not only that, we've come across

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1 at least information where the zoning administrator has
2 actually used this provision to approve a similar alley lot
3 condition.

4 BZA CHAIR HILL: All right, Mr. Bello. I guess
5 we'll see what happens a little later, right?

6 MR. BELLO: Absolutely. Thank you.

7 VICE CHAIRPERSON HART: Okay.

8 MR. JONES: Toye reminded me that this was the
9 design that we came up with as an alternative for privacy for
10 the neighbors which shows a three-foot planting bed along the
11 whole south side as well as a privacy fence that's above the
12 parapet. So that's what I was going to present to them, and
13 we're still open to do it. It doesn't really affect the
14 design of the project on our end.

15 VICE CHAIRPERSON HART: Thank you. Thank you for,
16 and this is not in our, this has not been submitted to us.

17 MR. JONES: It has not but we can submit it if you
18 like.

19 VICE CHAIRPERSON HART: Okay.

20 MR. JONES: Again, since it wasn't presented
21 formally to the neighbors, you know, we didn't think it was
22 necessary to include it. But, yes, we can include it.

23 VICE CHAIRPERSON HART: Thank you. Any other
24 questions?

25 Okay, yes, ma'am?

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1 MEMBER JOHN: Question for Mr. Bello. Are you
2 combining two existing tax lots?

3 MR. BELLO: Not at all, ma'am. It's a single tax
4 lot. There's no change in configuration.

5 MEMBER JOHN: Okay. So you do note that Section C
6 discusses combining two record lots. I'm just throwing that
7 out for your information. Because as the Vice-Chair said,
8 this is self-certified. So if you end up needing relief from
9 this provision, you'll have to come back to the Board.

10 MR. BELLO: Duly noted. Thank you.

11 VICE CHAIRPERSON HART: I'd like to move to, if
12 there are no other questions, move to the Office of Planning
13 if you're finished, Mr. Bello?

14 MR. BELLO: I'm done, thank you.

15 VICE CHAIRPERSON HART: Thank you. Good morning.

16 MS. VITALE: Good morning, Mr. Vice-Chair. Elisa
17 Vitale with the Office of Planning. The Office of Planning
18 rests on the record and continues to recommend approval of
19 the requested relief. I'll keep things short but am
20 available to answer any questions. Thank you.

21 VICE CHAIRPERSON HART: I did have a question. And
22 thank you to Mr. Jones for actually putting this up. Do you
23 have any, I know this is spur of the moment, but do you have
24 any response for what's on the screen right now?

25 MS. VITALE: That was not submitted in the record,

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1 and we haven't had an opportunity to review it. So I would
2 not comment at this time.

3 VICE CHAIRPERSON HART: I mean, one of things is it
4 is, have you had a chance to look at the letter that was in
5 opposition to the --

6 MS. VITALE: Yes, I did.

7 VICE CHAIRPERSON HART: And it, I'll just leave it
8 at that. I appreciate the information. I think that's it.
9 Do the other Board members have any questions for the Office
10 of Planning?

11 Does the Applicant have any questions for the
12 Office of Planning?

13 MR. BELLO: Not yet.

14 VICE CHAIRPERSON HART: Okay. Is there anyone in
15 the audience wishing to speak in support of the application?
16 Anyone in the audience wishing to speak in opposition? No
17 hands raised. And just to make sure, the ANC is not here.
18 Okay. I wanted to make sure, just in case they wanted to say
19 something.

20 So, Mr. Bello, do you have other final comments
21 that you'd like to make, a conclusion, statement?

22 MR. BELLO: Yes, Mr. Hart. The Applicant believes
23 that the application meets all the tests for the granting of
24 both the special exception and the variance. And the
25 Applicant notes that what is to be established here is a

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1 matter of right use in the underlying zone and that that use
2 will be reducing the density of the user or the former user
3 of the property as a commercial property.

4 The ANC won't be here, recommended unanimous
5 approval of the application. And so the Applicant
6 respectfully requests that the Board grant the application.
7 Thank you.

8 VICE CHAIRPERSON HART: Thank you. Any final
9 questions for the Applicant? No, okay. So if you can put
10 up that last image, Mr. Jones, I don't know if I want to
11 close the record yet. And that's why I haven't said that.
12 But I do want to hear about your thinking on this particular
13 image.

14 And, you know, we've had some, granted it was one
15 letter, but there were several people that signed onto the
16 letter regarding kind of a privacy issue. And I wanted to
17 understand where my fellow Board members were regarding this
18 particular image, if you thought it was something that you
19 liked or didn't. Any questions or any comments on this
20 particular image?

21 COMMISSIONER TURNBULL: Well, I think it's a start.
22 I don't think it goes far enough. I don't think it really
23 addresses, it addresses the Applicant's view of what they
24 think is affecting the impact.

25 But I don't like going to a six-foot parapet wall

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1 or a screen wall to address this. I think if they've going
2 to do something worthwhile, I think it ought to be back
3 around five feet, and that it ought to be just a green
4 terrace out there, and the parapet wall would be back five
5 feet so that they're standing back, and you have either
6 something -- and I don't know, I'm not going to throw out a
7 design for this, but I just think it doesn't go far enough.

8 I think it's the beginning, but I think adding
9 another three feet to the back of that property up that close
10 is just even more of an affront. I think they need to go
11 back a little bit more, scale it back at the back, and make
12 it fit in better with the back of the property. I think it's
13 a start, but I think it needs to go further, needs more work.

14 VICE CHAIRPERSON HART: Yes, I would concur with
15 that. I think that it is definitely something that I would
16 be supportive of, because I think that it is, it can help to
17 move where the people that would be in the building are away
18 from where the people that are south of the building.

19 And I think that having something that is something
20 to order of five feet may be helpful to do that. Because it
21 gives more space, and then it allows, you know, the people
22 that are, you know, to the rear, the neighbors that are to
23 the rear, a little bit more privacy. The people that are
24 sitting on this roof deck wouldn't then be able to kind of
25 see over into the neighbor's property. It would be a little

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1 bit more difficult.

2 I'm not sure about moving the parapet wall, per se.
3 I think keeping it there, I think that they've got to kind
4 of deal with that issue. But I think keeping it there is
5 okay. It's just having the setback. And currently, they
6 already are looking at, the center line setback, I think, is
7 about five feet, if I'm correct, as it is. And so I think
8 to kind of offset that, that having that five-foot --

9 COMMISSIONER TURNBULL: I could go along with that.
10 And then there could be either a green roof or something on
11 the inside of that.

12 VICE CHAIRPERSON HART: Yes.

13 COMMISSIONER TURNBULL: That's totally fine.

14 VICE CHAIRPERSON HART: And I'm glad you brought up
15 the issue about the screen. I am not sure if that actually
16 would need to be set back if it's over the height of the
17 parapet, like, if it's over three and a half feet.

18 COMMISSIONER TURNBULL: It would be.

19 VICE CHAIRPERSON HART: And so that issue is why I
20 think that that wouldn't, that's why I think it needs to be
21 a wider area and not taller. So I think the three-foot-six
22 is fine for the parapet wall, but having a five-foot setback
23 from that wall would be my preference. And I think it would
24 be helpful to kind of help mitigate some of the issues that
25 the, you know, kind of link it into the relief that's being

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1 sought and some of the impacts that are there from the
2 neighbors.

3 COMMISSIONER TURNBULL: I could see that.

4 VICE CHAIRPERSON HART: Yes?

5 MEMBER JOHN: Mr. Vice Chair, I could support that
6 as well.

7 VICE CHAIRPERSON HART: Mr. Bello, Mr. Jones, I
8 just wanted you to kind of hear some of that conversation
9 before I close the record. Because I felt we may need some
10 further, you know, drawing to kind of get us there. And I
11 don't know if you had any comments on that.

12 MR. JONES: Well, just so I'm clear what you're
13 saying is currently we show three-foot-nine for the planting
14 bed. And you prefer a five-foot planting bed? Is that
15 correct?

16 (Simultaneous speaking.)

17 VICE CHAIRPERSON HART: Do you want to, I'm not
18 sure which drawing you'd like. Oh, could you show the deck
19 plan, floor plan, please?

20 MEMBER JOHN: I believe what the Vice Chair was
21 referring to was extending the green roof to the full length,
22 and that would perhaps give you the five foot setback.

23 MR. JONES: Yes, that's what I was referring to,
24 yes. So I think this part is actually over five feet. But,
25 you know, we're definitely fine with the five foot planting

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1 bed.

2 MEMBER JOHN: Okay.

3 VICE CHAIRPERSON HART: Yes. And, like I said, I
4 was trying to kind of connect it to some of the relief that's
5 being sought and wasn't sure what that distance might be.
6 So I don't know if you needed to play with that. It may go
7 through that skylight that you have here.

8 So I don't know if you really wanted it, you know,
9 if you need to deal with some of these issues. But it would
10 be helpful for us to have an updated drawing to kind of, you
11 know, address it and then how you felt it addressed that
12 would be --

13 MR. JONES: I mean, we actually, since we have the
14 window on that south facade, the skylight isn't as important.
15 So we're fine with sort of eliminating it and just extending
16 the planting area. Actually, less holes in the roof is
17 probably better for the client anyway.

18 VICE CHAIRPERSON HART: When do you think you
19 could, could you get us a drawing within the next, like, day
20 or two?

21 MR. JONES: Of just the site plan, of this plan?
22 Yes, I can get it to you tomorrow.

23 VICE CHAIRPERSON HART: Are there any other things
24 that we --

25 COMMISSIONER TURNBULL: On that same plat, the X,

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1 the little --

2 MR. JONES: That's the skylight.

3 COMMISSIONER TURNBULL: No, no, the other one by
4 the wall, by the parapet, what is that? Is that a --

5 MR. JONES: Right there?

6 COMMISSIONER TURNBULL: Yes.

7 MR. JONES: That's a wet bar.

8 COMMISSIONER TURNBULL: That's a wet bar?

9 MR. JONES: Yes.

10 COMMISSIONER TURNBULL: So what is that, a sink
11 then?

12 MR. JONES: Yes, correct.

13 COMMISSIONER TURNBULL: That's a sink. Are you
14 having any fire pits up here, or barbecue, or --

15 MR. JONES: I think over here is where we would
16 have some sort of grill.

17 COMMISSIONER TURNBULL: Okay, what about lighting
18 up here on this?

19 MR. JONES: We would actually do low lighting in
20 the wall, sort of like --

21 COMMISSIONER TURNBULL: Down lighting?

22 MR. JONES: Down lighting, correct. Yes.

23 COMMISSIONER TURNBULL: Okay, so nothing that, if
24 I'm a neighbor over here, I'm going to look up and see this
25 sparkling jewel or whatever --

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1 MR. JONES: No, no sparkling jewels.

2 COMMISSIONER TURNBULL: Okay. Yes. Okay, I just
3 want to make sure that the impact that you're having upon the
4 roof is, again, minimal to the people who live in the lots
5 next to this building.

6 MR. JONES: No, we're definitely open to that.

7 COMMISSIONER TURNBULL: Okay.

8 VICE CHAIRPERSON HART: Thank you. And actually,
9 one other question, there are no structures that are being,
10 no pergola or anything that's going up on top of this roof?
11 It's just going to be the three-foot-six parapet that goes
12 around here is the --

13 MR. JONES: Correct, yes.

14 VICE CHAIRPERSON HART: -- the tallest thing that's
15 --

16 MR. JONES: We're not trying to cover anything.

17 VICE CHAIRPERSON HART: Okay.

18 MR. JONES: There might be some umbrellas, but
19 those are temporary.

20 VICE CHAIRPERSON HART: And so when do you think
21 you could get a drawing to us? One of the things that we're
22 dealing with is we have one more meeting before our break for
23 the, actually for the rest of the year. And I didn't know
24 if this was possible to get an updated drawing today?

25 We're going to have a pretty long agenda. And what

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1 we could do is to continue this hearing until the end of the
2 day, and then come back to this after we got an updated
3 drawing, and then I think we're ready to vote on it as it is.

4 MR. JONES: Do you just need this updated floor
5 plan, or you want the elevations updated as well?

6 VICE CHAIRPERSON HART: The elevations, and I'm
7 trying to think, what is the change to elevation?

8 MR. JONES: You would just see, like, trees.

9 VICE CHAIRPERSON HART: Oh, I mean --

10 COMMISSIONER TURNBULL: You'd see an extra line,
11 you'd see how it breaks it. And I think if you saw the
12 elevation on all four sides, you'd see how it's --

13 VICE CHAIRPERSON HART: How about the plan and all
14 of the elevations that --

15 MR. JONES: Okay. But the elevation, there
16 wouldn't be any step in it.

17 VICE CHAIRPERSON HART: Oh, that's right. You're
18 -- go all way back.

19 MR. JONES: Yes. So the only difference would be
20 just --

21 (Simultaneous speaking.)

22 MR. JONES: -- you would see trees popping up out
23 of the --

24 VICE CHAIRPERSON HART: Yes. I think that having
25 them in all of the elevations that we see on this page, just

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1 putting them in there so that we know where that is, maybe
2 they're ghosted in, you know, the north elevation and --

3 MR. JONES: Okay. Do you want this section?

4 VICE CHAIRPERSON HART: Yes, that would be helpful.

5 MR. JONES: Okay. So this section showing the five
6 foot planting bed without the fence, correct?

7 VICE CHAIRPERSON HART: And with dimensions on
8 this.

9 MR. JONES: Right.

10 VICE CHAIRPERSON HART: And then, yes, exactly,
11 without the fence, and then the site plan and the four
12 elevations.

13 MR. JONES: Okay.

14 VICE CHAIRPERSON HART: What I'm trying to do is
15 make sure we have a set that it consistent so we're not, what
16 did they mean, what did we approve? So anyhow --

17 MR. JONES: What time do you want them by?

18 VICE CHAIRPERSON HART: Yes, if we could do it by,
19 like, 3:00?

20 MR. JONES: Sure, that's fine.

21 VICE CHAIRPERSON HART: Because I think we'll, huh?

22 BZA CHAIR HILL: I mean, how long will it take you
23 to do it? Do you have to go somewhere?

24 (Laughter.)

25 MR. JONES: Well, I have to go to my computer and

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1 --

2 BZA CHAIR HILL: Right. But, I mean, do you have
3 one with you?

4 MR. JONES: No. I did not bring a computer today.

5 BZA CHAIR HILL: Okay.

6 MR. JONES: But my office is right in Shaw, so I
7 just hopped in an Uber and --

8 BZA CHAIR HILL: Okay, all right. I mean, yes, as
9 soon as you can get them back here.

10 MR. JONES: I'll try to get it, like, in an hour.

11 BZA CHAIR HILL: I mean, I'm saying I doubt we're
12 going to be done by 3 o'clock. Anyway, so --

13 COMMISSIONER TURNBULL: Mr. Bello, we want a status
14 report on where we are with the record lot submission.

15 MR. BELLO: Well, unfortunately, it's not gone to
16 the zoning administrator yet, because it had some hiccup
17 with the Office of Tax and Revenue. But we hope to be
18 submitting it probably prior to filing for a building permit
19 application if the Board approves it today.

20 COMMISSIONER TURNBULL: So it hasn't gone to the
21 zoning administrator yet?

22 MR. BELLO: It might be on his desk, but he hasn't
23 signed it yet. But, you know, like I said, we do have
24 evidence of the application of 303.C in approving the
25 reconfiguration of an alley lot with even less lot area. And

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1 so there seems to be precedents that it shouldn't be a
2 problem with getting that approved.

3 VICE CHAIRPERSON HART: Okay. So what I was just
4 trying to understand is, like, what the timing might be.
5 We've got a number of cases that are on the agenda, and we
6 just want to make sure that we get this done. So that's why
7 I was saying, does 3 o'clock work? Did you respond to that
8 already?

9 MR. JONES: Yes, 3 o'clock's fine.

10 VICE CHAIRPERSON HART: Okay. Could you do it
11 earlier?

12 (Laughter.)

13 MR. JONES: I will do it as quickly as I can.

14 VICE CHAIRPERSON HART: That's fine.

15 MR. JONES: Where do I email it to?

16 VICE CHAIRPERSON HART: I would just submit it as
17 a, have Mr. Bello submit as a --

18 (Simultaneous speaking.)

19 MR. BELLO: Onto IZIS?

20 VICE CHAIRPERSON HART: Yes. Or you could bring in
21 here and, you know, hand us copies and hand a copy to the
22 Secretary.

23 MR. BELLO: Okay.

24 VICE CHAIRPERSON HART: Either way is fine.
25 Because I think we're having a little problem with IZIS

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1 today. So I'm not sure if that's going to be --

2 MR. JONES: Do you prefer a hard copy or --

3 VICE CHAIRPERSON HART: I don't prefer one, we just
4 need to have it.

5 MR. JONES: Okay.

6 VICE CHAIRPERSON HART: And so if we get it to the
7 Secretary, we can at least have something that we're agreeing
8 to as opposed to having the drawings that we have currently.

9 MR. JONES: Okay.

10 VICE CHAIRPERSON HART: So I think we're going to,
11 if we can get it by 3:00, we'll put it on the agenda. And
12 like I said, it's going to be, I think, a long day. So we're
13 going to have, you'll get on the agenda when we can get you
14 on the agenda, unfortunately. I can't give you a time after
15 3:00 that --

16 MR. JONES: Should we be back for that part of it?

17 VICE CHAIRPERSON HART: Yes. Well, yes, because I
18 think it's, just so that you can hear all of this. Yes, I
19 think it would be helpful to do that. I don't know if both
20 of you need to be there, but we just need to have the
21 drawing, and then we can decide.

22 MR. JONES: Great.

23 BZA CHAIR HILL: Okay. So --

24 MEMBER JOHN: Mr. Vice Chair, I believe we're going
25 to lose Mr. Turnbull. So did you want to deliberate now or,

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1 I just wanted to hear what everybody else thought.

2 VICE CHAIRPERSON HART: Okay, so I guess what I can
3 do is to close the record for everything except for this one
4 drawing that we just, or the set of drawings that we just
5 requested. And we can have a discussion now. But I'm not
6 sure how we're going to vote if, the issue that we're dealing
7 with is Commissioner Turnbull is not going to be with us for
8 the rest of the day.

9 (Simultaneous speaking.)

10 VICE CHAIRPERSON HART: No, that's fine. Well,
11 then would he do an absentee? I'm looking at OAG to make
12 sure that all this is okay. Because it's a little bit --

13 MR. RITTING: You're asking whether Mr. Turnbull
14 can vote now, is that the question?

15 VICE CHAIRPERSON HART: No, actually, just if he
16 could submit an absentee, because he's not going to be here
17 at 3:00 when we're actually, after 3:00 when we're --

18 MR. RITTING: Yes, I think that's permissible for
19 him to submit an absentee ballot.

20 VICE CHAIRPERSON HART: The issue also was a
21 hearing if there are particular issues that he had and
22 comments that he had kind of now, but actually gets to vote
23 later.

24 MR. RITTING: Yes. I mean, I don't see anything --

25 VICE CHAIRPERSON HART: Okay.

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1 MR. RITTING: -- any reason he couldn't talk about
2 his feelings about --

3 COMMISSIONER TURNBULL: It would be a conditional
4 absentee based upon a drawing that I will not have seen and
5 basically assuming that the changes have been made the way
6 I think they're going to be made. So that's the only issue
7 I have. But if that's acceptable --

8 MR. RITTING: Can I make a suggestion?

9 VICE CHAIRPERSON HART: Sure.

10 MR. RITTING: If the Applicant is willing to submit
11 the documents on IZIS electronically, then Mr. Turnbull could
12 view them wherever he is and then submit his absentee ballot
13 and avoid that particular problem.

14 VICE CHAIRPERSON HART: Okay.

15 MR. RITTING: I think that's a good way to proceed.

16 VICE CHAIRPERSON HART: Yes. And we're just trying
17 to, because we know this is bigger case has been on our
18 docket for quite a while, that's why we're trying to do this.
19 So thank you for bearing with us.

20 MR. BELLO: We appreciate that. I think IZIS is
21 experiencing some technical issues this morning. I don't
22 know if that's fixed yet.

23 SECRETARY MOY: I don't know. My understanding is
24 that I think it's been corrected, Mr. Chairman.

25 VICE CHAIRPERSON HART: Okay. So for right now, I

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1 think submitting it on IZIS, if there is some issue that you
2 may have to come in and actually hand it, Mr. Bello, to the
3 Secretary, I think that's what we do from there.

4 MR. BELLO: No problem.

5 VICE CHAIRPERSON HART: So we've heard from Mr.
6 Turnbull already. I don't know, a few others, okay.

7 So with that, I think we're going to make this a
8 continued hearing. And thank you all very much.

9 MR. BELLO: Thank you.

10 BZA CHAIR HILL: Are the O Street Applicant people
11 here? I see one, I see one attorney. Is Melinda Roth here?
12 Okay. Just give me a second. Can somebody go get Melinda
13 Roth? Thanks. Is the ANC here also for O Street? Okay.

14 (Pause.)

15 BZA CHAIR HILL: All right, Mr. Moy, could you do
16 me a favor and call 20135.

17 SECRETARY MOY: Thank you, Mr. Chairman. If I can
18 call parties to the table to Case Application Number 20135
19 of 3428 O Street, LLC, as amended, for area variance from the
20 corner store requirements, Sub-title U, Section 254.6(g),
21 that's G as in Golf, to operate a corner store on the first
22 floor and basement of an existing mixed use building in an
23 R-20 zone at 3428 O Street NW, Square 12228, Lot 76.

24 BZA CHAIR HILL: Okay, could Melinda Roth also come
25 forward. If you have witness cards, you can -- did you fill

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1 out your witness cards yet? Okay. That's great. Go ahead
2 and have a seat.

3 Okay. If you could introduce yourselves for the
4 record from my right to left? You, thank you.

5 MS. ROTH: Melinda Roth, a resident at 3418 O
6 Street.

7 BZA CHAIR HILL: Okay.

8 MS. ROTH: Thank you.

9 BZA CHAIR HILL: And Mr. Sullivan.

10 MR. SULLIVAN: Thank you, Mr. Chair. Marty
11 Sullivan on behalf of the Applicant.

12 BZA CHAIR HILL: Okay.

13 MR. DANA: Andrew Dana, the Applicant.

14 BZA CHAIR HILL: Mr. Dana. All right.

15 All right. So, what we're going to do today here,
16 now, is this is just going to be kind of -- I thought this
17 was going to be -- happen in a more efficient manner, but
18 this is now probably going to be the most efficient manner
19 that we're going to handle this -- or kind of look through
20 this.

21 So, Ms. Roth, you had put something in the record
22 here in terms of your opposition to being denied party
23 status.

24 And after reading through the record, I mean, just
25 -- I'll give you kind of my thoughts on this, but then also

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1 wanting to be, you know -- again, I'll use the word
2 efficient, but, you know, you cite some things in terms of,
3 like, we were denying you party status because you weren't
4 an adjacent property.

5 I mean, what -- you are within -- you're within,
6 like, 75 feet of this particular property and we have had a
7 lot of people that come in and ask for party status and --
8 or not a lot of people.

9 When people do ask for party status, oftentimes
10 they use, like, you know, they're within 200 feet or they're
11 within a certain number of feet. And usually it's not
12 necessarily even the number of feet that we approve or deny
13 party status, it's just what the Board thinks at the time
14 might be something that fits within the regulation of, you
15 know, 404.13, which, again, is, the Board shall grant party
16 status only if the person requesting party status has clearly
17 demonstrated that the person's interests would likely be more
18 significantly, distinctly or uniquely affected in character
19 or kind by the proposed zoning action and those of other
20 persons in the general public.

21 It's always been a little bit of a vague one for me
22 in that general public, you know, it's like there's -- you
23 know, your ANC SMD was here and so, therefore, I thought that
24 you were represented well by the general public.

25 And then, also, your ANC commissioners were here

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1 and they also gave their interpretation, as well as there was
2 a variety of other neighbors that had kind of similar
3 viewpoints as you in terms of what you had stated, right?

4 So, however, after seeing the letter here and the
5 fact that now we are going to be having a limited scope
6 hearing within the new -- well, not the new, but now that we
7 seem to be talking about, perhaps, an area variance rather
8 than a use variance, I think that, you know, I would go ahead
9 and lean forward and see what the Board thought and go ahead
10 and grant -- and that's why I'm doing this now -- go ahead
11 and grant Ms. Roth party status for this now application.

12 And then we can go ahead and break again and then
13 -- and then there was a PowerPoint in here and I wasn't, I
14 wasn't sure, there was, like, a brief that got submitted and
15 I wasn't sure who submitted the brief, and then there was a
16 PowerPoint in here.

17 Was that PowerPoint your PowerPoint, the burden of
18 proof not met, Ms. Roth?

19 MS. ROTH: The PowerPoint was submitted by myself,
20 yes.

21 BZA CHAIR HILL: Okay. So, then you're kind of
22 prepared, then, in terms of, you know, what your arguments
23 are.

24 And so, what I wanted to do was, again, I'm doing
25 this so that everybody knows what's going on, there's plenty

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1 of time; and I think, by the way, we've spent a lot of time
2 on this case, right?

3 And so, I'm going to go ahead and we're going to go
4 back and do the other three cases that we had planned on
5 doing, which is the ones that Commissioner Miller is going
6 to be here for, and then we'll come back and do this. Okay?

7 And so, what that means, Mr. Sullivan, again, is
8 you're going to go ahead and -- and I'm going to walk through
9 a couple of other things, I suppose.

10 Okay. So, first of all, I mean, what does the
11 Board think of everything I just said in terms of Ms. Roth
12 having party status now?

13 COMMISSIONER SHAPIRO: I concur, Mr. Chair.

14 BZA CHAIR HILL: Sure. Anyone else?

15 VICE CHAIRPERSON HART: Yeah, I don't have an issue
16 with doing that. I understand that it is -- it can be
17 somewhat hard, at times, as we're going through the whole
18 party status request process, but I don't have a problem with
19 it.

20 BZA CHAIR HILL: Yeah. And just, again, for
21 further discussion, I mean, sometimes someone is adjacent --
22 not adjacent. Sometimes someone is across the street,
23 sometimes someone is across the alley, and we also don't
24 think that that's, you know, something that's falling within
25 the regulations to grant party status, right?

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1 So, but, again, in this case, since we're having
2 another, we're continuing to have discussions on this case,
3 I think we're going to go ahead and do that.

4 So, Ms. John, do you have any thoughts? Are you
5 okay with this? Oh, you're not on this case. Okay. That's
6 right. So, you're just waiting for us to move on.

7 All right. So, Ms. Roth, we're going to go ahead
8 and grant you party status, as I said. So, sure, Mr.
9 Sullivan.

10 MR. SULLIVAN: I would just object for the record,
11 but it doesn't make much difference because she's basically
12 been involved the whole time anyway, but I don't think the
13 changing of a standard or the request changes the criteria
14 for party status.

15 BZA CHAIR HILL: I don't necessarily think -- I
16 guess, what am I trying to -- okay. Anyway, noted. Okay.

17 MR. SULLIVAN: Thank you.

18 BZA CHAIR HILL: So, what we're going to do, again,
19 is go ahead and give you a chance to do your presentation,
20 right, on limited scope, right.

21 So, all we're talking about is the area relief now
22 in the first, second and third -- well, actually, just really
23 the first and second prong are the only things that I'm
24 really that interested in.

25 I mean, the third prong basically hasn't changed

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1 one way or the other. It's all still the same objections,
2 I believe, that everyone has had.

3 I would like to again note that, you know, how we
4 had gotten to this or how we kind of worked through this is
5 that I wanted to note that at the beginning of the hearing
6 that was on December 4th, the Board requested the Applicant
7 look into the corner store regulations of subtitle U254 and
8 submit a statement explaining the proposed project's
9 compliance with the standard.

10 The Board requested this information because it has
11 a duty to not consider a request for higher relief when it
12 believes lesser relief may be available. So, this is why we
13 asked for this.

14 The Applicant subsequently decided to amend its
15 application and is now requesting an area variance for the
16 corner store provision of U254.6(g). And if I have any
17 issues with OAG at some point, I'll be able to ask them
18 questions about that as well.

19 The Board notes that the Applicant is still seeking
20 a variance and that the underlying proposed use has not
21 changed, only the classification of the proposed use has
22 changed. And as a result, the Applicant is now seeking less
23 relief.

24 As such, the Board does not believe that continuing
25 the hearing on the new relief raises any issues regarding

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1 notice.

2 However, the Board still wants to ensure that the
3 new relief is fully vetted, so it will allow all parties and
4 individuals to testify in the issue of the new relief.

5 So, Mr. Sullivan, as you know, you'll go ahead and
6 give your presentation. It will be just on the new relief.
7 And basically I'm kind of interested in the two prongs,
8 right?

9 First of all, kind of how you're meeting the corner
10 store requirements, right? And then also the first and
11 second prong of the area variance.

12 So, and then, Ms. Roth, you'll have an opportunity
13 to ask questions of just the presentation, not any other
14 questions about anything that -- it will be just on the
15 presentation itself and you'll have the same amount of time
16 that Mr. Sullivan will have for his presentation.

17 Then you'll give your presentation, then Mr.
18 Sullivan will ask any questions that you might have of that.
19 We're going to hear from the Office of Planning. The Office
20 of Planning will then have an opportunity to answer any
21 questions that you might have -- I mean, Ms. Roth might have,
22 as well as Mr. Sullivan.

23 We'll then have an opportunity to hear, again,
24 public testimony based on the continued hearing. So,
25 whatever, now, we're talking about in terms of is before us

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1 now. And so, as I mentioned -- as I mentioned even -- was
2 it last week? As I mentioned the last time we were here,
3 which was last week, that we're just going to be speaking on
4 the items that are before us today.

5 And I noticed, actually, Mr. Dana, all your people
6 didn't raise their hand. So, none of them are going to talk?
7 Okay. So, they're here just to hang out? Great. Okay. All
8 right.

9 So, Ms. Roth, do you have any questions?

10 MS. ROTH: None at this time.

11 BZA CHAIR HILL: Okay.

12 MS. ROTH: You are surprising us, so, it's a good
13 surprise, but --

14 BZA CHAIR HILL: Okay. Well, I just want to make
15 sure that you have an opportunity to -- I mean, I, again,
16 believe that everyone that has been here has had an
17 opportunity to be heard, but I want to make sure that you do
18 have an opportunity to be heard and that there's no issues
19 with that.

20 And, again, I want to say, you know, as I mentioned
21 before, this isn't a popularity contest -- or, I'm sorry, you
22 also mentioned, and other people have mentioned, because if
23 it was, you know, you guys are outvoted. Okay? And so --
24 but it's not.

25 Okay. And then you'll have an opportunity for a

1 little bit of a conclusion and, Mr. Sullivan, you'll
2 obviously end as well with a conclusion.

3 All right. Does anybody have any questions? Mr.
4 Sullivan?

5 MR. SULLIVAN: No. Thank you.

6 BZA CHAIR HILL: Okay. All right. Then we're
7 probably going to be back here in about 20 minutes. Okay?
8 And so, thank you very much.

9 Sure, Mr. Sullivan.

10 MR. SULLIVAN: Just for clarification, we're back
11 in line where we were before?

12 BZA CHAIR HILL: Yeah. So, now I'm giving Ms. Roth
13 an opportunity to collect herself, and I'm giving you an
14 opportunity to collect yourself, although -- anyway.

15 And then we're going to go ahead and do the three
16 cases that the next commissioner is on, and then we're going
17 to come back. Okay?

18 But I don't suppose they're going to take very
19 long. That's why I'm saying -- okay. Thank you.

20 (Pause.)

21 BZA CHAIR HILL: And just for the record, we, the
22 Board, will probably take a break after these next three
23 cases.

24 All right, Mr. Moy. Mr. Miller is coming back, so
25 you can go ahead and call our next case.

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1 SECRETARY MOY: Thank you, Mr. Chairman. If we can
2 call the Applicant to Case No. 20053 of Mohammed Sikder and
3 -- as captioned and advertised for area variance from the
4 side yard requirements of subtitle D Section 206.2 to
5 construct a new, detached, principal dwelling unit in the
6 R-1-B Zone. This is at 2433 Girard Place Street, N.E.,
7 Parcel 155/7.

8 And, Mr. Chairman, as you're aware, there is a
9 request for a postponement.

10 BZA CHAIR HILL: Okay. Great. Thank you, Mr. Moy.
11 Could you please introduce yourself for the record.

12 MR. HEATH: Yes. My name is Antoine Heath.

13 BZA CHAIR HILL: All right. Okay. And, Mr. Heath,
14 why do you guys want a postponement?

15 MR. HEATH: Yes. We want a postponement because we
16 had a previous meeting in June -- one of our representatives,
17 Adam Davis, presented to the ANC -- and some of the ANC
18 members voiced some concerns, which we weren't aware of until
19 last month when we found a decision letter on the ANC from,
20 I think, the IZIS website.

21 We thought we were in the clear, but we didn't find
22 that letter until last month. So, we need more time to meet
23 with them in January for that particular case.

24 BZA CHAIR HILL: Okay. All right. I don't
25 actually have any issues with the postponement. However,

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1 now, it seems as though if you do -- there might be some new
2 relief that you know that you might be needing from the
3 Office of Planning in terms of new variance.

4 Are you aware of this?

5 MR. HEATH: No, I am not, no.

6 VICE CHAIRPERSON HART: Mr. Heath, you're working
7 for the District Properties?

8 MR. HEATH: Yes, uh-huh.

9 VICE CHAIRPERSON HART: And which position are you
10 holding? I don't remember seeing anything in our file that
11 -- we've had several people from District Properties come
12 here and so it's just helpful for us to understand.

13 MR. HEATH: Okay. Okay. I'm a drafter. So, I do
14 the drawings --

15 VICE CHAIRPERSON HART: Okay.

16 MR. HEATH: -- for the houses and the apartments,
17 yeah.

18 VICE CHAIRPERSON HART: Okay. And you're also
19 saying that you are able to represent District Properties?

20 MR. HEATH: Yes, uh-huh. Yes. On this particular
21 case, yes.

22 VICE CHAIRPERSON HART: Okay.

23 BZA CHAIR HILL: Mr. Heath, I guess if you could
24 submit something into the record, okay, that says that you're
25 here, the next time to -- there's nothing official in the

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1 record.

2 MR. HEATH: Okay.

3 BZA CHAIR HILL: You're now stating on the record.
4 You were sworn in this morning, correct?

5 MR. HEATH: Yes.

6 BZA CHAIR HILL: So, you're stating on the record
7 that you're able to represent District Properties.

8 MR. HEATH: Yes. I will be -- well, are you saying
9 you want me to come here next time we --

10 BZA CHAIR HILL: I'm saying right now you're
11 representing District Properties, correct?

12 MR. HEATH: Yes, I can do that.

13 BZA CHAIR HILL: Okay. And then if you could
14 submit something into the record --

15 MR. HEATH: Uh-huh.

16 BZA CHAIR HILL: -- that says today you were here
17 to represent District Properties.

18 MR. HEATH: Sure.

19 BZA CHAIR HILL: Okay.

20 MR. HEATH: Sure.

21 VICE CHAIRPERSON HART: We have to have an
22 authorization for any representatives --

23 MR. HEATH: Uh-huh.

24 VICE CHAIRPERSON HART: -- of any of the --

25 MR. HEATH: Okay.

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1 VICE CHAIRPERSON HART: -- that come here before
2 us. And the issue is somebody that works with District
3 Properties, the owner, could say, I don't know who that
4 person is.

5 MR. HEATH: Okay.

6 VICE CHAIRPERSON HART: And so, we need to make
7 sure that we are having somebody that is here that is
8 actually representing them. That's why we're trying to close
9 that loop. That's all.

10 MR. HEATH: Okay.

11 VICE CHAIRPERSON HART: Thank you.

12 BZA CHAIR HILL: Okay. All right. So -- okay.
13 When, Mr. Moy, are we going to postpone this to?

14 SECRETARY MOY: All right. Mr. Chairman, the
15 in-writing request for postponement is under Exhibit 57 and
16 Mr. Sikder requests the Board to reschedule to March 4th.

17 And the staff's judgment, Mr. Chairman, is based on
18 the Applicant's -- no offense -- the Applicant's case history
19 that staff is -- of course the Board can schedule to March
20 4th, but the Board is --

21 BZA CHAIR HILL: More time is needed, is what
22 you're trying to say, Mr. Moy?

23 SECRETARY MOY: Yes. Thank you very much.

24 BZA CHAIR HILL: So what date is the more time
25 needed that you have?

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1 SECRETARY MOY: March 25th.

2 BZA CHAIR HILL: Okay. So, Mr. Heath --

3 PARTICIPANT: Is that the date that I'm here, you
4 know?

5 SECRETARY MOY: The dates have not been assigned
6 that far out yet.

7 PARTICIPANT: Okay.

8 BZA CHAIR HILL: Okay. So, we'll just put you on
9 March 25th.

10 MR. HEATH: Okay. Thank you.

11 BZA CHAIR HILL: Okay. And, Mr. Heath, also when
12 you repost, make sure you repost for today's date -- I'm
13 sorry, for the March 24th date, okay, for the hearing,
14 because apparently the --

15 MR. HEATH: 25th or 24th?

16 BZA CHAIR HILL: Wasn't it March 24th -- is that
17 what you said, Mr. Moy? Maybe I misheard. I'm sorry, March
18 25th. Let me write that.

19 And this is important, okay, because the last time,
20 I guess, you had it, it was listed as December 4th.

21 MR. HEATH: Uh-huh.

22 BZA CHAIR HILL: Right. Today is not December 4th.

23 MR. HEATH: Okay.

24 BZA CHAIR HILL: Okay?

25 MR. HEATH: Okay.

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1 SECRETARY MOY: I'd also like to, Mr. Chairman, I'm
2 sure you know, given the many multiple times this Applicant
3 has asked for postponements, it should be the final -- I'll
4 reserve that right to the Board.

5 BZA CHAIR HILL: Is this the third postponement?

6 SECRETARY MOY: At least, yes, sir. Yeah, this
7 would be the third request.

8 BZA CHAIR HILL: Right. We don't normally postpone
9 more than three times.

10 So, you're just a drafter, Mr. Heath?

11 MR. HEATH: I do the drawings, yes.

12 BZA CHAIR HILL: Okay.

13 MR. HEATH: Yes.

14 BZA CHAIR HILL: All right. Okay. All right. So,
15 there you go. March 25th.

16 MR. HEATH: Okay.

17 BZA CHAIR HILL: Okay.

18 MR. HEATH: I got you.

19 BZA CHAIR HILL: All right, Mr. Moy. I think
20 you're going to call the next case and I guess Mr. Heath, I
21 think, is --

22 SECRETARY MOY: Yes.

23 BZA CHAIR HILL: So, we're going to go through that
24 exercise as well.

25 SECRETARY MOY: Yes. Thank you, Mr. Chairman.

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1 This is also a request for a postponement to Case
2 Application No. 19984 Rupsha 2011 LLC, caption and advertised
3 for a special exception under the use provision, subtitle U
4 Section 421.1, to construct an eight-unit apartment house,
5 R-A-1 zone. This is at 2908 N Street, S.E., square 5507 Lot
6 2.

7 BZA CHAIR HILL: All right. Could you please
8 introduce yourself for the record.

9 MR. HEATH: Antoine Heath.

10 BZA CHAIR HILL: All right, Mr. Heath. So, why are
11 you requesting a postponement, please.

12 MR. HEATH: This particular property there is -- we
13 met with ANC in October. We were going to meet with them,
14 but they're not meeting this month, so a meeting in January.

15 So, that's going to be the next time we get in
16 contact to discuss the changes we've made that they asked
17 for.

18 BZA CHAIR HILL: Okay. And when were you
19 requesting a postponement till?

20 MR. HEATH: March 4th was what we requested for
21 this one. If you want to do the same thing, that's fine with
22 us.

23 BZA CHAIR HILL: All right. Well, let's put you
24 back on March 25th, then.

25 MR. HEATH: Okay.

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1 BZA CHAIR HILL: And then there was also -- I noted
2 something about special trees and heritage trees. If you
3 could confirm the lack of special or heritage trees when you
4 come down here next --

5 MR. HEATH: Okay.

6 BZA CHAIR HILL: Okay?

7 MR. HEATH: Okay.

8 BZA CHAIR HILL: All right. Okay. Then, Mr.
9 Heath, we'll see you -- oh, do you have a question? Sorry.

10 VICE CHAIRPERSON HART: If you could also put the
11 same letter of authorization for this one as well.

12 MR. HEATH: Okay.

13 VICE CHAIRPERSON HART: So, I'm just trying to make
14 sure that we have a full record and we understand that the
15 person that was before was actually --

16 MR. HEATH: Okay.

17 VICE CHAIRPERSON HART: -- given the authority to
18 be able to do that. The letter that we have right now just
19 says, District Properties will represent itself, but we don't
20 know --

21 MR. HEATH: Okay.

22 VICE CHAIRPERSON HART: Besides you telling us,
23 it's helpful for us to have something that's actually in the
24 record that's in writing that says, you know, that Mr. Heath
25 is, you know, representing District Properties for these two

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1 or other cases.

2 MR. HEATH: Okay.

3 VICE CHAIRPERSON HART: Thank you.

4 BZA CHAIR HILL: All right. Is that it, Mr. Moy?

5 SECRETARY MOY: Yes, sir.

6 BZA CHAIR HILL: Okay. Thank you, sir.

7 SECRETARY MOY: Okay. Ready? Okay. Here we go.

8 Parties to Case Application No. 2004 of General Services,
9 Inc., caption and advertised for a use variance from the use
10 restriction subtitle U Section 201.1, to construct a new,
11 three-story, mixed-use building with ground floor office and
12 storage space, R-2 Zone. This is at 5415 through 5417 Eads
13 Street, that's E-A-D-S, N.E., square 5231 Lots 16, 17 and 18.

14 VICE CHAIRPERSON HART: Good morning. If you could
15 introduce yourselves from my right to left.

16 MR. SULLIVAN: Good morning, Mr. Chair. Marty
17 Sullivan on behalf of the Applicant.

18 MR. TEASS: Good morning. Will Teass, a principal
19 with Teass Warren Architects.

20 MS. AKINLEYE: Good morning, sir. Moureti
21 Akinleye, architect.

22 BZA CHAIR HILL: And, Mr. Hart, just, again, for
23 the record, I did read in for this; but since you are
24 beginning it, I believe you can continue. Thank you.

25 VICE CHAIRPERSON HART: I can, thank you, Mr.

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1 Chairman.

2 So, Mr. Sullivan, if you could -- I'm assuming
3 you're going to give us a presentation for this. And if you
4 could focus on the office use aspect of this -- the Office
5 of Planning, as you're well aware, is in -- recommending that
6 the Board deny the use and it would be helpful to -- for you
7 to kind of state your claim.

8 I know you've provided us with the prehearing
9 statements and all that, but it's always helpful to hear this
10 as well.

11 Do my fellow Board members have any other
12 questions? Okay. And ten minutes.

13 MR. SULLIVAN: Yes.

14 VICE CHAIRPERSON HART: Okay.

15 MR. SULLIVAN: And we also have an additional
16 letter from the ANC that we just got this morning.

17 VICE CHAIRPERSON HART: Thank you. You can give
18 that to the secretary, please.

19 Give us a second, Mr. Sullivan.

20 Okay. Mr. Moy, if you can give Mr. Sullivan ten
21 minutes, and you may start when you'd like.

22 MR. SULLIVAN: So, there were a couple of things
23 that the Board wanted us to address. One was very -- more
24 specific detail on the use itself.

25 And there were also some physical changes, and so

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1 I'll turn it over to the architect to start -- to show that.

2 MR. TEASS: Good morning. We submitted a revised
3 set of drawings dated December 2nd, which I've got on the
4 screen right now.

5 Specifically, there were some design concerns about
6 the elevation of the lowest level and the entrance to the
7 residential aspect of the project. We have revised the
8 design to take those into account.

9 Excuse me a second.

10 So, as you recall, the project faces Eads Street.
11 The overall site plan configuration has not changed with the
12 exception of the area in the front.

13 We have elevated the lowest level of the ground
14 above the -- 18 inches above the floodplain level, which
15 necessitates a stair and a ramp configuration. We're showing
16 that on the north side of the site facing Eads Street.

17 Obviously, these are features in public space that
18 we would have to get reviewed and approved by the Department
19 of Transportation, but it addresses one of the concerns.

20 The building section here on page 5 shows, again,
21 that what we have -- what we described as a crawlspace
22 configuration for that lowest level raising that entrance up.

23 And then this is a section being cut through the
24 residential lobby that shows the residential lobby being
25 above the floodplain elevation and, perhaps, more

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1 importantly, that residential lobby and entrance facing the
2 street, which was one of the Commissioners' -- Board members'
3 concern previously. And so, you're seeing a stair that takes
4 you up to a common quarter and then the residential units
5 above.

6 The front elevation here indicates the design -- or
7 the revised design that illustrates the ramp providing
8 accessible means of access to the commercial uses on the
9 ground floor.

10 We've also separated the commercial and the
11 residential entrances, providing both with frontage along
12 Eads Street. We've also proposed a modest sign down above
13 the two areas of glazing.

14 This is the east elevation facing the apartment
15 building. Previously we had some stairs that were located
16 at the rear that would enter the apartment. Those have been
17 removed in their entirety.

18 The view from the west, from the park, and then the
19 view from the rear from the parking area that illustrates,
20 again, another ramp configuration that would bring you up to
21 the back door for the residential entry or allowing residents
22 to take out trash and access vehicles, as well as the
23 backdoor to the office use.

24 That lower-level plan, the area in blue, would be
25 the area devoted to the office again showing the ramp

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1 configuration at both the north and south ends of the
2 building, and then the residential units above.

3 So, that, at this point, concludes the
4 architectural changes that were made as a result of our last
5 meeting, and I would turn it over to Ms. Akinleye to talk
6 about some of the more specific uses of the training center
7 that she's proposing.

8 MS. AKINLEYE: Good afternoon, sir.

9 The training location will focus primarily onto
10 empower youth and also for career advancement, especially in
11 the area of healthcare practices.

12 It is basically primarily geared towards training
13 in the areas of certified nursing assistance, home
14 healthcare, as well as technology.

15 It's also geared towards hospitality training,
16 including focusing on food handler, food manager, alcohol
17 ServSafe training, especially for the youth and these
18 residents that might be receiving currently being on --
19 receiving public assistance and so forth.

20 And during the last meeting, I know we spoke -- I
21 basically gave the ball -- a ballpark of anticipated number
22 of students that will be trained per year, which was a
23 hundred, and not necessarily indicating that a hundred people
24 or students will be on the premises at a time.

25 Nevertheless, the training is broken down into

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1 sections and modules, and each module is basically between
2 four weeks and six weeks upon which each module will
3 graduate.

4 And the classes have broken down into two sessions.
5 We have day classes, the day program, which we have at least
6 16 students there, or eight classes minimal.

7 And the evening classes, eight students minimum,
8 plus one instructor and one admin staff, making at least
9 minimum of nine people on a day shift that will be in the
10 premises.

11 The evening class will be the same as well.
12 Minimum of nine people that will be on the premises at a
13 time.

14 And the number is not expected to increase until
15 each module graduates, which is about four weeks to six
16 weeks.

17 The home health training is usually four weeks, and
18 the certified nursing assistant training program is about six
19 weeks.

20 And out of the six weeks of the training there will
21 be conducting skills in healthcare facility upon
22 arrangements.

23 So, that's definitely taking away from most of the
24 students being away from the location to their clinical sites
25 during that time. Thank you.

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1 VICE CHAIRPERSON HART: Thank you.

2 MR. SULLIVAN: So I do have a closing; but if the
3 Board has any questions prior to that --

4 VICE CHAIRPERSON HART: I don't have any questions
5 at this moment. I don't know if my fellow Board members do.

6 So, I guess not. They're really quiet today.
7 They're saving it up for later.

8 So, I think we'll do the closing at the end. I
9 don't think we need to have that right now. I was going to
10 go to the Office of Planning.

11 Good morning.

12 MR. MORDFIN: Good morning. I'm Stephen Mordfin
13 and the Office of Planning continues to support the
14 residential use that the Applicant has requested for the
15 site, but also the office use, we continue to oppose that use
16 on the site.

17 It's an office use as defined by the zoning
18 administrator's office. Office use is not permitted within
19 this zone. It's a low-density residential zone and OP does
20 not see a reason to introduce an office use into this
21 property.

22 It can be used residentially and we support the
23 request by the Applicant to use it residentially. So, we're
24 not opposing any use of the property. We're supporting the
25 use of the property residentially as would be supported by

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1 this low-density residential zone to the extent possible.

2 VICE CHAIRPERSON HART: Thank you. Any questions?

3 BZA CHAIR HILL: I've got a quick question.

4 So, Mr. Mordfin, again, in your report where it
5 says the current zoning regulations permit such programming
6 in this residential zone only as a community service center
7 use operated by a nonprofit.

8 And so, since this is a for-profit, that's why it's
9 considered an office use, correct?

10 MR. MORDFIN: That's correct.

11 BZA CHAIR HILL: And if it were a nonprofit, then
12 this design and this use would have been permitted by right
13 or not by right?

14 MR. MORDFIN: Yeah, that's correct. The Zoning
15 Administrator's Office said, a nonprofit use could be
16 permitted in this zone, but that's not what the Applicant is
17 proposing.

18 So, it's a different use. It's an office use.

19 BZA CHAIR HILL: I understand. But the Office of
20 Planning would have -- if this had been a nonprofit, the
21 Office of Planning would have been in approval of this design
22 and the application?

23 MR. MORDFIN: Perhaps so. That's not what's before
24 me, so I can't comment on --

25 BZA CHAIR HILL: Okay.

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1 MR. MORDFIN: -- what is not before us.

2 BZA CHAIR HILL: That's fine.

3 So, Mr. Sullivan, just to you and, I guess, your
4 client, there was no -- I mean, you understand what you're
5 up against here in terms of the for-profit versus nonprofit
6 use and all of the community support that they have for this
7 particular use.

8 There was nothing that you guys tried to figure out
9 to get the training center there as a nonprofit?

10 MR. SULLIVAN: So, the community service center use
11 is first permitted by special exception in the RF zone. So,
12 it's not even permitted -- it would also be a use variance,
13 because we've just done a couple cases in the Bloomingdale
14 area, I think, for a church and it was -- it's RF-1 is the
15 first, where it's first permitted and it's only by special
16 exception in the RF zone.

17 BZA CHAIR HILL: Mr. Mordfin, it would still have
18 to be a use variance for the community service center?

19 MR. MORDFIN: Yes. So, but how it would impact
20 this piece of property is not part of the application.

21 BZA CHAIR HILL: Okay.

22 VICE CHAIRPERSON HART: And I did have a question
23 for Mr. Teass.

24 So, you've added the stairway for the residential
25 as an indoor stairway that's access from the front of the

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1 building on the, I guess, on the west -- on the east side of
2 the building; is that correct?

3 MR. TEASS: It's actually to the north side of the
4 building.

5 VICE CHAIRPERSON HART: Well, I'm sorry. I meant
6 it's -- the whole access is on -- the stairs and everything
7 are on the east side of the floor plan.

8 MR. TEASS: Yes. Interior to the building,
9 correct.

10 VICE CHAIRPERSON HART: Yes. But you're right,
11 it's on the north side of that along the street. I mean, I
12 think that that is helpful.

13 I -- because I think that it helps to bring that to
14 the street frontage, which is a more appropriate location for
15 it.

16 So, could you talk a little bit about the, raising
17 the -- why did you raise the level of the building?

18 MR. TEASS: It's really due to the fact that the
19 floodplain regulations have different standards if your
20 structure is located in or below the floodplain elevation.

21 If you're elevated above the level of construction
22 that's required differs, it's less expensive. It's a little
23 bit simplified. You're not limited in terms of the
24 construction materials if you're more than 18 inches -- if
25 your finished floor is more than 18 inches out of the

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1 floodplain.

2 VICE CHAIRPERSON HART: And what's a little bit
3 perplexing about this is that that's actually the issue about
4 having to raise this -- having to raise the residential part
5 of this above the floodplain to allow the residential
6 buildings to be located there.

7 So, it's somewhat hard to kind of figure out, while
8 I understand that there is kind of a need for -- there is,
9 the Applicant believes that there is a need for this office
10 use/training center, the one issue about kind of raising up
11 to the one and a half feet so that you can actually be above
12 the floodplain is something that is more connected, in my
13 mind, to the having it as a residential zone -- or
14 residential, solely residential building.

15 Am I missing something with that, Mr. Sullivan?

16 MR. TEASS: I mean, no. The intent here was that
17 all residential portions of the building are outside of the
18 floodplain.

19 And the building -- the site and the building
20 itself are still within the floodplain. But in terms of
21 having the actual design detail associated with constructing
22 a structure in a floodplain when you're outside of it, it is
23 certainly feasible.

24 VICE CHAIRPERSON HART: Yeah. And the other part
25 that I think I heard, and maybe I wasn't focusing on this

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1 enough, but because there is the high school to the north of
2 this, that there may be some synergy between that being
3 there, the location of where that is with where this is.

4 And it's because it's in such close proximity that
5 there is an ability to be able to, you know, kind of easily
6 get to the school to ask students if they are interested in
7 healthcare training and that sort of thing.

8 Did I hear that --

9 MR. TEASS: That was part of our previous
10 presentation in terms of where the actual project is located
11 and its relationship to not only, there's a school across the
12 street, there's a residential apartment building to the east,
13 all the land to the west is actually part of a park system
14 that's owned by the U.S. government.

15 So, there's really not a pattern on this particular
16 block of Eads Street with regard to single-family, low-rise,
17 residential development.

18 I think there's a strong connection between some of
19 the opportunities that are being afforded at the center and
20 the high school across the street. And the Applicant, I
21 believe, has reached out to engage the staff of the high
22 school to talk about community partnerships.

23 VICE CHAIRPERSON HART: Thank you. Any other
24 questions from the Board?

25 COMMISSIONER MILLER: Thank you, Mr. Chair.

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1 I know you went over this last time, but if you
2 could just briefly, Mr. Sullivan, summarize your best case
3 as to the exceptional situation leading to a practical
4 difficulty or undue hardship, that part of the prongs of the
5 use variance test?

6 MR. SULLIVAN: Thank you. And admittedly, as we
7 stated, that argument doesn't hit you over the head, but we
8 think we can tie together a lot of small things that might
9 allow you to find the path to finding that we meet prong one
10 and prong two.

11 A lot of it is about location and there's positive
12 aspects of the location and negative aspects of the location.
13 And I think the positive aspects of the location go to prong
14 three. That would be having the high school across the
15 street and the synergy that that's going to have with the
16 proposed use.

17 The negative aspects, and I think this is the heart
18 of the exceptional condition and it's very well detailed in
19 the ANC letter that you got today, it's a dead-end street
20 that doesn't have, apparently have residential uses and
21 serves as a dumping ground, in some sense.

22 And the -- this location of this property makes it
23 not viable to create a solely residential use, in a sense.
24 The commercial use allows the creation of some activity or
25 some critical mass that could then support the residential

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1 use above it and then maybe lead to additional residential
2 use on the dead-end street, if that's possible.

3 But for the owner -- and they would -- if the Board
4 couldn't get to approval, the owner would accept OP's
5 recommendation, but what they -- it's not really viable, but
6 maybe it will be someday as three units.

7 The owner had an alternate proposal to do eight or
8 nine units, which would make it financially viable to develop
9 in this location, but the ANC was really focused on this
10 community service use and would not have supported that.

11 And the Applicant wanted to stick with the ANC's
12 recommendation on that, and so that pushed us back towards
13 sticking with our guns on the adoption of the commercial use,
14 community service use, small C, small S, community service
15 use.

16 And I think while it would be an office use, I
17 think that the Board could condition that use in accordance
18 with the specific information that we provided so that it
19 would be tailored to not just be a wide-open office use. It
20 couldn't be used by another office user that wouldn't be
21 doing these specific activities.

22 COMMISSIONER MILLER: If I could just follow up
23 with Office of Planning, as I recall, I think your previous
24 testimony at a previous hearing was that you would not -- the
25 office would not be in support of an eight- or nine-unit

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1 residential use on this site because, I think, of the
2 intensity of that use in an R2 zone.

3 I think that was your testimony but correct me if
4 I'm wrong.

5 MR. MORDFIN: No, that is correct.

6 Currently, the site is divided into three
7 residential lots, which is why we supported a three-unit
8 apartment building on the site.

9 COMMISSIONER MILLER: Thank you.

10 VICE CHAIRPERSON HART: Okay; yes, Ms. John?

11 MEMBER JOHN: So, if I get this right, they can't
12 build multifamily because OP would not support it, and they
13 don't meet the -- so, it seems they can't use the property
14 at all, really, to have a viable project, right?

15 Because they're saying they need nine units or some
16 nonresidential use on the first floor to be viable, so it
17 doesn't seem as if they have any good option.

18 MR. MORDFIN: That's the Applicant's argument. But
19 because it's zoned residentially and it's currently
20 subdivided into three lots, although you can't build
21 single-family detached or semi-detached on the lot because
22 of the floodplain regulations, that is the reason we
23 supported three units as an apartment building because it is
24 a three -- it is divided into three residential lots
25 currently.

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1 VICE CHAIRPERSON HART: Any other questions?

2 Okay. Mr. Sullivan, I think it's -- actually, I
3 guess we should do -- is there anyone here wishing to speak
4 in support of the application?

5 Anyone here wishing to speak in opposition?

6 And, again, I want to make sure that the ANC is not
7 here. So, that brings us back to you, Mr. Sullivan, for your
8 closing statement.

9 MR. SULLIVAN: I think I effectively provided the
10 closing in response to Commissioner Miller. I just wanted
11 to tie together, as well as I could, prong one and two of the
12 argument.

13 VICE CHAIRPERSON HART: Okay. Thank you.

14 MR. SULLIVAN: Thank you.

15 VICE CHAIRPERSON HART: Any final questions?

16 Okay. So, I'm going to close the hearing. Is the
17 Board ready to deliberate? Okay. So, I can start on this,
18 but I will need my fellow Board members to weigh in as well.

19 This was a difficult case, in some ways, because of
20 some of the relief that the Applicant is requesting and
21 because of some of the idiosyncrasies, I guess, of the zoning
22 regulations.

23 And I think this was kind of difficult in that
24 because there were the proximity of things like the school
25 and the ANC support of a training center, the Applicant is

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1 looking to move in a direction for having this office space
2 in this site.

3 I think, in the whole of it looking at the ANC
4 report and the Office of Planning report, I do understand the
5 viewpoint of the ANC, but I think that the Office of Planning
6 has made a recommendation to us to support the residential
7 use, but to deny the change in the office use, or adding the
8 office use.

9 I would be in support of that in that I think that
10 the residential is fine to have here that they're proposing,
11 which were the three units, but I think that the office use,
12 I just don't think that we would -- I think it would be
13 somewhat difficult for the Board to come up with conditions
14 that would limit this in a way that would make, you know, all
15 types of office not be allowed at this location because
16 currently, without any conditions, any type of office would
17 be located here and I don't think that that's appropriate for
18 this R2 zone.

19 Now, maybe there's an argument today that this may
20 not be -- this possibly shouldn't be an R2 zone and maybe
21 this should be another -- rezoned into something that would
22 allow for some other use, but that's not where we are.

23 So, I, unfortunately, would not be able to support
24 the office aspect of this, the request for a use variance for
25 the office space, but I would be supportive of the three

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1 units that are currently being proposed. So, my thoughts.

2 Yes, sir.

3 COMMISSIONER MILLER: Thank you, Mr. Chairman.

4 I agree with you on the -- supporting the use
5 variance for the multifamily, the three units, residential
6 use on floors two and three.

7 I disagree with you and the Office of Planning on
8 denying the use variance for the office use on the first
9 floor, on the ground floor.

10 I think the ANC letter, which we have today, 7C,
11 dated December 11th, has a number of -- well, the ANC which
12 unanimously supports, according to their last letter.

13 And this letters says, we strongly feel that the
14 location is well-suited for a nonresidential use. It's
15 directly across from H.D. Woodson High School and most of the
16 training center programs are a good fit for students.
17 Located on a dead-end street that generally receives little
18 traffic and becomes a dumping ground. There are no other
19 single-family residential buildings on that block. In
20 addition, there are other nonresidential uses, including day
21 care and churches, within the next block, and a mixed-use
22 building with ground floor nonresidential and upper level
23 apartments would be a welcome addition to our neighborhood.
24 Our constituents need training opportunities to prepare
25 themselves for the workforce, especially in the areas of

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1 technology, healthcare and professional leadership, and it
2 goes on.

3 So, I would be supportive of the -- I think there's
4 a confluence of factors related to the topography of the site
5 and the floodplain issue and the location on a dead-end block
6 that doesn't have any single family despite the R2 zoning and
7 across the street from a big high school with a lot of
8 students who need training.

9 They're proposing a training center, a for-profit
10 one. There are hours that they've submitted would be the
11 operational hours in the Applicant's, or Mr. Sullivan's most
12 recent submission.

13 I think there are hours that are 8:00 a.m. to 4:00
14 p.m. on Saturday, and I guess it's 8:00 a.m. to 9:30 p.m. on
15 Monday through Friday.

16 The maximum number of people who would be in the
17 space would be 19 at any one time. That's a maximum of 16
18 students, two instructors and one administrative staff. That
19 would be the maximum at any one time. It often would be less
20 than that, according to the submission.

21 I think we can include as conditions of an order,
22 if there were support, there were three of us that were
23 supportive of this, we should include if we were to grant the
24 use variance for office use, we should include conditions
25 that limit the use to a community training center that

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1 includes certification programs and job training programs
2 designed for youth and adult empowerment, including, but not
3 limited to, CPR training, computer training, help with job
4 searches and placements.

5 I think the OAG could work with the Applicant on
6 crafting those conditions that limit the hours, limit the
7 number of people, and limit the type of use to what's being
8 proposed, which is a youth and adult training and enrichment
9 program.

10 So, that's, I think there is a confluence of
11 factors with the location of the -- with this location that
12 creates an exceptional situation leading to a practical
13 difficulty for any other type of -- for another type of use.

14 So, I would be -- and there's no detriment to the
15 public good. ANC is strongly supportive of this training
16 center that's needed in this neighborhood.

17 So, I would be supportive of both use variances and
18 the -- for the office use on the ground floor, limiting that
19 through a series of conditions that would be in an order if
20 there were support for that.

21 VICE CHAIRPERSON HART: Thank you. Anyone else?

22 BZA CHAIR HILL: Okay. See if we need a five.

23 So, I'm going to agree with Mr. Miller. I thought
24 that, you know, that the residential use, I think, is -- I
25 can agree with the analysis of the Office of Planning.

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1 I would also again, now, respectfully disagree with
2 the Office of Planning in terms of their analysis of the
3 office use, but I do agree with the conditions that Mr.
4 Miller had kind of spoken through.

5 I mean, I think that, again, it's kind of at the
6 end there, it's in the floodplain, it's right across the
7 street from a high school that's not going anywhere for, you
8 know, however long and it's right next to an apartment
9 building.

10 I mean, it seems as though there isn't, as you say,
11 any single-family homes down there anywhere at that point,
12 so I do agree that the confluence of factors that are making
13 this property unique is how I could get behind the office
14 use.

15 However, again, I agree with the Office of
16 Planning, but that -- I can understand the Office of
17 Planning's analysis; however, I'm going to now side with, I
18 suppose, more of the ANC and the community in terms of giving
19 them their great weight with the fact that this training
20 center is, again, right across the street from a high school.

21 And so, I'm going to be voting in favor.

22 MEMBER JOHN: So, I think I'm going to side with
23 Mr. Miller as well and associate myself with his comments.
24 I thought it was a good discussion.

25 I agree there's a confluence of factors and there

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1 is a distinctly commercial context where the building is
2 located; it seems as though the Applicant has a difficulty,
3 you know, and there's no ability to -- or it appears, from
4 the record, that there's an inability to construct a
5 multifamily residential building at this location.

6 And while it is not the strongest case in the world
7 for the confluence of factors burden of proof, I think there
8 is enough here to allow the residential use -- I'm sorry,
9 residential use on the first and second floors, and I agree
10 with the Office of Planning on that -- on the second and
11 third floors, and the office use on the first floor with the
12 conditions proposed by Commissioner Miller.

13 And I can support the application with those
14 conditions and limitations.

15 VICE CHAIRPERSON HART: Okay. So, would someone
16 like to make a motion?

17 (Off mic comments.)

18 COMMISSIONER MILLER: Thank you, Mr. Chairs;
19 Messrs.

20 So, I will make a motion that the Board approve the
21 use variance. Okay -- that the Board approve a use variance
22 from the use restrictions to construct a new, three-story,
23 mixed-use building with ground floor office and storage space
24 in the R2 zone at premises 5415 and 5417 Eads Street, N.E.,
25 square 5231, lots 16, 17 and 18.

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1 And so, what the motion essentially would be doing
2 is supporting both the use variance for the multifamily three
3 units on the second and third floors in accordance with the
4 recommendations of the Office of Planning and the ANC and the
5 Applicant, but also supporting the use variance for office
6 use on the ground floor with conditions that relate to hours
7 of operation that I stated earlier and the -- that's in the
8 Applicant's most recent submission, including the maximum
9 number of people -- I think it was 19; 16 student, 2
10 instructors, one administrative staff, at any one time. And
11 the limited -- limiting the commercial use to strictly a
12 computer training -- a community training center that
13 includes certification programs and job training programs
14 designed for youth and adult empowerment, including, but not
15 limited to, CPR training, computer training and help with job
16 searches and placement.

17 That's a long way of making a motion, but that's --
18 and having the Applicant work with the OAG on those specifics
19 of those conditions limiting the commercial use on the first
20 floor.

21 BZA CHAIR HILL: And then just mentioning the
22 revised -- based on the revised architectural plans in
23 Exhibit 59?

24 COMMISSIONER MILLER: Yes. That would be part of
25 my motion. Thank you.

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1 VICE CHAIRPERSON HART: So --

2 COMMISSIONER MILLER: First.

3 VICE CHAIRPERSON HART: Oh, second. I was going to
4 ask for a second.

5 Anyone second?

6 BZA CHAIR HILL: Second.

7 VICE CHAIRPERSON HART: Okay. Having made the
8 motion and hearing a second, all those in favor say aye.

9 (Chorus of aye.)

10 VICE CHAIRPERSON HART: Any opposed? Nay.

11 So, motion carries, Mr. Moy.

12 SECRETARY MOY: Yes, sir.

13 Staff would record the vote as 3-1-1 and this is on
14 the motion of Chairman -- or, rather, Zoning Commissioner Rob
15 Miller to approve the application for the relief requested
16 along with the conditions as he cited in the record.

17 Seconding the motion is Chairman Hill. Also in
18 support, Ms. John. Opposed to the motion is Vice Chair Hart.
19 We have no other members present. The motion carries, sir.

20 VICE CHAIRPERSON HART: Thank you, Mr. Moy. Thank
21 you all very much.

22 BZA CHAIR HILL: And we're going to take a little
23 break. 15 minutes?

24 VICE CHAIRPERSON HART: Okay.

25 (Whereupon, the above-entitled matter went off the

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1 record at 11:43 a.m. and resumed at 11:56 a.m.)

2 BZA CHAIR HILL: All right, Mr. Moy. Let's go
3 ahead and call our next case.

4 SECRETARY MOY: Thank you, Mr. Chairman. The Board
5 is back in session, and the time is about 11:55 in the
6 morning, at or about. So if we can have parties to the table
7 to -- oh, yes.

8 Case Application No. 20135 of 3428 O Street, LLC as
9 amended for an area variance from the corner store
10 requirements, Subtitle U, Section 254.6(g) to operate a
11 corner store on the first floor and basement of an existing
12 mixed use building, R-20 zone. This is at 3428 O Street,
13 Northwest, Square 1228, Lot 76. This is continued from
14 earlier in the morning.

15 BZA CHAIR HILL: Is the party status person around?
16 Okay, great.

17 (Pause.)

18 BZA CHAIR HILL: Okay, great. If you could please
19 introduce yourselves for the record from my right to left.

20 MS. ROTH: Melinda Roth.

21 MR. SULLIVAN: Marty Sullivan on behalf of the
22 applicant.

23 MR. DANA: Andrew Dana, the applicant.

24 BZA CHAIR HILL: Okay. All right. Let's see. So
25 a couple of things here. So for everybody in the audience,

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1 this has gone on -- the day has gone on longer than I had
2 anticipated in terms of the morning. And so we're going to
3 take lunch after this case. And so lunch will probably go
4 45 minutes. This case, I don't know how long it's going to
5 go. So just kind of letting everybody know in terms of the
6 time.

7 In terms of this case, Mr. Sullivan, Mr. Dana, and
8 Ms. Roth, this is now the third time I think we've been here
9 and we'll see what happens. But a lot has already been said,
10 and also a lot of things have already been -- in terms of --
11 it's been a long process for everybody, right?

12 And it's been kind of tense at times. So I'd very
13 much appreciate and I'm definitely not going to tolerate
14 anything that's tense here today because I haven't had
15 anything to eat yet. And so you really don't want that to
16 happen, right?

17 So I went through the process of what we're going
18 to do and also as to kind of where we are. I mean, we've
19 heard a lot of things in favor of the application and we've
20 heard a lot of things in terms of how we've gotten to where
21 we've gotten with the application.

22 I think that, as I stated earlier, the Board was
23 interested in seeing if there was different alternatives in
24 terms of the level of relief that was needed. It seems as
25 though, Mr. Sullivan, you are your client have come to the

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1 determination that this is another -- or a way that you'd
2 like to present the requested relief in terms of an area
3 variance. And so now we're going to just be talking about
4 that.

5 As I mentioned earlier, again, there's three prongs
6 to the test. And Ms. Roth, I'm kind of mentioning this a
7 little bit more to you which is that we've already gone
8 through the third prong which is about community the effect
9 of the community and what might happen there. So we're just
10 really interested in the first two prongs.

11 And so you can go ahead and hear -- and I guess if
12 you don't know what else to speak to, if you end up speaking
13 about the third prong, that's fine as well. And if people
14 are here to testify about the third prong, we'll see how we
15 go. But I guess what I'm just trying to say is we've heard
16 a lot about the third prong, right?

17 And I definitely think that -- and again, in my
18 opening statement here in a moment which is that I live in
19 a very dense part of the city. And so I understand in terms
20 of, like, lines and people and what could possibly happen or
21 not possibly happen. So I understand that. The Board
22 understands that. And so that, I think, has been thoroughly
23 discussed is what I'm trying to establish.

24 So with that all being said, Mr. Sullivan, I'm
25 going to ahead and put up ten minutes on the close and just

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1 see where we get with that. Okay? And you can begin
2 whenever you like.

3 MR. SULLIVAN: Thank you, Mr. Chair and members of
4 the Board. As you stated, we'll focus on prong 1 and prong
5 2. We did amend the application to seek area variance relief
6 from the restriction on corner stores of being located within
7 750 feet of a property that's in the MU zone.

8 The property is located at 3428 O. You see where
9 it says, subject site. The MU-3A zone that we are within 750
10 feet of is this area here. It's not the main MU zone. It's
11 sort of an outlier of a zone. And we think that actually
12 adds to the exceptional condition present here.

13 That is the only -- we have determined that's the
14 only requirement of the corner store regulations that we
15 don't meet. And so we've effectively self-certified
16 otherwise that we'll meet the corner store regulations but
17 for that requirement.

18 So I'll go through the area variance relief
19 requirements. There is an extraordinary or exceptional
20 condition affecting the property. Some of these you've heard
21 before. The building is exceptional in that it was
22 constructed and has been in constant use as a corner store.
23 Well, as a corner store related, small c, small s, as a
24 commercial use in a residential zone with commercial on the
25 first floor and residential above.

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1 Lower level has always functioned as commercial
2 space. And since they've always been commercial, they're
3 commercially configured. And we've gone through, I think,
4 in detail how it would be difficult to convert that to a
5 residential use. And we also have information on the record
6 on converting it to a -- what may be permitted as a viable,
7 thriving retail use.

8 The location is unique as the use would be
9 otherwise permitted as a matter of right but for its
10 proximity to that outlier of the MU-4 zone. And I would add
11 too, not that this directly applies, the comprehensive plan
12 for that area is designated as moderate density residential.
13 So the MU-3A outlier zone isn't even consistently zoned with
14 the comp plan.

15 So based on a review of corner lots within 750 feet
16 of that, this property is one of only three corner properties
17 that's currently categorized as commercial use and not fully
18 residential. And all of the corner lots within that 750 feet
19 are used for residential purposes, two others being Saxbys
20 across the street and 13 and 135th Street.

21 The practical difficulties, these exceptional
22 conditions, the history of this configuration of the
23 building, and this proximity creates an exceptional situation
24 where the applicant has a practical difficulty in meeting the
25 corner store requirements.

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1 And the use of the building, of course, as a single
2 family dwelling is not feasible and it's not configured for
3 residential purposes. And in fact, there's evidence on the
4 record that it is configured for -- specifically configured
5 to a flower shop or to some sort of prepared food shop use.

6 And this is some more information on why the
7 residential use wouldn't work as well. The relief can be
8 granted without substantial detriment to the public good.
9 I think we've, as you said, addressed prong 3. In my
10 closing, I may address prong 3 slightly. But I don't think
11 I need to go over it here.

12 So if the Board has any questions.

13 BZA CHAIR HILL: Sure, please. Go ahead.

14 COMMISSIONER SHAPIRO: Can you go back to what you
15 said about 13 and 135th Street? I missed what you were --

16 MR. SULLIVAN: So there's only two. We found what
17 add to the uniqueness argument, there's only two properties
18 within 750 feet of this MU zone that could also be used as
19 commercial or have been used as commercial uses in the past.

20 COMMISSIONER SHAPIRO: What is 13 and 135th Street
21 being uses as right now, that corner?

22 MR. SULLIVAN: Actually, I don't know that offhand.
23 I can find out.

24 COMMISSIONER SHAPIRO: My question is, is it being
25 used currently as a food establishment?

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1 MR. SULLIVAN: I don't believe so.

2 COMMISSIONER SHAPIRO: Okay.

3 MR. SULLIVAN: Custom TV Solutions.

4 COMMISSIONER SHAPIRO: Okay. Because there's
5 another standard within 500 feet of two or more food
6 establishments would also trigger it. But that's not an
7 issue here because the only one is Saxbys.

8 MR. SULLIVAN: Right. And we self-certified to
9 that. Actually, the corner store use, as I read those
10 regulations, it's within 500 feet of another corner store
11 use, meaning a corner store use that was approved under those
12 regulations.

13 COMMISSIONER SHAPIRO: Of one or more corner store
14 uses.

15 MR. SULLIVAN: Right, one or more approved under
16 the corner store use regulations of which there are very few
17 actually.

18 COMMISSIONER SHAPIRO: Okay.

19 MR. SULLIVAN: None that I know of actually.

20 COMMISSIONER SHAPIRO: Was Saxbys approved under
21 the corner store use?

22 MR. SULLIVAN: So --

23 COMMISSIONER SHAPIRO: You may not know.

24 MR. SULLIVAN: Well, corner store is a defined term
25 created under the 2016 regulations for this particular use

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1 that we're going to apply for if we get this relief.

2 COMMISSIONER SHAPIRO: Okay.

3 MR. SULLIVAN: Prior to 2016, there is no corner
4 store use. So if you're not officially a corner store use
5 under those regulations, you could be a legally nonconforming
6 use.

7 COMMISSIONER SHAPIRO: Okay. Thank you. Thank
8 you, Mr. Chair.

9 BZA CHAIR HILL: Mr. Sullivan, could you just go
10 over that again, how you believe this would be a corner store
11 use?

12 MR. SULLIVAN: Sure. And I didn't submit going
13 through those requirements because it wasn't a special
14 exception. I self-certified to all those requirements. But
15 I could -- I don't have them in front of me right now. But
16 I could pull up those regulations. But I am -- as I said,
17 I'm taking the risk and I'm self-certifying to that.

18 (Simultaneous speaking.)

19 BZA CHAIR HILL: I understand. Just in terms of
20 for the party status person, just kind of knowing a little
21 bit more about how that corner store use you comply with.
22 I mean, I also agree that you comply with it and also that
23 you're self-certifying for it.

24 Does the Board have any other questions?

25 Okay. So, Ms. Roth, do you have any questions for

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1 the applicant in terms of the presentation that he just gave?

2 MS. ROTH: Yes, I do.

3 BZA CHAIR HILL: Okay.

4 MS. ROTH: Is it appropriate at this point to ask
5 you for the flexibility of having some of my neighbors come,
6 two in particular, with me? Because as you know, we were
7 just granted party status, and I am not as prepared as I --

8 BZA CHAIR HILL: That's fine. So when you say --
9 I mean, you mean you would like them at the table to help
10 you?

11 MS. ROTH: Correct.

12 BZA CHAIR HILL: Okay. I'm trying to think.
13 That's not -- it's not -- as long as -- and this is where I
14 always -- I'm looking at OAG. As long as everything gets
15 asked through the party status person, people can help the
16 -- I mean, they're able to come forward. They've not
17 testifying as witnesses necessarily.

18 MS. CAIN: Yeah, it would be fine to have them at
19 the table for support as long as Ms. Roth is the one directly
20 asking the questions.

21 BZA CHAIR HILL: Okay. So Ms. Roth, whoever wants
22 to come. And they can introduce themselves, I suppose.

23 MS. ROTH: Okay. And at this time, is it possible
24 -- and we are very, very grateful to be granted -- I am very
25 grateful to be granted a party status. But because of -- it

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1 really does require a different level of preparation
2 including knowing backward and forward the zoning
3 regulations, we would like to request a continuance. And I
4 know that you're going to be unhappy to hear that, but --

5 BZA CHAIR HILL: No, that's okay. I don't think --
6 we're going to work through this today and see where we get.
7 And so the -- if we leave -- we might leave the record open
8 for information and then we might do a continued hearing
9 based upon what information we keep it open for. We'll see
10 where we get to, right?

11 I think that -- so if you want to confer there with
12 -- well, first of all, if the gentlemen would like to
13 introduce yourselves for the record.

14 MR. SAVAGE: Hi, my name is Michael Savage. I own
15 property on the 3400 block of O Street.

16 MR. NEELEY: Christian Neeley. I also own property
17 on the 3400 block of O Street.

18 BZA CHAIR HILL: Could you spell your last name for
19 me?

20 MR. NEELEY: Sure. It's N-E-E-L-E-Y.

21 BZA CHAIR HILL: Okay. And Mr. Savage, were you
22 here last time?

23 MR. SAVAGE: Negative. I was here the first
24 hearing, not the second, and I'm back here for the third.

25 BZA CHAIR HILL: Okay. And Mr. Neeley, were you

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1 here for any of them?

2 MR. NEELEY: I was here for the first as well.

3 BZA CHAIR HILL: Okay. So you testified at the
4 first one, correct?

5 MR. NEELEY: Yes.

6 BZA CHAIR HILL: Okay, great. So let's see. Ms.
7 Roth, you want to confer and then ask your question? The
8 questions have to go through you.

9 MS. ROTH: Understood, loud and clear. Okay. So
10 Mr. Sullivan, isn't it true at the previous hearing you had
11 asked if you needed to file a new application for this area
12 variance?

13 BZA CHAIR HILL: No, hold on a second. That's not
14 what he just testified to. So he's just testifying to the
15 first and second prong of how they're meeting it, right?

16 MS. ROTH: All right. We'll start again then.

17 BZA CHAIR HILL: Sure.

18 MS. ROTH: Mr. --

19 BZA CHAIR HILL: And the other thing that might be
20 helpful -- I understand where you are with this, right? What
21 really will also be helpful is having the opportunity to ask
22 questions of the Office of Planning, right? So they can
23 answer all kinds of questions, right? So they're just
24 answering questions based upon the testimony that they've
25 given today for the first and second prong of the test. So

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1 again, do you have another question?

2 MS. ROTH: I do.

3 BZA CHAIR HILL: Okay.

4 MS. ROTH: Okay. So Mr. Sullivan, you mentioned in
5 your testimony today about evidence that the building would
6 not be -- actually, let me start from a different way. In
7 the very beginning of your testimony, Mr. Dana introduced
8 himself as the applicant. Mr. Sullivan, who is the applicant
9 in this case?

10 MR. SULLIVAN: Technically, the applicant is the
11 property owner. The Board has traditionally accepted a
12 tenant or a contract purchaser as the small a applicant just
13 for descriptive purposes.

14 BZA CHAIR HILL: Yes, that is accurate. And so
15 hold on a second. Just to let you know again, Ms. Roth, you
16 are going to get a chance to also make a presentation. So
17 go ahead.

18 MS. ROTH: Okay. Thank you. All right. Mr.
19 Sullivan, in your testimony today, you talked about the
20 conversion to a residential use. Isn't it true that there
21 are other residences just steps away from the proposed
22 location that have those same features that you argue are
23 unique, namely large shop windows and open -- have a corner
24 door that have been utilized and are currently being utilized
25 as residences?

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1 MR. SULLIVAN: I'm not technically a witness
2 testifying to that. I could have Mr. Dana respond to that
3 if she wants to ask the question of him.

4 BZA CHAIR HILL: Okay. So the question -- I'm just
5 trying to work through this together. You're asking Mr. Dana
6 if he knows if there are other types of conversions that have
7 happened in that area from stores to residential. Is that
8 your question?

9 MS. ROTH: The question is that there are
10 residences that have those same features. We don't know what
11 has been converted, what the use -- we can assume that the
12 use may have been a commercial use.

13 BZA CHAIR HILL: I'm just trying to figure out your
14 question. You're making a statement right now. And so I'm
15 trying to understand your question.

16 MS. ROTH: Okay. So Mr. --

17 BZA CHAIR HILL: You're asking Mr. Dana, if he
18 knows --

19 MS. ROTH: So in the testimony today on the first
20 prong, Mr. Sullivan was arguing that there are unique or
21 exceptional circumstances to this subject property. One of
22 those arguments is that it has large shop windows and a
23 corner door and that would make it prohibitively expensive
24 to convert it to commercial use.

25 And what we are asking is, are there -- isn't it

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1 true that there are other locations just on that same exact
2 block that have those same features that are being used both
3 as offices and as residences?

4 BZA CHAIR HILL: Mr. Dana, do you know the answer
5 to that?

6 MR. DANA: I am not aware of any conversions, so I
7 don't know any stores being converted. There are other
8 buildings with windows, but that's also a part of the pie.
9 There's a large walk-in in there. There's not a bathroom on
10 the first floor, so --

11 BZA CHAIR HILL: Okay. So the answer, I suppose,
12 is no. Okay. So what's your next question?

13 MS. ROTH: Okay. This time I think we'll reserve
14 what we -- the other things that we need to say for our
15 presentation.

16 BZA CHAIR HILL: Okay. All right. So Ms. Roth, go
17 ahead. Mr. Moy, if you can throw ten minutes up on the clock
18 there so we know where we are. And again, you can begin
19 whenever you like. And again, like, as far as, like,
20 latitude to speak about whatever your -- you have a
21 presentation? Okay, sure.

22 (Pause.)

23 BZA CHAIR HILL: I'll tell you what. Mr. Sullivan,
24 Mr. Dana, why don't you guys just sit back. Okay? And just
25 let them have -- or move over or whatever and just let them

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1 have the ability there to use the PowerPoint. Hang on one
2 second.

3 MR. SAVAGE: So the deck that -- this is Michael
4 Savage. The deck that Melinda is about to present from is
5 also been submitted as an exhibit. I believe it's Exhibit
6 133.

7 BZA CHAIR HILL: Yeah, that one, I got. And also,
8 Mr. Sullivan and/or Ms. Dana -- I mean, Ms. Dana -- and/or
9 Ms. Roth, if you happen to have anything that you haven't
10 submitted into the record, if you could make sure that you
11 have after this is concluded with today. Okay? Right.

12 So again, Ms. Roth, the way that it works is that
13 whatever time we've allowed to the applicant, we allow to the
14 party status person as well. And so you can go ahead and
15 begin whenever you like. I know that there is -- it's very
16 technical in nature in what we're speaking to. So therefore,
17 however you kind of are able to give your presentation and
18 walk us through what some of your issues are, then please do
19 so. Okay.

20 MS. ROTH: Okay. Thank you, Chair. So we will try
21 to focus on the first two prongs of the test because we do
22 not believe that the burden of proof has been met by the
23 applicant. We believe, of course, the applicant is the
24 owner. So the first prong is the exceptional situation with
25 the building. We have not heard a shred of evidence that

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1 there is an exceptional situation with the property.

2 BZA CHAIR HILL: Ms. Roth, like, just -- okay.
3 Shred of evidence, I mean, we've heard a lot of evidence.
4 So just go ahead and state the facts. We don't need to color
5 it all or anything. Just go ahead and give us your opinion.
6 Okay?

7 MS. ROTH: This is why --

8 BZA CHAIR HILL: Thanks.

9 MS. ROTH: -- I'm not prepared to go today.

10 BZA CHAIR HILL: That's all right. I mean, I don't
11 know if it would've been any different in a couple of weeks,
12 but --

13 MS. ROTH: Well, let's hope it would be.

14 BZA CHAIR HILL: Right. Okay.

15 MS. ROTH: All right. Anyway, the first issue is
16 that the applicant has argued the large shop windows and the
17 corner door opening. As I've already mentioned, we have
18 submitted at the first hearing on October 30th photographic
19 evidence that this is absolutely -- that this is not the
20 case. There are numerous locations with both the large shop
21 windows and corner door openings that exist throughout
22 Georgetown.

23 Second issue that the applicant only argues about
24 conversion to a residence. And there is a variance that
25 exists on this site to open retailer services. There is no

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1 variance required for any other commercial use. They neglect
2 to mention this. They only focused on a conversion to a
3 residence. And from the case law, we have found that the use
4 or prior use of a particular property is inapplicable to the
5 first condition that the property itself be unique.

6 Okay. More importantly is that second prong of
7 practical difficulties. We are -- to be quite honest, we're
8 not even sure why we're here. The owner of this property has
9 a ten-year lease. They are being paid rent now. There is
10 no practical difficulty if that owner is being paid rent now.

11 The tenant has the right -- has the current right
12 to open as a matter of right. And even if we lower the
13 relief requested from an undue hardship to practical
14 difficulties, the burden of proof still needs to be met to
15 show that the owner has experienced practical difficulties.
16 There are numerous other potential uses of this space. And
17 as Call Your Mother has testified previously, if they needed
18 to break the lease, the owner, it would cost them 100,000
19 dollars to do so.

20 So the fact is, is that the owner has this ten-year
21 lease. They're being paid rent. There's no reason to
22 consider a variance when there have been no practical
23 difficulties that have been established.

24 At this time, I would like -- since it's my
25 presentation, is it possible that my neighbor, Michael

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1 Savage, can present on these 750 foot rule that they are
2 asking for you to waive?

3 MR. SAVAGE: Thanks, Melinda. So --

4 BZA CHAIR HILL: Hold on one second. She's asking
5 me whether you can or not. So I'm just trying -- I mean, I
6 don't really particularly mind. I mean, OAG, usually the
7 witnesses get submitted ahead of time. I mean, I don't know.
8 I think we can waive that. We can waive that, correct?

9 MR. SAVAGE: I'll be quick.

10 BZA CHAIR HILL: I just need to ask her if she'll
11 let me waive it, if it's okay.

12 MS. CAIN: This is sort of a unique situation, so
13 I think you would be okay to proceed.

14 BZA CHAIR HILL: Okay. So Mr. Sullivan, you don't
15 mind if we hear from --

16 MR. SULLIVAN: No.

17 BZA CHAIR HILL: -- Mr. Savage? Thank you. All
18 right, Mr. Savage.

19 MR. SAVAGE: Thanks to you all. I'll be quick. In
20 the presentation that Mr. Sullivan just presented -- the
21 applicant presented -- spent a lot of time talking about the
22 750 foot rule and its relationship to the mixed use zone.
23 And of course, for them to open, they're going to need no
24 longer a use variance, of course, but an area variance to
25 operate as a corner store.

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1 The applicant state in their amended application
2 the proposed use conforms to all requirements of a corner
3 store except for the requirements of the rule about the 750
4 feet. But it does ignore some important facts. The first
5 is stated in the opposition letter from the Citizens
6 Association of Georgetown.

7 Section 2546(b) provides that a corner store should
8 not be located within 500 feet of another corner store as
9 used and defined as an eating and drinking establishment.
10 Saxbys, and the owner of Saxbys is here today to testify, is
11 a corner store that serves food and drinks and is located
12 across the street from the property and well within 500 feet.
13 The applicant, therefore, does not meet the other
14 requirements of a corner store.

15 While the BZA can waive this provision to be across
16 the street from Saxbys, the applicant must conform to all
17 other restrictions if this requirement is waived. Section
18 254.14(b)(1) states that the applicant must demonstrate,
19 quote, conformity to the provisions of Subtitle U, 254.5
20 through 254.12.

21 The BZA by regulation may waive the Saxbys
22 restriction, but the restrictions do not specifically mention
23 any available waiver to the restriction of the proposed
24 location close to 700 feet to a mixed use zone. So there's
25 this as an issue.

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1 As importantly, the applicant continues to mention
2 ANC support in their brief of today. But this support was
3 for the use variance in the original application. With
4 respect to an area variance which is now the direction that
5 they're going, the ANC position is entirely different.
6 Again, the zoning rules provide that a corner store not be
7 located in an R-20 zone, no nearer than 750 feet to a
8 property line of an MU or NC zone.

9 The granting of an area variance in this case would
10 directly countermand the September 14th, 2015 unanimous
11 decision of the ANC 2-E and CAG in a joint release to support
12 the inclusion of the 750 feet rule ban in Section 254.6 for
13 new corner stores in which the ANC and CAG stated -- and
14 remember this is Exhibit 132 of the record -- quote,
15 Georgetown is well served by retail and other commercial
16 stores on Wisconsin and M Street as well as numerous corner
17 stores throughout the neighborhood. Accordingly, we support
18 this section placing a 750 foot restriction on new corner
19 stores. This is unique to the R-20 zone.

20 The ANC 2E supported inclusion of this exact
21 language and rule with full knowledge of the existence of the
22 MU-3 zone. Mr. Sullivan downplayed the MU-3 zone as small
23 and irrelevant, but that isn't the case.

24 MR. SULLIVAN: Mr. Chair, I'm sorry to interrupt.
25 I'm sorry. There's information being submitted, I think, and

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1 talked about or maybe it was submitted. We were never
2 served. I would just ask that we could get a copy of these
3 things --

4 BZA CHAIR HILL: Okay. Yeah, I understand.

5 MR. SULLIVAN: -- if they are submitted.

6 (Simultaneous speaking.)

7 BZA CHAIR HILL: Well, I don't know when this stuff
8 was --

9 MR. SAVAGE: Yesterday.

10 BZA CHAIR HILL: Yesterday is not that long ago.

11 MR. SAVAGE: Sir, we had a week to prepare
12 including the weekend.

13 BZA CHAIR HILL: Are you telling me how much time
14 you've had? We've had a lot of time. We've been here a long
15 time and we've talked about a lot of things. And I know why
16 everybody is here, right? Okay. You don't want it to be
17 there. Okay? And so I'm going to hear the arguments again
18 as to why you don't want it to be there. Okay?

19 And so you were currently in the regulations. And
20 Mr. Sullivan, you're saying you haven't seen is what now,
21 please?

22 MR. SULLIVAN: We've never been served with
23 anything from the prospective party. And I could review
24 those documents. And maybe I'll --

25 BZA CHAIR HILL: That's okay. I'm just saying --

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1 MR. SULLIVAN: -- withdraw the objection.

2 BZA CHAIR HILL: It's okay. Because again, as what
3 Ms. Roth just mentioned without the microphone being on, they
4 just found out they were a party right now. And so I'm now
5 going to even look to OAG at some point about -- and we can
6 talk through this in terms of -- yeah, in terms of serving
7 things. I mean, now that they've become a party, right?
8 Were they -- have to serve everything on the applicant?

9 MS. CAIN: As a party now, any submissions would
10 need to be served on the applicant and the ANC as the other
11 two parties. The submission came in before they were
12 afforded party status, though.

13 BZA CHAIR HILL: Okay. So then Mr. -- it's all
14 right.

15 MR. SULLIVAN: If it's in the record, I drop my
16 objection.

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: That's okay. I think you might
19 have an opportunity to read through it, right? And so we'll
20 see where we get to that point. Now just in terms of your
21 testimony again, Mr. Savage. You had started to talk about
22 the -- and I kind of -- I was listening and I just got a
23 little distracted for a second. I was looking here in the
24 record on something.

25 MR. SAVAGE: Sure.

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1 BZA CHAIR HILL: You had started talk about
2 something about the ANC and that you thought that the ANC is
3 no longer in support?

4 MR. SAVAGE: Negative. So remember what's
5 happening here, as you know, is the applicant is shifting its
6 request from a use variance to an area variance. When they
7 originally came -- when the applicant originally came to the
8 ANC a couple of months ago, then they were presenting
9 themselves as a use variance rather than an area variance.
10 And they addressed the use variance issue.

11 The ANC in a prior year in 2015 addressed the issue
12 of the area variance, the 750 feet. And it's important that
13 the distinction is made --

14 BZA CHAIR HILL: Within what? Within a different
15 application?

16 MR. SAVAGE: No, it -- yes, it was --

17 BZA CHAIR HILL: It was a different application.

18 MR. SAVAGE: No, no, no. It wasn't an application.
19 It was Zoning Commission Order 0806A which is the whole --
20 the zoning --

21 VICE CHAIRPERSON HART: What's he's referring to is
22 the zoning rewrite that happened --

23 MR. SAVAGE: Right.

24 VICE CHAIRPERSON HART: -- in 2016. So we call
25 ZR-16. This was a -- evidently, the ANC wrote in something

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1 prior to the zone -- the rezoning -- the entire rezoning
2 happening. And it specifically was looking at an aspect of
3 this project. It didn't look at this project because the
4 project wasn't before us.

5 MR. SAVAGE: Correct.

6 VICE CHAIRPERSON HART: The application wasn't
7 before us. So he's just saying that the -- he is making the
8 assertion that because the ANC has already talked about this
9 particular thing, he is saying this is where they are
10 thinking now. But we do not have anything on the record
11 where the ANC is with regard to the area variance that's
12 before us now.

13 BZA CHAIR HILL: Okay. All right, Mr. Savage. You
14 can continue.

15 MR. SAVAGE: So yeah, I'm almost done. So ANC 2E
16 supported the inclusion of this exact language and rule with
17 the full knowledge of the existence of the MU-3 zone. In
18 addition, the 750 foot rule was added to the regulation
19 specifically because of conditions in the R-20 Georgetown
20 zone, specifically in this zone, R-20.

21 Zoning Commission Order -- I call it 0816, but ZR
22 16 states as follows, and this is also submitted as an
23 exhibit, quote -- this is the Zoning Commission -- the
24 Commission also recognized that there already existed several
25 corner stores in the Georgetown Historic District. And due

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1 to the tight proximity of the commercial corridors and
2 Georgetown University, accepted a larger spacing of corner
3 stores in the R-20 zone from the commercial zones.

4 Therefore, to approve this area variance request,
5 the BZA will have to override the specific determinations of
6 the Zoning Commission, as I just stated, the unanimous
7 decision of the ANC 2E, as I've already state, the CAG, and
8 95 percent of those who live within 200 feet as we presented
9 in our original presentation. So that does not seem
10 reasonable. That seems like a awfully high hurdle.

11 In addition, you will hear testimony from the
12 owners of the additional corner stores who are here today and
13 will talk about how they could be detrimentally affected by
14 the opening of this as a corner store.

15 BZA CHAIR HILL: Okay, Mr. Savage. Are you done?

16 MR. SAVAGE: One last sentence and then I'm done.

17 BZA CHAIR HILL: Sure.

18 MR. SAVAGE: To approve this application would mean
19 there's a litany of stores running through the R-20 zone in
20 a very tight area as already determined by the Zoning
21 Commission, as determined by the ANC, and as determined by
22 the Citizens Association of Georgetown and will effectively
23 do is it'll turn an R-20 zone into a C-20 zone.

24 It'll set a dangerous precedent not only for us in
25 the immediate area but throughout the R-20 zone, and it

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1 eviscerates on some level the enormous work that me and many
2 people in this room and certainly all of you all put into the
3 zoning rewrite of 2016. Thanks.

4 Sorry, one last thing. All of that argument is
5 articulated in Exhibit 131. There was an enormous amount of
6 effort put into a brief that laid out all these arguments.
7 So I do encourage all of you to read Exhibit 131 which is our
8 response to the applicant's revised brief.

9 BZA CHAIR HILL: Yeah, we read the brief, yeah.

10 MR. SAVAGE: 131?

11 BZA CHAIR HILL: Yeah, 131.

12 MR. SAVAGE: Appreciate it. Thank you. Thank you.

13 BZA CHAIR HILL: That's okay. That's why you're
14 kind of sitting here. Let's see. Mr. Sullivan, so there is
15 a lot of stuff that just got thrown out, and some of it is
16 I guess within 131. Like, I mean, I might actually want to
17 have some responses from you in terms of some of the
18 allegations that Mr. Savage has just thrown out.

19 I think that, however -- Mr. Savage, did you go to
20 the ANC meeting?

21 MR. SAVAGE: Yes, of course.

22 BZA CHAIR HILL: The one where you guys lost the
23 vote.

24 MR. SAVAGE: I was there. I presented.

25 BZA CHAIR HILL: Okay. And then let's see. So I

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1 guess what I'm trying to state is you mentioned all the
2 things you mentioned, right? And I'm just letting you know
3 that the ANC -- your ANC voted in favor of this.

4 MR. SAVAGE: I respectfully disagree. They voted
5 in favor of the use variance.

6 BZA CHAIR HILL: Yeah, it's okay. I understand you
7 technically --

8 MR. SAVAGE: And this is an area variance.

9 BZA CHAIR HILL: -- disagree. It's the exact same
10 thing that was going to be there, right? So I'm sure that
11 if your ANC was here, I could get at least some input from
12 them. But we'll see what happens also in terms of your ANC.
13 If you think your ANC is going to -- okay. Anyway, I'm just
14 letting you know. They voted --

15 MR. SAVAGE: Well, if you want to send it back to
16 the ANC for review which seems the appropriate next step,
17 then I think that's right.

18 BZA CHAIR HILL: No thanks, Mr. Savage.

19 MR. SAVAGE: No, I don't mean to disrespect you,
20 sir.

21 BZA CHAIR HILL: That's all right. That's okay.
22 It's all right, Mr. Savage. Okay. Mr. Sullivan, do you have
23 any questions for the person -- party status?

24 MR. SULLIVAN: No.

25 BZA CHAIR HILL: Okay.

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1 MS. ROTH: We actually had one -- we still had a
2 little bit more time on the record, and we wanted Christian
3 to just very quickly say one more thing.

4 BZA CHAIR HILL: Okay. What's your last name
5 again, sir? I'm sorry.

6 MR. NEELEY: It's Neeley.

7 BZA CHAIR HILL: Neeley? Thank you. All right,
8 Mr. Neeley. What else did you want to add?

9 MR. NEELEY: So I'll just clarify a statement that
10 Ms. Roth brought up earlier about the second prong. We
11 pointed out that Mr. Dana is not the capital A applicant.
12 He's the little a applicant. 3428 O Street, LLC is the
13 actual applicant and property owner.

14 So when we talk about practical difficulties, we
15 can only talk about the property owner, not Mr. Dana. Palmer
16 set out very clearly and pointed to legislation across the
17 board that it doesn't matter what the tenant's difficulties
18 are.

19 They further refined it to say that even the
20 introduction of changes to a building between 50 and 90
21 percent more expensive would not be considered a practical
22 difficulty in the appeals court case. They set a very high
23 burden for cost associations with practical difficulties.
24 And as a matter of the facts of this case, none of them would
25 apply to Mr. Dana. They only apply to --

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1 BZA CHAIR HILL: You guys keep talking about the
2 building property owner. We're always here all the time with
3 applicants. Okay? And so this happens all the time. We
4 understand -- I shouldn't say this happens all the time.

5 The applicant comes forward because they need
6 relief, right? And we understand that it's the property
7 owner's relief that we're speaking to. So thank you for
8 clarifying again what we understand. Okay. Is that it?
9 Okay.

10 MR. NEELEY: That's all.

11 BZA CHAIR HILL: All right. I'm going to turn to
12 the Office of Planning.

13 MS. MYERS: Hello. Crystal Myers with the Office
14 of Planning. The Office of Planning is recommending approval
15 of this area variance. I'd just like to, I guess, be clear
16 that we are specifically looking at this as an area variance
17 and just as the question of the location is really what we're
18 reviewing it now for.

19 So the site is less than 750 feet away from MU zone
20 property. And so we're looking at whether or not there's an
21 exceptional situation that should allow for them to be
22 located less than that 750 feet. And our conclusion is that,
23 yes, there is.

24 This building, as we all well know now is that the
25 building has had commercial use for -- since the beginning

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1 of the building's construction and has physically been -- it
2 physically has a configuration for commercial use. It has
3 effectively been a corner store since its beginning.

4 So we, again, recommend approval, but this time
5 based off of the fact of the building's history and physical
6 configuration makes it a corner store which is a matter of
7 right use according to what the applicant is saying. The
8 applicant is saying that this -- the business, this use,
9 conforms to the matter of right requirements.

10 So in that effect, as a matter of right use, the
11 practical difficulty would be that the applicant should be
12 allowed to do a matter of right use in a matter of right
13 building or in a building that is -- that would allow for a
14 matter of right use.

15 So in effect, we are saying that we're recommending
16 approval on this case.

17 BZA CHAIR HILL: Okay. So all right. Does the
18 Board have any questions of the Office of Planning? I have
19 a couple, and so then you can think about yours. So in terms
20 of -- and Mr. Savage was there a minute ago and now he's
21 gone? Okay. So has he left? Okay, okay.

22 So in terms of the things that Mr. Savage was
23 speaking to, I got -- and I'm going to have to go back and
24 kind of look at it. Did you follow along with what he was
25 speaking about?

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1 MS. MYERS: A bit. I did have a chance -- the
2 brief came in pretty late, so we didn't have a chance to
3 really fully digest it as well. But we really are just
4 strictly looking at it as the location.

5 I know that there was discussion about, I guess,
6 impacts to perhaps other sites in the area. We did not
7 review the other sites. We're just looking at this
8 particular site in this particular situation.

9 BZA CHAIR HILL: What was confusing me about the
10 discussion -- and I'm sorry that Mr. Savage has left. But
11 it was this -- the overriding the Zoning Commission and the
12 new ZR 16. And I got a little convoluted in there. I mean,
13 you're the Office of Planning.

14 MS. MYERS: Well, I believe you were saying that
15 the ANC -- or the gentleman who left was saying that the ANC
16 had a position about the 750 feet. But the ANC has not
17 provided any, I guess, information about how they feel about
18 the area variance.

19 As for the Office of Planning, the Office of
20 Planning, like I had mentioned, is recommending approval.
21 And the 750 feet, the intent of that section was to make sure
22 that -- I think more competition issues and conflicting with
23 other commercial establishments.

24 And since this building has been in this location
25 from the beginning, we don't feel that it would be disturbing

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1 the character of the street. I mean, it's been a commercial
2 building since the origin. And I'm aware of the fact that
3 we have, I believe, a coffee shop, Saxbys, across the street.
4 But that has been the situation from the beginning. And
5 again, there has always been a commercial use in this
6 building.

7 So that, the character, the concern when it comes
8 to those two businesses being in relatively close proximity
9 isn't something that we really thought was an issue. Again,
10 this is now considered a matter of right use. So the use
11 itself really wasn't a concern of ours. It was more the
12 building itself.

13 BZA CHAIR HILL: Okay. So again, you guys are
14 looking at 254.6(g), right? U 254.6(g), did I get this
15 right?

16 MS. MYERS: Correct, 254.6(g), 254.6(g).

17 BZA CHAIR HILL: Okay. All right. I'm just
18 pulling up the regs. All right. Does anyone still have any
19 questions for the Office of Planning? You'll get your shot.

20 MR. NEELEY: I have a question for Mr. Sullivan.

21 BZA CHAIR HILL: Oh, okay. Then give me a minute.
22 So Mr. Sullivan, do you have any questions for the Office of
23 Planning?

24 MR. SULLIVAN: No, thank you.

25 BZA CHAIR HILL: Okay. Ms. Roth, do you have any

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1 questions for the Office of Planning?

2 MS. ROTH: Yes, I do.

3 BZA CHAIR HILL: Okay.

4 MS. ROTH: Thank you for letting us have this
5 chance. So Ms. Myers, thank you for being here today and for
6 the submission of your report. We have a few questions about
7 it. The first is that you mention that this building is
8 zoned for commercial use. Is that true?

9 MS. MYERS: The building is zoned R-20 which is a
10 residential zone.

11 MS. ROTH: But it has an -- but doesn't it have an
12 existing variance for commercial use?

13 MS. MYERS: It has a variance, but that is not a
14 matter of right use.

15 MS. ROTH: Okay.

16 BZA CHAIR HILL: Just to clarify, you had asked --
17 it seemed that you were asking that this is a matter of right
18 use. And what the Office of Planning is saying is that it's
19 currently not zoned as a matter of right use. They have a
20 variance for the commercial space.

21 MS. ROTH: Okay. Let me ask a question in a
22 different way. Isn't it possible that this space could be
23 used for any commercial, retail, or services purpose that is
24 not a corner store or a prepared food shop?

25 MS. MYERS: According to the Zoning Administrator,

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1 the variance they have on this property allows for retail
2 use.

3 MS. ROTH: Thank you. Do you -- could you comment
4 on whether the variances, if granted -- if the area variance
5 would be granted for this applicant, can you comment on
6 whether that would stay with the building, whether or not
7 this applicant was there or not?

8 MS. MYERS: It would stay with the building. I
9 mean, that is why the Zoning Administrator granted this
10 applicant the retail variance is because there had previously
11 been retail on the property -- a retail variance granted on
12 the property.

13 MS. ROTH: And isn't it true that the variance that
14 they're now seeking would be an increase in the intensity of
15 the use?

16 MS. MYERS: They are now seeking an area variance
17 from a matter of right use on the property. So use is no
18 longer something that we really reviewed on this case.
19 Again, it's just an area variance. But they do have a --
20 there is a use variance on the property for retail. But this
21 is now an area variance from a matter of right use.

22 BZA CHAIR HILL: So just to clarify, even for me as
23 I'm repeating. So again, they're here now for an area
24 variance of a matter of right use.

25 MS. ROTH: But you can't clarify whether that would

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1 be an increase in the intensity or not?

2 MS. MYERS: We don't even review intensity because
3 it's a matter of right use. We only looked at the location,
4 the building structure, and the issue of the 750 feet.

5 MS. ROTH: Okay, thank you. And again, part of
6 this is because of our inability to really properly prepare.
7 Could you tell me how many within 750 feet --

8 BZA CHAIR HILL: Ms. Roth, I just want to point out
9 something about the improperly prepared. I think you guys
10 have had a lot of time to understand everything that's going
11 on. And so I understand that this might have been -- and you
12 might have an opportunity to submit more information into the
13 record.

14 But I just want to let you know that we've been
15 here a long time, right? And we've been here for hours and
16 hours and hours. And today, in fact, this was supposed to
17 be a little bit more efficient and it's still going to be at
18 least an hour. So what's your next question then?

19 MS. ROTH: Again, I appreciate, Chair Hill. What
20 I mean by saying that is that we didn't really have the
21 chance to prepare the kinds of questions that we have the
22 ability to ask. So I'm asking things that I shouldn't be
23 asking, it's because of that lack of ability. And again, I'm
24 not trying to take anything away from our appreciation --

25 BZA CHAIR HILL: Okay.

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1 MS. ROTH: -- for being granted party status. So
2 could you -- Ms. Myers, could you -- within the 750 feet,
3 could you tell me how many spaces are commercially zoned?

4 MS. MYERS: No. I mean, I did not count all of the
5 commercial spaces. But I can tell you this. I do know that
6 Saxbys, the coffee shop, is across the street. And I know
7 that there is a requirement for food and beverage shops, I
8 believe, that are within 500 feet. So we did take a quick
9 review of that over a day or two ago, and that would be one
10 store, not -- so I believe the requirement is more than one.

11 So from what I know of the immediate area, that
12 would be the only food and beverage store. But as the
13 applicant said earlier, it's not a corner store, or at least
14 not a corner store as in -- according to the regulation
15 considering it a corner store.

16 But it's not -- again, this is not a use variance.
17 So we looked at this from the strict point of view of the
18 location and its impacts by it not being more than 750 feet
19 away from the MU zoned properties.

20 BZA CHAIR HILL: Okay. Ms. Roth, do you know how
21 many more you have left?

22 MS. ROTH: We were just trying to get to the
23 clarification of the buildings, and we believe there are five
24 of them in that MU zone that are within 750 feet because one
25 is, indeed, another deli or corner store. And also we want

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1 clarification. I don't know if this is the right time to ask
2 to the Office of Planning.

3 We want clarification of why the 500-foot rule for
4 Saxbys is not being taken into consideration. I know that
5 the BZA has the ability to waive it. But I think that the
6 --

7 BZA CHAIR HILL: I'm just trying to remember the
8 two questions they just asked. So the first one about the
9 500 feet, I thought what the Office of Planning had just said
10 was that it's one or more -- more than one, and that Saxbys
11 currently isn't even defined as a corner store. See, there
12 would be more than one, right?

13 First, there would be -- and I'm just trying to
14 clarify. It's the more than one part, correct, Office of
15 Planning? So this is now it's not more than one. There's
16 only one. And also now just for my -- Office of Planning,
17 it's more than one of a corner -- oh, no, the food retail,
18 right? That was the one, right? So it doesn't apply.
19 There's not more than one.

20 So now your first question again was clarification
21 about what?

22 MS. ROTH: Clarification of the five buildings that
23 are in that MU-3 zone that are within 750 feet.

24 BZA CHAIR HILL: What was the clarification that
25 you wanted about them?

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1 MS. ROTH: Because there was a statement that they
2 didn't -- that we didn't know of any commercial zones. But
3 there are five buildings that are in that MU-3 zone.

4 MS. MYERS: I'm a little unclear. Are you saying
5 that I mentioned something that was about those commercial
6 aspects of those buildings?

7 MS. ROTH: Okay. I guess that maybe our hearing of
8 what was stated was that there was only one building within
9 the 750 feet, and we believe that there are five in that MU-3
10 zone.

11 MS. MYERS: To be clear, I wasn't talking about the
12 number of buildings in that MU -- in the MU zone. I wasn't
13 even referring to those. I was saying the ones that were
14 closer to this property, so other buildings that are less
15 than 750 feet.

16 There are -- and I think we've talked about this
17 earlier. There are other mixed use commercial properties,
18 even on the street. But I don't believe any of them are
19 defined as corner stores, at least according to the way the
20 regulations determine them to be.

21 MS. ROTH: I guess that was the question of if you
22 have -- if you're operating prior to 2016, then there would
23 be no way for you to be defined as a corner store. Is that
24 fair to say?

25 MS. MYERS: I believe so. I mean, I don't have the

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1 history of what previously we had in the regulations. But
2 again, we were mostly focused on this as the location itself.

3 BZA CHAIR HILL: Okay, Ms. Roth. We got to kind of
4 move on here a little bit. So last question, is that what
5 you said? Okay.

6 MS. ROTH: Last question.

7 BZA CHAIR HILL: Go ahead.

8 MS. ROTH: So Ms. Myers, did you conduct any
9 independent review of this area variance application at the
10 site and walk through the neighborhood?

11 MS. MYERS: I have not walked through the whole
12 neighborhood on this -- for this application.

13 BZA CHAIR HILL: Okay.

14 MS. ROTH: Thank you.

15 BZA CHAIR HILL: Okay. Yeah, no problem. So I was
16 just told we have a hard stop over here as well. So let's
17 see. Okay. Oh, yeah. All right. Is there anybody here
18 that's wishing to speak in support? Okay. Please come.
19 Well, actually, hold on a second.

20 Is there anybody here that's wishing to speak in
21 opposition? Okay. All right. Let me do the opposition
22 first. Okay? So everybody go ahead and take a step back.
23 Let's -- if everybody can come -- did everybody get sworn in?
24 Is anyone late? Okay.

25 If you're going to talk -- if you're going to -- if

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1 you're going to testify today regardless of which case and
2 if you missed getting sworn in, if you could please stand now
3 and get sworn in by the secretary to my left. Yeah, if you
4 haven't been sworn in. If you've been sworn in, you can't
5 lie, I guess, so --

6 (Witnesses sworn.)

7 BZA CHAIR HILL: Okay. I'm sorry. So Ms. -- well,
8 how many of you? Could you raise your hand again? Oh,
9 there's three. So please come forward. I think I saw three
10 microphones over here to the right. Okay. So let's see.
11 If you could please introduce yourselves for the record.

12 MS. GINA VOGEL: Gina Vogel from Wisemiller's Deli.

13 BZA CHAIR HILL: Okay. Can you spell your last
14 name, please?

15 MS. GINA VOGEL: V as in victory, O-G-E-L as in
16 love.

17 BZA CHAIR HILL: Okay.

18 MS. CHRISTINE VOGEL: Christine Vogel, and I work
19 for Nabeel Audeh who owns the Saxbys building and also is a
20 part owner of Wisemiller's.

21 BZA CHAIR HILL: Okay.

22 MS. EMAD: Caroline Emad, E-M-A-D. I'm the next
23 door neighbor.

24 BZA CHAIR HILL: You're the next door neighbor to
25 what?

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1 MS. EMAD: To the baker shop.

2 BZA CHAIR HILL: Oh, okay. Right. No, just, like,
3 you -- none of you guys have been here before? Okay. Did
4 any of you guys go to the ANC meeting? Okay. All right.
5 So one did. Okay. All right. So you'll get three minutes
6 to testify. Since you haven't been here before, you can just
7 go ahead and give us your testimony.

8 I mean, there was -- I guess -- this is, again, our
9 third time being here. And the first time, I think, was
10 three hours. The second time was two hours. And now maybe
11 this is going to be an hour.

12 And what I'm saying is that we heard a lot about --
13 and again, I don't know how much you know about regulations
14 or not. But, like, the third prong in terms of, like,
15 community impact and detriment to the public good, that kind
16 of thing, which you might speak on. I don't know. But
17 that's stuff that we had heard in previous hearings.

18 This hearing would've just been for the area
19 variance -- thank you -- the area variance that they're here
20 for. But regardless actually, now that I'm even thinking of
21 three. There's a third prong there, so it doesn't matter.
22 So just go ahead and give us your testimony as you see fit.
23 And there's three minutes on the clock, and you can begin
24 whenever you like.

25 MS. GINA VOGEL: I'm speaking in opposition to the

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1 variance requested by 3428 O Street under the corner store
2 provisions. Nabeel Audeh and I, Gina Vogel, are business
3 partners and the owners of Wisemiller's, a neighborhood
4 corner store located in an MU-3A zone at 1236 36th Street,
5 Northwest.

6 At 586 feet away, Wisemiller's is within 750 feet
7 of the subject property located at 3428 O Street. The
8 applicant is requesting a variance relief from the 750 foot
9 location restriction.

10 Wisemiller's is truly a neighborhood deli, and it's
11 been operating for over 68 years serving Georgetown
12 residents, Georgetown students and staff as well as the Holy
13 Trinity community. We have leased the building for our deli
14 and pay rent premium for our close proximity to Georgetown
15 University and the commercial zoning that allows us to
16 operate business as a matter of right.

17 We entered into the lease agreement with the
18 explicit understanding that under the District zoning rules,
19 no other prepared food shop or corner store could operate in
20 our immediate Georgetown University area due to the minimum
21 distance restrictions in the commercial zone.

22 Our economic vitality is predicated on this
23 protection afforded to us under the law. The vitality of the
24 zone depends on businesses like ours, and we depend on the
25 protection of the law to keep that symbiotic relationship

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1 working in the neighborhood's favor.

2 We strongly believe that granting this variance
3 would have a tremendous negative impact on our business.
4 When you walk around Georgetown, look at the vacant shops and
5 empty storefronts that used to have small shops owned by
6 friends and neighbors. Entrepreneurs who lost their dreams
7 to skyrocketing wholesale costs, the difficulties of
8 competing with large wealthy chains, and the sky high rents
9 that come with a Georgetown address.

10 Despite all these challenges, we have stayed the
11 course hoping this weathered hard time too should pass.
12 Putting this new storefront within 600 feet of both Saxbys
13 and Wisemiller's will be an unfair burden, one that we may
14 not be able to withstand, and which is also unlawful by
15 statute, a statute we have always relied upon.

16 Please take the little guy into consideration in
17 this process and protect us as the statute was meant to do.
18 Thank you.

19 BZA CHAIR HILL: Okay. Thank you. Ms. Vogel? Mr.
20 Moy, could you put three minutes back on the clock. Thank
21 you.

22 MS. CHRISTINE VOGEL: So I'm giving the testimony
23 of Mr. Audeh who's not feeling well today. I work for him,
24 and he asked me to present. I could say the same thing
25 myself as someone who works for him. Can I do that?

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1 BZA CHAIR HILL: Can they -- and I'm just asking
2 OAG.

3 MS. CHRISTINE VOGEL: Okay.

4 BZA CHAIR HILL: No, no, no. I'm just trying to
5 ask. It doesn't matter. Actually, can you turn off --
6 thanks so much. Thanks, Ms. Roth. So --

7 MS. CHRISTINE VOGEL: He's present.

8 BZA CHAIR HILL: -- the -- no, I understand. I'm
9 saying that she can testify on behalf of somebody else?

10 MS. CHRISTINE VOGEL: I'm reading his statement.

11 MS. CAIN: Really, she shouldn't be providing
12 testimony of someone -- if they're not here for the Board to
13 ask questions of them.

14 BZA CHAIR HILL: So you -- that's okay.

15 (Simultaneous speaking.)

16 BZA CHAIR HILL: So go ahead and testify on behalf
17 of yourself. Okay. Go ahead and read that statement --

18 MS. CHRISTINE VOGEL: Just read this?

19 BZA CHAIR HILL: -- on behalf of yourself. If we
20 have any questions for it and you have to ask somebody else,
21 I guess we'll figure out that one too. So go ahead.

22 MS. CHRISTINE VOGEL: I can probably answer the
23 questions.

24 BZA CHAIR HILL: Sure.

25 MS. CHRISTINE VOGEL: Thank you.

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1 BZA CHAIR HILL: Sure.

2 MS. CHRISTINE VOGEL: So Mr. Audeh is also the
3 owner of 3500 O Street, Northwest which houses Saxbys Coffee
4 Shop. He's also part owner of Wisemiller's and is directly
5 across the street from the subject property and proposed
6 location of Call Your Mother.

7 So the applicant also requires the waiver of the
8 requirements of U 254.6(b) stating that a corner store cannot
9 be within 500 feet of another corner store, use defined as
10 an eating and drinking establishment.

11 So there may be some disagreement about what a
12 corner store is. But we're on the corner. We're a store,
13 and we perceive ourselves as an eating and drinking
14 establishment to be a corner store. And it's clearly within
15 500 feet.

16 As a landlord, he's deeply concerned about the
17 adverse effect that this would have on his tenant and their
18 ability to uphold their leasehold obligations, causing undue
19 hardship to both tenant and landlord. Parking near our
20 businesses which is already near to impossible would be
21 dramatically affected by a chain retail food business.

22 Further, we believe Saxbys would suffer a negative
23 impact given that CYM would be selling the exact same menu
24 items. Granting the variance for CYM will certainly directly
25 negatively impact the economic viability of our businesses.

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1 According to the zoning regulations, the
2 requirement that a corner store cannot be within 500 feet of
3 another corner store cannot be waived unless the applicant
4 provides evidence that they would be, A, neighborhood
5 serving, and, B, not negatively impact the economic viability
6 or vitality of an area zoned MU or NC that's closer than 750
7 feet to an R-20 zone or 500 feet to any other R zone.

8 We strongly believe that granting this variance
9 would have a tremendous negative impact on our business and
10 therefore entreat denial of the requested variance which we
11 would oppose the granting of the use variance as well for the
12 same reasons highlighted above.

13 BZA CHAIR HILL: Okay. Thank you, Ms. Vogel. Is
14 it Ms. Emad? If you please, go ahead. Three minutes on the
15 clock, Mr. Moy. Thank you.

16 MS. EMAD: All right. I will try to be very brief.
17 Thank you for the opportunity.

18 As I said earlier, I am the next door neighbor to
19 the proposed bagel shop. And I am very excited for them to
20 come to Georgetown.

21 But I do have a lot of concerns that I shared with
22 my neighbors on the street. The biggest one is that it
23 started with a change to a transom window, and fast forward
24 several months later, now I understand that it might develop
25 into a full-fledged restaurant.

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1 And I do have concerns with that. And if you do
2 grant them the variance, it will stay with the building. So
3 when the bagel shop may leave at one point, who's to stop a
4 fast food store to come, operation to come into the building?

5 We did have a gas leak next door. And that's how
6 we found out that you were installing the --

7 BZA CHAIR HILL: Yeah, that's okay, Ms. Emad. Just
8 talk to us up here. Okay?

9 MS. EMAD: Okay.

10 BZA CHAIR HILL: That's okay.

11 MS. EMAD: So that is my concern. Basically the,
12 what might develop later. If it's a regular use of a bagel
13 shop where they hand bagels over, I have no objection to
14 that. But if it's much more than that, I do have objections.

15 BZA CHAIR HILL: Okay. All right. Thank you. All
16 right. Does the Board have any questions for the witnesses?

17 Ms. Emad, if you wouldn't mind turning off your
18 microphone there? Okay. Okay. All right, thank you all
19 very much. Oh, I'm sorry. Does the Board have any question
20 -- I'm sorry, does the Applicant have any questions for the
21 witnesses?

22 MR. SULLIVAN: No. Thank you.

23 BZA CHAIR HILL: Does the Party Status have any
24 questions for the witnesses? You have to state no in the
25 microphone.

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1 MS. ROTH: No. Thank you.

2 BZA CHAIR HILL: Okay. Great. All right, thank
3 you all very much. Okay, there was somebody wishing to speak
4 in support. If you can just come on over and have a seat.
5 And if you could please state your name for the record?

6 MR. MATHEWS: It's Christopher Mathews.

7 BZA CHAIR HILL: And also your address, Mr.
8 Mathews?

9 MR. MATHEWS: 1553 33rd Street.

10 BZA CHAIR HILL: All right, Mr. Mathews, you also
11 have three minutes. You can begin whenever you like.

12 MR. MATHEWS: Okay. By the way of background, I'm
13 on the Board of the Citizens Association of Georgetown,
14 although I'm not speaking for that organization today.

15 However, I was very actively involved in the zoning
16 subcommittee that worked with the Office of Planning in the
17 adoption and the drafting of the corner store rules that are
18 at issue today.

19 And just the general residential zoning rewrite.
20 I personally was very excited about the corner store rules.
21 I thought they would be great for the neighborhood.

22 And so I kept a keen interest in it. When I heard
23 that the Applicant needed a zoning relief, I wondered why
24 they didn't have that, and then I found out about this 750
25 foot rule.

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1 I think it's important to understand that this C23,
2 or I'm sorry, the MU3 is an anomaly. It's originally whole
3 stretches of West Georgetown were zoned commercially. That
4 got chewed back.

5 For some reason this one small little block was
6 left over. And so that's still zoned commercial. When we,
7 the Citizens Association, were pushing for changes to the
8 corner store rule, the concerns were over the density, which
9 is addressed by the 500 foot rule.

10 The 750 foot rule was always about bleeding
11 commercial activity from M and Wisconsin into the
12 neighborhood. That's something that the Citizens Association
13 and other groups have been concerned about going back to the
14 '20s and '30s, when the map started chewing away at the
15 commercial district.

16 It was not the concern that there would be
17 commercial uses in corner stores, particularly historic
18 corner stores like 35th Street that are functionally and
19 historically identical to 36th Street where this commercial
20 zone is.

21 They've both been used for commercial. They're
22 commercial buildings. There's really, it's a distinction
23 without a difference between why this one remained a
24 commercial MU3, and 35th Street wasn't.

25 So, that was not the intent of the corner store

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1 rules. And that was not the intent of the 750 foot
2 provision, as was specified for the R20 zone.

3 And I think the Board would be very on firm ground
4 granting the area variance based upon the fact that that's
5 not -- that wasn't the intent of the rule in the first place,
6 from my understanding. That's it.

7 BZA CHAIR HILL: Okay. Does the Board have any
8 questions for the witness?

9 COMMISSIONER SHAPIRO: Nope.

10 BZA CHAIR HILL: Does the Applicant have any
11 questions for the witness?

12 MR. SULLIVAN: No.

13 BZA CHAIR HILL: Does the Party Status have any
14 questions for the witness?

15 MS. ROTH: I'm sorry, but yes.

16 BZA CHAIR HILL: Sure. What's your question?

17 MS. ROTH: Okay. So Mr. Mathews -- should I ask
18 him directly?

19 BZA CHAIR HILL: Yeah.

20 MS. ROTH: Okay. So Mr. Mathews, how do -- can you
21 explain how you know what the intent of the rules were?

22 MR. MATHEWS: I can say what the discussions over
23 with the Citizens Association with the Office of Planning,
24 Jennifer Steingasser and other at the time were.

25 We specifically made a concern about the density of

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1 corner store rules. Which -- of corner stores, which they
2 are not seeking a variance from. Which is the 500 foot rule.

3 Any concern that was for this proximity to the
4 commercial zones, it wasn't called MU at the time, just the
5 C1 and C2 or whatever it was, was all about M Street and
6 Wisconsin Avenue. It was never --

7 BZA CHAIR HILL: I'm just going to interrupt you
8 one second, Mr. Mathews. I appreciate your answer.

9 Ms. Roth, he's not testifying as an expert witness
10 or anything. He's just somebody who's in the public making
11 some comments. But, do you have any other questions?

12 MS. ROTH: I do. Were you a member of the CAG in
13 2016 when they voted unanimously to support the 750 foot
14 rule, knowing that the 36 blocks of stores, which is
15 classified as MU3, existed and has existed as a commercial
16 zone for forever?

17 MR. MATHEWS: I will say that as a board member I
18 voted for the entire package of the residential zoning that
19 was not dealt with in any particular way. It was an overall
20 package.

21 And yes, I personally voted for it. I have to say,
22 I consider it an oversight that I was understanding that the
23 750 foot rule was just for Wisconsin and M Street.

24 It wasn't my understanding at the time that 30 --
25 this tiny little block on 36th Street, and the block on P

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1 Street and 26th Street, would be -- would count for
2 commercial for these purposes.

3 But yes, I voted for it. And I was on the board
4 at the time.

5 BZA CHAIR HILL: All right. Okay. Thank you.
6 Thank you, Ms. Roth. All right. Okay, so if you want to --
7 thank you very much, sir.

8 If you, Ms. Roth, want to bring up the people that
9 you had with you before, we're back -- we're back on. Okay.

10 So, let's see, Mr. Sullivan, like a lot of what I
11 got, and I don't even know what to do now since Mr. Savage
12 isn't here, right.

13 But when Mr. Savage was going through kind of his
14 discussion, can you, Mr. Sullivan, explain why the provisions
15 of U254.14(b)(1) are applicable?

16 Because the Board understands that these provisions
17 only apply to the grocery store, corner stores described in
18 U254.13. Do you follow that?

19 MR. SULLIVAN: I think so.

20 BZA CHAIR HILL: Okay.

21 MR. SULLIVAN: And maybe tell me if you think I'm
22 not. But I think at a higher level, he's saying we don't
23 meet one of the requirements of the corner store regulations.
24 Which is not before the Board of course, because I'm
25 self-certifying to that.

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1 But the specific requirement on the 500 foot rule
2 relates to corner stores. I had another situation with the
3 Zoning Administrator, and this is why I know this
4 specifically, where he delineated between something that is
5 a store on a corner, and a corner store approved under the
6 2016 regulations.

7 And whether the fact that you perceive yourself as
8 a corner store, or if you're on a corner, doesn't make you
9 a corner store under the regulations, under Section 250 --
10 U254.

11 And so -- so that, which again is just a matter of
12 requirements that we think we need. It is up to the Zoning
13 Administrator, and I was comfortable that we didn't need
14 relief from that because of the information that I had on
15 that.

16 BZA CHAIR HILL: Okay. All right. So -- sure, go
17 on, Mr. Shapiro.

18 COMMISSIONER SHAPIRO: Thank you. So, can you --
19 I just want you to address this issue around who you are
20 representing and who the Applicant is.

21 Can you clarify that? Because we've heard two or
22 three times that the Party in Opposition is -- has a question
23 about who the Applicant is.

24 MR. SULLIVAN: All right. So the Applicant is the
25 building -- technically the Applicant is the building owner.

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1 The Applicant is represented by myself. The
2 Applicant is also represented by his tenant. So I represent
3 the tenant and I represent the building owner, who is the
4 Applicant.

5 And the tenant is also representing the Applicant
6 and the person of the building owner as well. And I think
7 that's all in the record.

8 And that's -- and I have some, I don't know if it's
9 -- I don't want to do more than answer your question, because
10 I have some rebuttal testimony I think that might be
11 responding to some of the comments about that.

12 COMMISSIONER SHAPIRO: You can certainly save it
13 for rebuttal, but I appreciate that clarification.

14 BZA CHAIR HILL: Okay. All right. Okay, just the
15 Office of Planning. I mean, in terms of the question that
16 I asked Mr. Sullivan, that is the way you also perceive it.
17 Is that accurate?

18 MS. MYERS: I'm sorry. Can you repeat the
19 question?

20 BZA CHAIR HILL: So, Mr. Savage went over why the
21 provisions -- well, I was trying to explain why the
22 provisions of U254.14(b)(1) are applicable.

23 The Board understands that these provisions only
24 apply to the grocery store, corner stores described in
25 U254.13. And then Mr. Sullivan gave an answer.

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1 MS. MYERS: I just want to, you know, I don't want
2 to sound like I'm just repeating myself. But, our position
3 is, is that this is self-certified.

4 And the Applicant has said that they are able to
5 comply with the matter of right. So we just didn't go any
6 further than that.

7 We strictly looked at the location and just the
8 issue of the 750 feet.

9 BZA CHAIR HILL: Okay. So back to the 750 feet
10 again. There has been -- and I'm -- I get confused sometimes
11 when we're talking about the 500 feet. So it's the more than
12 one within 500 feet?

13 MS. MYERS: They aren't even asking for relief from
14 the 500 feet section. They are only asking for relief from
15 the 750 section.

16 So that's just the MU3 properties, that's the only
17 ones that, because they are less than 750 feet way from the
18 MU3 properties. And the regulations say that you can't be,
19 I think -- I believe it says 750 or more is what you are
20 supposed to do from proximity to an MU property --

21 BZA CHAIR HILL: Right.

22 MS. MYERS: As well as some other zones.

23 BZA CHAIR HILL: Again, back to the U254.6(g).

24 MS. MYERS: Exactly.

25 BZA CHAIR HILL: Okay. All right. Okay. Let's

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1 see, so, I think that what we're going to do now, is I don't
2 know what we still need to hear. Okay. I'm trying to do a
3 few things. One is, make sure that everyone's had an
4 opportunity to kind of process and be heard.

5 And then also, I know that this has gone on for a
6 while. And if I were you, Mr. Dana, I would be looking for
7 a hipper area to move into.

8 But, you know, I think that at this point in time,
9 I'd go ahead and let's see, if you want to, Mr. Sullivan, res
10 -- I'm trying to see what information you haven't had a
11 chance to look at and possibly respond to.

12 And then also, what Ms. Dana maybe you -- oh, I'm
13 sorry. I'm sorry. I apologize. Ms. Roth, what you haven't
14 had an opportunity that you think to -- I'm just trying to
15 understand if there's any submittals that we still need to
16 look at?

17 And then have a possible continued hearing based on
18 the additional submittals. And do you, Mr. Sullivan, have
19 any idea of what you might want to reply to? You don't know
20 yet, correct?

21 MR. SULLIVAN: I have an idea, yes.

22 BZA CHAIR HILL: Okay.

23 MR. SULLIVAN: I could do that today.

24 BZA CHAIR HILL: Okay. Oh, okay. Well, okay. And
25 Ms. Roth, do you have an idea as to what you think you might

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1 want more time to respond to?

2 MS. ROTH: One area I think you hit upon yourself,
3 is the understanding of the definition of the corner store.
4 To know whether or not a waiver of what's called the Saxby's
5 Rule, is necessary.

6 The Applicant does not believe that that is the
7 case. But we do.

8 BZA CHAIR HILL: Right. But again --

9 MS. ROTH: And so part of it is, is how that is
10 interpreted in the Regulations. It says a corner store as
11 defined as an eating and drinking establishment.

12 It doesn't say a corner store as defined by the
13 regulations of 2016.

14 BZA CHAIR HILL: That's fine. And I'm just trying
15 to also understand in that that's their -- they're
16 self-certifying that. Right?

17 So that's not even before us. Right, if they don't
18 get -- if they can't -- if they can't comply with what is a
19 corner store, they won't be able to become a corner store.
20 Right?

21 So that's not what's before us. What's before us
22 is again, the area variance from the 750 square feet to that
23 MU3 zone. Right? And so that is where the Office of
24 Planning is here. So, I'm just trying to make sure that we
25 focus whatever additional information -- I don't you to waste

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1 your time, right? To then, to actually talk to whatever it
2 is, you know, the Office of Plan -- the Office of Planning
3 has submitted a supplemental report. You guys haven't, I
4 guess, responded to their supplemental report. I suppose you
5 could give us some kind of filing, right?

6 And now I'm kind of looking to the Board. I don't
7 know what would be appropriate from the -- now the Party
8 Status person, right?

9 And then I guess Mr. Sullivan can respond to that.
10 I'm now just kind of talking to myself. Go ahead Mr.
11 Shapiro.

12 (Off mic comments)

13 BZA CHAIR HILL: And I'm not talking about this.
14 Hold on. We're -- so what's left, just to let you know
15 what's left, you're going to have rebuttal Mr. Sullivan.
16 Okay?

17 And then you're going to have a little conclusion,
18 a small conclusion, Ms. Roth. And normally it's not within
19 the Regulations for the Party Status people to get a
20 conclusion. I always give a conclusion, just because I like
21 to hear a little bit of summary. And then Mr. Sullivan, you
22 can have your conclusion as well.

23 So instead of us figuring this out now, let's go
24 ahead and do the rebuttal. We'll do conclusion and
25 conclusion. And then we'll see where we get. Okay? So Mr.

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1 Sullivan, please go ahead and provide your rebuttal.

2 MR. SULLIVAN: Okay. And I'd like to ask Mr. Dana,
3 when you originally signed your lease, you intended that it
4 would be full -- for a full prepared food shop use, correct?

5 MR. DANA: Correct.

6 MR. SULLIVAN: And what are your concerns? And
7 what are the concerns of your landlord if that use is not
8 realized?

9 MR. DANA: We're concerned about the viability of
10 our long term business. We're not sure we'll be able to make
11 rent for the entire ten year lease.

12 Yes, we could break the lease for 100 thousand
13 dollars. But the total value of the lease is closer to a
14 million dollars. It's north of 840 thousand dollars.

15 So, the landlord would be out of that. And as
16 stated by our opposition, there are lots of vacancies. And
17 Wisemillers and Saxby's also talked about how the viability
18 of opening a shop is really tough in Georgetown.

19 So, the landlord would be worried about filling
20 that. And yes, they would get a lump sum for us to break the
21 lease. But over the ten year span, it doesn't come close to
22 filling the full value of the lease.

23 BZA CHAIR HILL: Okay. Mr. Sullivan, can you hang
24 on one second?

25 (Off mic comments)

1 BZA CHAIR HILL: Okay, sorry. I always -- the
2 process sometimes up here, I get a little bit confused about.

3 So Ms. Roth, I just see you writing some stuff
4 down. I just want to let you know, so this is rebuttal. So
5 what rebuttal is, and I'm not a lawyer, thank God, is just
6 that like, you know, you go ahead and like -- well I'm sorry
7 to all the lawyers in the -- I apologize profusely. I wish
8 I was a lawyer.

9 And so, if -- I don't remember, so rebuttal is just
10 basically they're now rebutting whatever had been said
11 before. Right? So, you're not going to have another
12 opportunity for questions to this. Okay? They're just
13 responding to everything that was provided testimony for.

14 And I'm sorry, you said you were a lawyer? Oh,
15 okay. You don't know. That's okay. I'm sorry.

16 MS. ROTH: Technically. But I actually teach at a
17 law school.

18 BZA CHAIR HILL: Okay. Okay. All right. So then
19 you know what rebuttal is then better than me. That's all
20 I was trying to get at.

21 So, Mr. Sullivan, you can continue with your next
22 item.

23 MR. SULLIVAN: Mr. Dana, one of the speakers today
24 was concerned about you converting the prepared food shop use
25 to a more intensive use like a restaurant use. Even if that

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1 were possible legally, what would that entail?

2 MR. DANA: My understanding is prepared food shop,
3 all you're allowed is toasters and microwaves. A restaurant,
4 you would have to retrofit. You'd have to put full scale
5 cooking into it.

6 Or a corner store as well, is only toaster and
7 microwave. There's no space or infrastructure to turn this
8 into a full scale restaurant. It's really hard, you know.

9 MR. SULLIVAN: That's all I have.

10 BZA CHAIR HILL: Okay. Great. All right. So, Ms.
11 Roth, you're going to have a couple of minutes for a
12 conclusion. Do you want to go ahead and tell us your
13 conclusions?

14 MS. ROTH: Sure. Thank you again. Okay. So,
15 first of all, we do not believe that the Applicant has met
16 the burden of proof if we just focus on even the two prongs.

17 There are no exceptional circumstances to the
18 building. Just being zoned for commercial use does not
19 create - does not create an exceptional circumstance.

20 And just because it's always been zoned that way
21 doesn't create any exceptional circumstance. In addition,
22 the Applicant argued that being within -- the unique
23 situation of being within the 750 foot rule of a small MU3
24 zone, again, does not create any exceptional circumstances.

25 The exceptional circumstances have to be unique to

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1 the specific property. And if that were the case, then every
2 single property that was within 750 feet of that MU3 zone,
3 would be considered to be, have exceptional circumstances.

4 Most importantly, we do not believe that the
5 Applicant has met the burden of proof of establishing any
6 practical difficulties.

7 That testimony today shows that -- well, we know
8 from previous testimony that the owner has a ten year lease,
9 is currently receiving rent.

10 And that Call Your Mother can open today as a
11 matter of right without granting any type of variance that
12 would set a precedent for the waiver of part of the very
13 zoning regulations that should protect the businesses that
14 you heard from, and the immediate neighborhoods -- in the
15 immediate neighborhood.

16 Wisemillers' testimony shows that there will be a
17 detriment to their business. That is specific in the -- in
18 U254, Section 15(b), it says that granting a variance should
19 not negatively impact the economic viability.

20 And you heard today from Wisemillers that it would
21 affect their economic viability. We again want to
22 distinguish between favoring Call Your Mother, and favoring
23 a variance.

24 Mr. Dana has theory -- has been theorizing, sorry
25 about that word, an economic difficulty, as opposed to

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1 proving one. And the appeals court actually does not allow
2 for speculation of that -- that that would happen.

3 He mentions the value of the ten year lease. This
4 assumes that the property owner would not be able to rent
5 that property to anyone else for ten years.

6 The property owner has never tried to rent --

7 BZA CHAIR HILL: Okay.

8 MS. ROTH: To rent that property to anyone else.

9 BZA CHAIR HILL: This was just a small brief
10 conclusion.

11 MS. ROTH: Okay.

12 BZA CHAIR HILL: This wasn't hearing testimony
13 again or taking testimony again.

14 MS. ROTH: Okay.

15 BZA CHAIR HILL: Do you have anything to add in
16 conclusion?

17 MS. ROTH: Just we respectfully submit that you
18 deny granting this variance.

19 BZA CHAIR HILL: Okay. Great. Thank you. Mr.
20 Sullivan?

21 MR. SULLIVAN: Thank you, Mr. Chair. I'll go back
22 to how we originally got here. Mr. Dana entered into a ten
23 year lease, which contemplated the full use of Call Your
24 Mother Bagels.

25 And by a mistake of the architect, specifically

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1 related to the 750 foot rule actually, they originally
2 believed they would fit under the corner store regulations,
3 and believed that the 750 feet was measured as you walk
4 rather than as the crow flies. And when they discovered that
5 it was as the crow flies, they didn't meet the requirement.
6 And therefore, that's the specific aspect of what we're
7 asking for relief from.

8 BZA CHAIR HILL: And Mr. Sullivan, --

9 MR. SULLIVAN: Yes?

10 BZA CHAIR HILL: Again, I love it, like you're the
11 attorney. And so, no new testimony. No new -- I haven't
12 heard that before also, in terms of the architect or what
13 have you.

14 MR. SULLIVAN: Oh, I'm sorry. I thought that had
15 been proffered.

16 BZA CHAIR HILL: That's okay. And if it -- maybe
17 it's in the record. I hadn't -- I mean --

18 MR. SULLIVAN: Understood. Understood.

19 BZA CHAIR HILL: Thanks.

20 MR. SULLIVAN: I'm sorry. So, then regarding the
21 area variance --

22 BZA CHAIR HILL: I'm trying to be fair. That's
23 what I'm trying to do. Right. Thanks.

24 MR. SULLIVAN: Thank you. So, regarding the area
25 of variance tests, we've got our information in there. We

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1 agree with the Office of Planning.

2 Of course, this relates to location. There are
3 several instances of exceptional condition. The opponents
4 say there are no exceptional conditions.

5 This Board has found on many occasions with
6 buildings just like this, and uses with a history and
7 configuration like this, that this is an exceptional
8 condition.

9 And I would add that in all those cases, that was
10 proving undue hardship. The standard is much lower in this
11 case. It's whether or not it's unnecessarily burdensome to
12 the property owner rather than an undue hardship.

13 So, we think we're -- there's plenty of evidence on
14 the record as to that exceptional condition and the practical
15 difficulty therefrom.

16 In closing, relating to prong three and the
17 impacts, they brought up impact on Saxby's. And seemed to
18 imply that Call Your Mother is a large chain. I believe
19 Saxby's has -- well, I won't add new evidence. I believe
20 they're a chain.

21 And finally, in all this, the only evidence that
22 I've heard of a potential adverse condition is the line.
23 That's what they base their whole case on, the line. And I
24 think they referred to it as human pollution in one instance.
25 And I think we've shown clearly that the line can be

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1 accommodated.

2 And I think what was most dispositive on that was
3 the ANC, the authorized ANC Commissioner's testimony about
4 how the line works at the Park View location. At a time when
5 the Applicant had no need, or no concern about looking good
6 or promising anything to a Board with discretionary approval.

7 So, I think that shows, and the other evidence we
8 submitted, shows that there wouldn't be any adverse impacts
9 from granting the relief. Thank you.

10 BZA CHAIR HILL: Okay. Thank you. All right. So,
11 what I guess we'll try to figure out now, and --

12 (Off mic comments)

13 BZA CHAIR HILL: Okay. So, we're going to figure
14 out what we're going to do here. And I'm going to lose my
15 -- or a Commissioner for a little while.

16 Let's just talk about this real quick. And so,
17 what do you think you might need Mr. Shapiro? Because what
18 I'm trying to figure out is what we might still collect from
19 either the Party Status person and/or the Applicant.

20 And then talk through a couple of other things.
21 But, what do you think Mr. Shapiro, you might need, if
22 anything?

23 COMMISSIONER SHAPIRO: It's the same issue. The
24 only thing that we're addressing is the area variance, the
25 specific 750 foot rule.

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1 And you know, extraordinary exceptional condition.
2 The two, the first two prongs of the variance test. I mean,
3 only things related to that, and we've heard a lot of
4 testimony about that.

5 Anything additional related to that that would be
6 helpful to put in the record, put in the record. But,
7 anything beyond that is extraneous and irrelevant.

8 BZA CHAIR HILL: Okay. So, Mr. Sullivan, I don't
9 know, and you guys, we're going to talk this through now.
10 And Mr. Shapiro, if I lose you, we'll deal you in.

11 Okay. So, I guess, I mean, Mr. Sullivan, what I'd
12 be interested in, I guess, is like just a summary. Again,
13 you can take look -- you can take a look at all of the
14 information that has been submitted by the Party Status
15 person, see if there's anything you think you need to add.
16 If you again, summarize again, just the first and second
17 prong of -- and the three prongs of the area variance.

18 I mean, we're now here for this area variance,
19 right? And then as I'm talking about this, you know, out
20 loud, is that Mr. Moy --

21 SECRETARY MOY: I'm here.

22 BZA CHAIR HILL: Yeah. Mr. Moy -- Mr. Moy, if then
23 there would be time for the Party Status to respond to that
24 particular filing and/or then whatever the Party Status --
25 I'm trying to figure out how this, you know, the Party Status

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1 person might submit something as well.

2 Then you will have an opportunity to respond as
3 well, Mr. Sullivan, I suppose. And now if we're -- I still
4 have my Zoning Commissioner here there.

5 I'm also just -- I don't know where this is going
6 to go. I don't know how we're going to vote on this. But
7 I'm also, part of all this is about just that there's --
8 there's always like there's, you know, there's different
9 appeals that happen.

10 And there's all kinds of things. And so just so
11 everyone knows, you know, we're just trying to have a very
12 thorough record here.

13 So, I don't know if Mr. Sullivan, you think there's
14 even any benefit or need to go back to the ANC. Right? Or
15 get a letter or something.

16 Because now, and it is -- this is the way that this
17 has been going. And I know again that you all are a small
18 business. And you're here for a small business.

19 At the very least you'd like to know what's going
20 on one way or the other. And so and the community would like
21 to know what's going to happen to them one way or the other.

22 But, I don't know if since this has been changed,
23 if you think we need -- you need to do something with the
24 ANC? I'm asking you Mr. Sullivan.

25 MR. SULLIVAN: No. I don't think we need to hear

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1 anything further from the ANC. And well, in particular if
2 it affected our timing.

3 But if it wasn't affecting our timing, then we
4 probably would ask them to submit a further affirmation.
5 Which I think they've done twice.

6 BZA CHAIR HILL: Right. I mean, they came -- they
7 came and presented. Right? And they came and presented for
8 basically what is the same criteria. Right?

9 And you guys also in terms of the detriment to the
10 public good, I mean, you had submitted hours from, I think
11 it was nine to three? Something like that. Or was it --

12 MR. SULLIVAN: Seven to three.

13 BZA CHAIR HILL: Seven to three. And then, you
14 know, we had talked about the line and all these things. So,
15 I don't necessarily know if -- well, I would not think that
16 the ANC would have any different opinion as to what is moving
17 forward.

18 And so I don't know, it's more kind of like the
19 Board. And then, you know, what OAG thinks, I supposed.
20 But, we can contemplate that as well.

21 MR. SULLIVAN: The ANC has authorized a
22 Commissioner to speak for them in furtherance of their
23 resolution. So, it maybe something from that authorized
24 person would be enough.

25 BZA CHAIR HILL: Okay. So, if you can try to get

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1 something from that authorized person, right? That outlines
2 the area variance, right? And they don't believe anything's
3 changed. Right?

4 Then -- yeah. So, Mr. Dana, I'm just kind of
5 curious. Like you guys -- you guys aren't open now, correct?

6 MR. DANA: Correct.

7 BZA CHAIR HILL: And so -- and obviously you would
8 have liked to have had a decision one way or another by how.

9 And you can see that, I mean, we're -- this is
10 going on because we need to do all of our due diligence.
11 Right?

12 Because if this were to continue to go on in
13 different -- anyway, so what is it currently doing to -- I
14 mean, you guys are currently paying rent on space you're not
15 using?

16 MR. DANA: Correct.

17 BZA CHAIR HILL: Okay. And so the -- right. Okay.
18 So, --

19 VICE CHAIRPERSON HART: I don't have a whole lot to
20 --

21 BZA CHAIR HILL: You don't have -- want anything
22 else? Do you need anything else?

23 VICE CHAIRPERSON HART: No. I don't think so. I
24 know that you've kind of -- we may be getting some responses
25 to something that was submitted to us fairly recently, but

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1 I didn't look for anything in addition to that.

2 BZA CHAIR HILL: Okay. Is there -- okay. So, Ms.
3 Dana, just what is it that -- I'm sorry. I'm so, so sorry.
4 Ms. Roth. No, I know it's not even -- it's just, I don't
5 know why I -- Ms. Roth. It's the -- I don't know why.

6 So, Ms. Roth, the -- what is it that you think you
7 guys still need to submit?

8 MS. ROTH: Again, it's a little bit of a loaded
9 question. Because just being granted Party Status this
10 morning really puts me at a disadvantage to answer that
11 fully.

12 I know that Mr. Sullivan, just before in his
13 conclusion rebuttal, mentioned that there was -- there was
14 case law regarding exceptional circumstances --

15 BZA CHAIR HILL: Okay. I -- let me -- let me stop
16 you for a second. Again, no -- I just -- I mean, we granted
17 Party Status to be thorough. Right? To be helpful.

18 Not to be -- to make sure that you had an
19 opportunity to speak. Okay. And I believe clearly that you
20 guys have had all an opportunity to speak. Right.

21 And that -- I've done this for four years. And you
22 guys had a lot of opportunity to talk. Okay. And you've had
23 a lot of opportunity to present your case. Okay.

24 So now you've been granted Party Status. Right.
25 And so, if you wanted to go ahead -- and there's like, you've

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1 already submitted like three briefs. Right?

2 And so -- or somebody submitted another brief the
3 other day that we read. Okay? And so if you want to go
4 ahead and submit something into the record, okay, that you
5 believe you need to submit, okay, I'll go ahead and leave the
6 record open for your submission. Okay?

7 And then Mr. Sullivan, you'll have an opportunity
8 to look at that and see if you have anything you want to
9 respond to, I guess, about that. Right.

10 And then if you want to go ahead and look at the
11 ANC Commissioner, and see if you can get something from them,
12 right, or the ANC, and/or determine whether or not you think
13 you need anything from them or not.

14 If you don't need anything from them as well, we
15 can also continue to probably deliberate without something
16 from them. I'm just not clear if it's tighter for your
17 Applicant or not, to have something from the ANC. Right.

18 And then if you did want to respond to -- when you
19 responded to whatever the Party Status person gives us, if
20 you want to also then give us a summary in terms of like, you
21 know, just a summary as to what you think, how you're meeting
22 the area variance again.

23 I mean, you have -- or you don't have to --
24 actually I take that back. Because I don't want the
25 Applicant to necessarily --

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1 If you need to respond to anything the Applicant
2 submits too, you're fine. And so, what would the -- what
3 would the time line be on that Mr. Moy then here?

4 COMMISSIONER SHAPIRO: I just -- I'm -- I just want
5 to play devil's advocate a bit. Because as I hear you talk,
6 Mr. Chair, I feel like we are going to receive essentially
7 the same round of information again.

8 Because I'm not -- I'm not -- I'm still not hearing
9 what additional information folks are looking to put in the
10 record.

11 BZA CHAIR HILL: That's good. I'm just giving the
12 -- I don't want later on down the line, for the Party Status
13 party to claim that they didn't have a fair -- that they
14 didn't have appropriate time to give what they wanted to give
15 us. Right.

16 And so, if you want -- I want to get something from
17 the Party Status party so that they have the opportunity to
18 submit something. And then they can't claim that they didn't
19 have the opportunity to submit something.

20 So that's number one.

21 COMMISSIONER SHAPIRO: All right. That's great.
22 Thank you.

23 BZA CHAIR HILL: Okay. So if we get to that point,
24 then how long, Ms. Roth, do you think you guys need to submit
25 something to us?

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1 MS. ROTH: It has been a collective effort. And
2 this is regarding everyone else has. And that's one of the
3 reasons why Mr. Savage is gone. He had a meeting that he
4 couldn't miss. So, you know, a minimum of a week. We all
5 have other responsibilities.

6 BZA CHAIR HILL: Okay. So Mr. Sullivan, I don't
7 know how we're going to end this. This is the problem that
8 I'm now running into as well.

9 You know, we have the holiday now. And so the
10 holiday is a three week break. Right. And this
11 unfortunately, also for your Applicant, is of benefit to your
12 Applicant in terms of it being a tight record.

13 And that's the problem that we're up -- I'm also
14 having. And so, our last hearing is next week. Right. And
15 so, if you guys -- I don't even know how you can get back
16 here by next week.

17 Like you'd have to then-- I'd have to get
18 something, and Mr. Moy, I don't know --

19 SECRETARY MOY: Mr. Chairman, to help you, I'm
20 looking at, because I heard the words ANC. Because according
21 to my notes, they meet the third Thursday of the month. If
22 the Applicant was going to go to the ANC, so that's a fact.

23 So if that was needed to occur, then I would
24 suggest that we're going to a decision for the Board, a date
25 of January 29. And I would work back from there.

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1 If you want it sooner than that, then it would take
2 the ANC out of the loop possibly.

3 BZA CHAIR HILL: Okay. So then if that happens
4 then, if -- and I really, I feel bad for everybody. Okay.
5 You know, I wish that we could get this resolved, you know,
6 faster.

7 So, the -- if the Party Status party submitted
8 their information into the record a week from now, that would
9 be the 18th. Then we're off, right?

10 And then you guys would submit whatever you wanted
11 to submit Mr. Sullivan, from their responses. Right. And
12 then also if you wanted to get something from the ANC or I
13 guess what have you. And then we'd be back here on the 29th.

14 MR. DANA: Of January?

15 BZA CHAIR HILL: Of January. And then, I guess the
16 only upside, is that I think we could probably, I mean, we
17 could --

18 (Off mic comments)

19 BZA CHAIR HILL: Okay. So we would make it a
20 meeting. Okay. So we would meet on the 29th to come to a
21 decision.

22 MS. CAIN: Mr. Chairman?

23 BZA CHAIR HILL: Yeah?

24 MS. CAIN: I recommend continuing the hearing just
25 in case there are any additional questions that the Board

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1 wants to ask of any of the filings that come in. You may
2 not. But just procedurally, I think it's cleaner to continue
3 it at this point.

4 BZA CHAIR HILL: Okay. All right. So OAG is
5 again, being in an abundance of caution, giving us the
6 opportunity to have a continued hearing.

7 And so you, Mr. Sullivan, might have been here
8 anyway. And you guys are welcome -- well, yeah. That's
9 right. You might have been here anyway.

10 So, we'll have a continued hearing on the 29th.
11 However, if we don't have -- if we get all the information
12 we need, we can probably come to a decision on the 29th. You
13 know.

14 And so -- okay. So that at least is leaving it
15 open out of an abundance of caution. So, does everyone
16 understand what's happening?

17 Ms. Roth? No, I mean, on Fri -- so, you have a
18 week to submit whatever you want to submit to us. Okay.

19 MS. ROTH: But, so that's a hard deadline for us?
20 Because if it's not until the 29th, I had mentioned we would
21 need at least a week trying to be considerate of the
22 Applicant and the fact that they're trying to run a business.

23 But, it doesn't -- if it's not until the 29th, are
24 we bound by December 18 as a deadline to submit something?

25 BZA CHAIR HILL: Okay. Hold on. I'm just looking

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1 at my calendar. So -- right. So you can -- I mean, I guess
2 you can submit it by the 27th.

3 Mr. Moy, I'm just looking at calendars too, right.
4 And then -- I mean, Mr. Sullivan, do you have a calendar
5 there? Like when do you think you need -- I mean, we're not
6 coming -- nobody's going to be here. So, when do you think
7 you need the information by so that you can work with it?

8 MR. SULLIVAN: When would it be due if it's the
9 29th?

10 BZA CHAIR HILL: If it's due -- I would say on the
11 27th it would -- oh. Oh, when would your information to us
12 be due?

13 MR. SULLIVAN: Yeah, when would my response be due?

14 BZA CHAIR HILL: When is the ANC meeting perhaps?
15 The third --

16 MR. SULLIVAN: It's January 3rd or 2nd I believe.
17 Wait --

18 SECRETARY MOY: It's the third Thursday of the
19 month. If that holds through over the holiday, I'm not --
20 I don't know if that --

21 BZA CHAIR HILL: Oh, so it would be the 16th.

22 SECRETARY MOY: It would be the 16th.

23 BZA CHAIR HILL: So we could be back here on the
24 22nd then.

25 MR. SULLIVAN: Okay. Their December meeting, I

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1 think they usually hold the first week in January.

2 BZA CHAIR HILL: So then -- wait a minute. So then
3 they're going to hold their first -- I told everybody we were
4 going to lunch after this, right?

5 So, like you all don't have to hang out. Okay.
6 So, I don't know, Mr. Shapiro just told me he's out of the
7 country on the 22nd. So, are you out of the country on the
8 15th?

9 COMMISSIONER SHAPIRO: No.

10 BZA CHAIR HILL: Okay. Mr. Moy, are we back on the
11 15th?

12 SECRETARY MOY: Yes. We are, sir.

13 BZA CHAIR HILL: Okay. So if we could get back on
14 the 15th, then that ANC is going to meet on the 2nd?

15 MR. SULLIVAN: I don't think it's the 2nd. It
16 might be the 6th. If they have that, a January meeting. But
17 I don't know for sure. It's not on their -- it's not on
18 their website right now.

19 BZA CHAIR HILL: Mr. Moy, since I'm not supposed to
20 be doing scheduling, I'm going to say, if we try to get them
21 back here on the 15th, can you try to work out some dates
22 here out loud, and see if they can work with it?

23 SECRETARY MOY: Sure. I can do that. Okay. So,
24 I'm going to work backwards here. So, we have a continued
25 hearing on January 15. Okay.

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1 And I'll come back to the Applicant's response to
2 the filings by the Party Status and the ANC, if any at all.
3 And I heard the Chair say that the Party Status could make
4 their filing by January 27. Or would you prefer a later
5 date?

6 BZA CHAIR HILL: Well, now if we're -- I mean, I'm
7 working back now from the 15th.

8 SECRETARY MOY: December --

9 BZA CHAIR HILL: Right. It was a week from day was
10 something that we had originally discussed. And I'm just
11 trying to make sure everybody has enough time to get
12 everything back to us by the 15th.

13 SECRETARY MOY: Okay. So, -- okay, let me start at
14 the beginning then. The Board asked for a filing from the
15 Applicant, which includes the summary of the prongs, the
16 various prongs as well as you pursuing an ANC filing.

17 BZA CHAIR HILL: Yeah, I'm sorry Mr. Moy. Now I'm
18 clarifying again. We had asked for something -- I know I had
19 originally asked for something from the Applicant.

20 I think the Applicant has their information in the
21 record in terms of how they're making their case. I was
22 asking for something from the Party Status, so they have an
23 opportunity to submit something.

24 And then having Mr. Sullivan have an opportunity to
25 respond to that submittal, as well as anything if they wanted

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1 to, from the ANC.

2 SECRETARY MOY: Okay. Well, that clarifies it for
3 me then. So the first filing then would be from the Party
4 Status.

5 How much time did you say that you need? You
6 thought a week was too short for you?

7 MS. ROTH: We were trying to be considerate to the
8 Applicant in knowing that they -- I don't believe that
9 they're actually ready to open yet, given the construction
10 still. But the point is, is that we don't -- we're not
11 trying to drag this on. But we do need time given --

12 SECRETARY MOY: That's fine. That's fine. We're
13 -- so --

14 MS. ROTH: -- that it's a collective effort. And
15 there are holidays coming up.

16 SECRETARY MOY: Yeah.

17 MS. ROTH: So, sometime in January. If we're going
18 to meet on the 15th, you know, could we, you know, have
19 something by January 10, which is that Friday before.

20 BZA CHAIR HILL: Yeah. That's way too close.

21 MS. ROTH: Okay. So how about the week before?

22 BZA CHAIR HILL: Now if we do -- if we do the 3rd,
23 Mr. Sullivan, what does that do to you? Because you don't
24 know when the ANC -- if they submit on the 3rd, does that
25 give you enough time?

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1 MR. SULLIVAN: Their submittal on the 3rd?

2 BZA CHAIR HILL: Yeah.

3 MR. SULLIVAN: I mean, I'd like -- sure, I'd like
4 more than that. And I think they have plenty of time. They
5 originally stated one week, and now we're -- they're getting
6 three weeks.

7 BZA CHAIR HILL: Okay. So if we get it on the
8 27th, okay. Then that gives any time also -- okay. So,
9 we're going to get submittals from you guys on the 27th.
10 Okay. Of December. Okay.

11 So that's two and a half weeks. No. Yeah. That's
12 two and a half weeks. And so then if we get submittals, Mr.
13 Moy, from the Party Status by the 27th, can you take it from
14 there for me?

15 SECRETARY MOY: Sure. Sure. So, the Party Status
16 files -- so you need more time than by December 27? How
17 about Monday, December 30?

18 That would give you another additional weekend.

19 BZA CHAIR HILL: Okay. All right. So, --

20 SECRETARY MOY: Okay. So it's December 30, which
21 is a Monday. And then for the Applicant to respond by, can
22 you do that within a week? Or do you need a week and a half?

23 MR. SULLIVAN: So they get three weeks and we get
24 one week. And after we're submitting --

25 BZA CHAIR HILL: I'm just still talking about --

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1 MR. SULLIVAN: Brief for brief.

2 BZA CHAIR HILL: So the 10th. And hello, hello
3 God.

4 MR. SULLIVAN: I think I would like two weeks would
5 be nice. I'm just --

6 BZA CHAIR HILL: I swear, it's like it's a freaking
7 show.

8 MR. SULLIVAN: -- I don't know what it's about.

9 BZA CHAIR HILL: So, okay. And I'm suddenly an
10 idiot too. All right. So, --

11 SECRETARY MOY: One, two, it's two weeks. That
12 would take us Mr. Chair to Monday, January 13. And you're
13 going to have a continued hearing on the 15th.

14 You would have two days to review all the
15 materials. Is that right?

16 MR. SULLIVAN: We can do it on the 10th. Or if
17 that --

18 BZA CHAIR HILL: If you can get it to us by the
19 10th, that would be helpful. Then we'd have the weekend.

20 MR. SULLIVAN: Okay.

21 BZA CHAIR HILL: Okay.

22 SECRETARY MOY: That would be better. So the
23 Applicant's response with their materials by Friday, January
24 10. The ANC and any other parties meet, what was that date?
25 Monday, December 30, and then the continued hearing on the

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1 15th of January.

2 BZA CHAIR HILL: Yes. Okay. I'm sorry, but I
3 haven't had any lunch. And I really got to go get some
4 lunch.

5 So, all right. Is there any more questions?
6 Everybody kind of knows what's going on? All right. Great.

7 So, let's see, then you all have a nice holiday and
8 New Year. And we'll see you next year. And we're going to
9 go ahead and take lunch.

10 We'll be back here at 2:30. 2:30. Thank you.

11 (Whereupon, the above-entitled matter went off the
12 record at 1:42 p.m. and resumed at 2:42 p.m.)

13 BZA CHAIR HILL: All right, Mr. Moy, let's start
14 again. And let's -- Yeah, let's start again.

15 But go ahead and bring that case back up that we
16 had, the drawings that we wanted. I think it was 19978.

17 SECRETARY MOY: All right. Thank you, Mr.
18 Chairman. So, for the record the Board is back in session
19 after its lunch recess.

20 And the Board is going back to complete the
21 testimony to Case Number, Application Number 19978 of 775
22 Fairmont Street Northwest, LLC.

23 VICE CHAIRPERSON HART: Thank you very much, Mr.
24 Moy. So, welcome back. If you could, just introduce
25 yourselves for the record, please.

1 MR. BELLO: Tony Bello again, representing the
2 Applicant.

3 MR. JONES: Patrick Jones, the Architect.

4 VICE CHAIRPERSON HART: So, I do appreciate the --
5 submitting the updated drawings. I see in Exhibits 64, 65,
6 66, and 67, they are very much appreciated.

7 Is the Board -- is the Board -- thank you for those
8 hard copies. Is the Board ready to deliberate on this case?

9 And I'll just note that in these drawings that
10 they've -- that the Applicant has now provided, is a planting
11 area on the southern portion of the building, on the roof of
12 the southern portion of the building that is 50, excuse me,
13 five feet in width.

14 And it's planted with trees. And the plans and
15 elevations and sections actually all show this, have been
16 updated to show this information as we had discussed earlier.

17 Does the Board have any questions for the Applicant
18 on this case? Okay. So, having received these drawings, I
19 will now close the record completely. Is the Board ready to
20 deliberate?

21 MEMBER JOHN: Yes.

22 VICE CHAIRPERSON HART: Okay. And I can start.
23 So, I -- as I said, I do appreciate the information that the
24 Applicant has provided to us.

25 The case has been -- it's gone on for a little

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1 while. And there were a number of issues that were before
2 us. And I just wanted to kind of talk a little bit about
3 where I am on the case.

4 I did feel that after reading, you know, the
5 various pieces of documents that were uploaded for the
6 record, that I could understand the Applicant's -- the issues
7 that they were raising and the, how they were meeting the
8 relief that's being requested.

9 And I wanted to kind of stop and talk about the
10 relief that's being requested. They are seeking relief --
11 excuse me, I'm trying to get to the right place.

12 They're seeking relief from the side yard and rear
13 yard requirements. And these are special exception relief
14 and then variance relief from the height alley centerline
15 setback and minimum surface provisions of the zoning
16 regulations.

17 With regard to the side yard and rear yard
18 requirements, I thought that the Applicant had set forth how
19 they will be in harmony with the general purpose and intent
20 of the zoning regulations and zoning maps, and that they
21 would not tend to adversely impact -- excuse me, adversely
22 -- affect adversely the use or neighboring property in
23 accordance with the zoning regulations and zoning maps.

24 I think one of the things that I do appreciate from
25 the Applicant is providing these drawings that you see on the

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1 screen, and the drawings that are in the drawing set, because
2 I think this helps to show how they are kind of using this
3 screen as a way of making it less visible, or -- and making
4 the views towards this roof deck less of an issue. And
5 making privacy -- and making it more private for the
6 neighbors that are to the south of the building.

7 With regard to height, alley centerline setback,
8 and minimum surface provision variances, I did believe that
9 the -- because of the topography of the site, that -- and
10 the fact that there really wasn't a way in which under the
11 zoning that they could -- they had to devise a way to measure
12 the building. And they measured the building in such a way
13 that they still needed one foot, two inches of relief. And
14 this is because the existing building, there is one, a one
15 story existing building that is currently there.

16 That building has a 14, if I remember correctly, a
17 14 foot, nine inch --

18 (Off mic comments.)

19 VICE CHAIRPERSON HART: I thought it was higher.
20 I'm looking for the -- yeah. A 13, a little over 13 feet for
21 the height of the existing building, by adding -- if they
22 wanted to put a second floor, which they are allowed to have
23 in this zone for an alley lot, they would be able to -- they
24 would be above the 20 foot, which is allowable under zoning.
25 And that is, I think, a way in which they are actually

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1 meeting the prongs of the -- the variance prongs.

2 Regarding the alley centerline setback, the
3 Applicant has noted that they are actually -- to make the
4 building comply with that, they would actually have to tear
5 down a portion of the existing building, because the building
6 currently has approximately 92 percent lot coverage as it is.

7 And again, with the minimum surface provisions,
8 there's the issue of it already creating -- already -- the
9 existing building already taking up the entirety of the lot.

10 And so again, they'd have to be -- they'd really
11 have to tear down a portion of the building to be able to
12 meet these requirements.

13 There was a -- some neighbors had some comments and
14 some opposition to this, partially because of the privacy
15 concern. And I think that the drawings that have been
16 provided now help to screen that rooftop terrace from the
17 neighbors to the south.

18 And because of the setback of five feet from the
19 edge of the room, it makes visibility even that much more
20 difficult. And it gives a little bit more privacy to the
21 neighbors to the south.

22 The neighbors to the north are actually across the
23 alleyway. And as far as I'm aware, we haven't received any
24 concerns from them from the north.

25 So, by saying all that, I just wanted to say that

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1 I would be in support of the Application. And would like to
2 hear from my fellow Board Members.

3 MEMBER JOHN: So Mr. Vice Chair, I agree with your
4 review and analysis. I thought that the Applicant made its
5 burden of proof.

6 And the special exception relief, as well as the
7 relief for the alley centerline setback, all are affected by
8 the fact that this is a preexisting structure. And that it
9 occupies 92 percent of the lot.

10 So even though the level of relief is different, in
11 any other case, the Applicant would have to demolish a
12 portion of the building to meet that criteria.

13 With respect to the height, I thought the Applicant
14 did a good job of explaining why the additional seven feet
15 would be necessary in order to have habitable space on the
16 second floor.

17 And that because the first floor is so -- is about
18 13 feet, and that they intend to keep the -- they hope to be
19 able to keep the existing roof with some hardening of the
20 roof, then it would make sense to seek additional relief,
21 seven feet of height.

22 And this relief would work out to about a little
23 more than a foot, which is not a lot. I thought that, I
24 believe we discussed at some point that pervious surface
25 relief was not required, because it is, the minimum is 10

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1 percent.

2 And I would just note that even though I'm
3 supporting this Application, I do believe that the Applicant
4 has incorrectly interpreted the requirement under Section
5 303.3, I believe it was. And that relief under that section
6 is necessary.

7 However, because this is a self-certified
8 Application, I would be in favor of approving only the relief
9 that was requested at this time, with a condition that there
10 is no relief for this section, the Section 303.3. Thank you.

11 VICE CHAIRPERSON HART: Thank you. The only part
12 I would add to that, I'm glad you brought it up, Ms. John.
13 Yeah, I think with regard to Subtitle C 303.3, my opinion on
14 this is that, as you noted, that this Applicant is --
15 Application is a self-certified application.

16 And I kind of think that the Board should not opine
17 on it whether or not it's necessary. The Applicant is --
18 because they are doing a self-certified application, they are
19 making the decision as to what it is that they are -- that
20 they need.

21 And if the Zoning Administrator decides that the
22 provision does not apply, then the Applicant will need to
23 seek relief for it in the future. I don't have a particular
24 concern about adding a condition regarding Subtitle C 303.3.

25 And I think that I could leave it to the Office of

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1 the Attorney General to decide what that language actually
2 says.

3 But, I think it is -- I don't know if it's
4 something that we just note in the order and say that, you
5 know, that this relief may be necessary. Or if it's an
6 actual condition. And I don't know if OAG has any comments
7 on that.

8 MR. RITTING: I don't have any immediate thoughts
9 about it. And I -- to be honest with you, I can't -- I don't
10 know what real difference it would make, whether it's a
11 condition or whether it's stated.

12 The purpose of it would be to alert the permit
13 reviewer that this is not something that you have actively
14 decided. And that they have to exercise their own judgment
15 about that issue.

16 VICE CHAIRPERSON HART: Yeah. And again, I -- it
17 doesn't matter to me one way or the other. I just thought
18 that we needed to acknowledge it.

19 So, and I don't know about Ms. John, if you are
20 okay with OAG acknowledging it? Or it must be a condition?

21 MEMBER JOHN: Oh, I'm fine with just acknowledging
22 it in the order.

23 VICE CHAIRPERSON HART: Okay.

24 MEMBER JOHN: Thank you.

25 VICE CHAIRPERSON HART: Thank you. So, with that

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1 I will make a motion to approve Application Number 19978 of
2 775 Fairmont Street Northwest, LLC, as read and captioned by
3 the Secretary. Do I have a second?

4 MEMBER JOHN: Second. I would just add with the
5 notation that we have not addressed Section 303.3.

6 VICE CHAIRPERSON HART: And I would concur with
7 that. So, having made a motion and had it seconded, all
8 those in favor, say aye.

9 (Chorus of aye.)

10 VICE CHAIRPERSON HART: Any opposed? I think we
11 have an absentee as well?

12 SECRETARY MOY: Yes, Mr. Vice Chair. Before I give
13 a final vote, as was discussed earlier today, Zoning
14 Commissioner Michael Turnbull was going to read into the
15 record to review the updated plans and drawings. And he did
16 so.

17 And so his absentee ballot vote is to approve with
18 such conditions as the Board may impose. And if I may, he
19 did leave some comments on his absentee ballot for me to
20 read.

21 VICE CHAIRPERSON HART: Please.

22 SECRETARY MOY: Thank you. And it reads quote, I
23 have reviewed the revised drawings submitted today. It is
24 my understanding that the planter is continuous along the
25 facade facing the adjacent neighbors. And is 15 feet wide.

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1 The planter cannot be utilized for any purpose
2 other than as a landscape screening buffer. End quote.

3 VICE CHAIRPERSON HART: I think that should be five
4 feet wide.

5 SECRETARY MOY: Yes, five feet wide.

6 VICE CHAIRPERSON HART: Yes. Okay. I just wanted
7 to make sure that was clear. So, I think that's it. Yes?
8 That's it, right?

9 SECRETARY MOY: Yes. So, okay. So the vote is
10 four to zero to one. This is on the motion of Vice Chair
11 Hart to approve the application for the relief requested.
12 Seconding the motion is Ms. John.

13 Also in support, Chairman Hill, and of course
14 Zoning Commissioner Michael Turnbull. No other members
15 present.

16 VICE CHAIRPERSON HART: Thank you very much. And
17 thank you all very much.

18 MR. BELLO: Thank you.

19 MR. JONES: Thank you.

20 (Off mic comments.)

21 VICE CHAIRPERSON HART: Mr. Chairman, I hand the
22 gavel back to you.

23 BZA CHAIR HILL: Thank you. We may jump around
24 here just a little bit. I have a quick question. So there
25 are -- the application for 20154 of Doretta Ward, other than

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1 the Applicant, are there people here wishing to speak in
2 support or opposition? Okay. There is one person from the
3 ANC, I believe, correct? Right. So, just there's the ANC
4 person. Okay.

5 SECRETARY MOY: Thank you, Mr. Chairman. So, in
6 that case, I'm going to call Case Application Number 20154
7 of Doretta Ward, captioned and advertised for special
8 exceptions under Subtitle C Section 703.2 from the minimum
9 vehicle parking requirements of Subtitle C Section 701.5 and
10 under Subtitle E Section 5201 and 205.5 from the rear wall
11 extension requirements of Subtitle E Section 205.4, to
12 construct a two-story rear addition to an existing attached
13 principal dwelling unit, RF-1 Zone at 438 20th Street
14 Northeast, Square 4549, Lot 91.

15 BZA CHAIR HILL: Okay, great, thank you. Good
16 afternoon. If you could please introduce yourselves, from
17 my right to left?

18 MS. BLAIR: Good afternoon.

19 BZA CHAIR HILL: You need to push the button, sorry.

20 MS. BLAIR: Good afternoon, Tamara Blair,
21 Commissioner of 7D01.

22 BZA CHAIR HILL: Commissioner, can you spell your
23 last name for me, I'm sorry?

24 MS. BLAIR: Blair, B-L-A-I-R.

25 BZA CHAIR HILL: Okay, great. Next?

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1 MS. DANIEL: My name is Melissa Daniel, from AMAR
2 Group, LLC, and I'll be representing the Applicant.

3 BZA CHAIR HILL: Great, thank you.

4 MS. WARD: Doretta Ward, the Applicant.

5 BZA CHAIR HILL: Okay. Ms. Daniel, I guess you're
6 going to be presenting to us?

7 MS. DANIEL: That is correct.

8 BZA CHAIR HILL: Okay. I guess if you could tell us
9 a little bit about your project and why you believe you're
10 meeting the standard for us to grant the application. I'm
11 going to put 15 minutes on the clock, so I know where we are,
12 and you can begin whenever you like.

13 MS. DANIEL: All right. Thank you. This project,
14 which is located at --

15 BZA CHAIR HILL: Ms. Ward -- Ms. Ward, if you could
16 turn off that microphone over there? Sorry, it's just
17 creating feedback when more than one is on. Thank you. Go
18 ahead, and thank you.

19 MS. DANIEL: Okay. It's located at 438 20th Street
20 Northeast, Square 449, Lot 96, in an RF-1 Zone. It's to
21 construct a rear addition that would extend 19 feet nine
22 inches beyond the adjacent rear wall, to allow for an
23 expansion and interior renovation of the existing row house.

24 A conforming one-story detached, which would not be
25 a separate unit, is to be part of this project. Its location

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1 would create a nonconforming parking space in the rear yard.

2 We're here to request relief under Subtitle C
3 703.2, Subtitle C 701.5, and under Title E 5201 and 205.5 for
4 the rear yard requirement of Subtitle E 205.4.

5 First, I would like to address Subtitle C 701
6 parking requirement. This project is particularly well-
7 served with mass transit, shared vehicle, and parking
8 facilities.

9 This property is approximately 0.6 miles from
10 Stadium-Armory Metro Station, approximately one mile from
11 Benning Road Station, has two bike shares near Oklahoma and
12 D Street, as well as serving several bus lines, including the
13 X1, X2, and so forth. So, needless to say, this property's
14 proximity establishes a well-served by mass transit.

15 In terms of Subtitle E Chapter 5201, addition to
16 building an accessory structure, again, the rear addition
17 would extend 19 feet nine inches beyond the rear wall of
18 adjacent buildings.

19 The height of the addition is at the same level as
20 the adjacent buildings. And this would have a less impact
21 on light to the adjacent properties. In addition, there's
22 no windows or roof decks, thus ensuring neighborhood privacy.

23 The character along 20th Street consists of row
24 houses and apartment buildings, including some buildings that
25 have been expanded upon. The addition would not be visible

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1 on 20th Street, however, it would be visible through the
2 public alley, where there have been various additions to the
3 adjacent properties.

4 I have provided Exhibit 12, which is part of the
5 burden of proof. On the last page, there's a photograph
6 illustrating the various expansions of their neighbors. As
7 a result, the addition would not substantially visually
8 intrude upon the character, scale, and patterns of the houses
9 along the public alley.

10 In conclusion, Ms. Ward has attended the ANC
11 meeting and they have provided support for this special
12 exception. We have also obtained several letters of support
13 that has also been filed under Exhibits 57 through 61, 63
14 through 66, and 69. The Ward family has been part of the
15 community in this house for 30 years and this is their first
16 renovation. Thank you.

17 BZA CHAIR HILL: Okay, thank you. Commissioner
18 Blair, did you have some things you'd like to add? You need
19 to push the button, sorry.

20 MS. BLAIR: Nothing that I think is not already
21 included in the record. I'm mostly here in case the Board
22 has questions of the Commission, realizing, as you know, part
23 of Kingman Park is designated historic area, but this area
24 where this project takes place is not within a historic
25 district.

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1 So, the Commission was very pleased to see that the
2 Ward family is taking measures to remain a part of Kingman
3 Park, as Kingman Park is known to be a transitioning
4 community. I just wanted to comment support and if the Board
5 had questions of the Commission, I'm here to represent the
6 Commission.

7 BZA CHAIR HILL: Okay, thanks. Yes, Commissioner
8 Blair, I mean, we try to get the Commissioners out as quickly
9 as we can, but this morning went a little bit longer than I
10 had thought. Were you here the whole morning?

11 MS. BLAIR: Been here the whole morning.

12 BZA CHAIR HILL: Okay. No --

13 MS. BLAIR: Yes.

14 BZA CHAIR HILL: -- mainly because, like, we would
15 possibly have more questions of you, but we're going to be
16 here a really long time. So, does anybody have any
17 questions? Okay. I'm going to turn to the Office of
18 Planning, please. Oh, I'm sorry, Ms. John?

19 MEMBER JOHN: Yes, I have one question about the
20 parking. So, what size parking space are you providing?

21 MS. DANIEL: Currently, it's 15 feet five inches,
22 five or six inches.

23 MEMBER JOHN: So, you would need maybe another foot
24 to get a compact --

25 MS. DANIEL: It'll approximately be one foot and six

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1 inches.

2 MEMBER JOHN: My question is, did you consider
3 moving the accessory structure further into the yard to get
4 that one foot, so you wouldn't -- well, you would need relief
5 from not having a regular size parking space?

6 MS. DANIEL: I've discussed this with the Ward
7 family, we wanted to maximize the accessory building and
8 also, their vehicle is compact, to say the least, so we just
9 felt that it wasn't a necessity.

10 MEMBER JOHN: Thank you.

11 BZA CHAIR HILL: Okay, thank you. Go ahead and turn
12 to the Office of Planning.

13 MS. ELLIOTT: Good afternoon, Mr. Chair and members
14 of the Board. I'm Brandice Elliot, representing the Office
15 of Planning. The Office of Planning is recommending approval
16 of the relief that's been requested for the parking space and
17 the rear wall extension. I'll go ahead and just leave it,
18 sorry, I'll stay on the record, leave it to the report on the
19 record. But I'm happy to answer any questions you have.

20 BZA CHAIR HILL: Okay, great. Thank you, Ms.
21 Elliot. Ms. Elliot, you're not here on the last case of the
22 day, are you?

23 MS. ELLIOTT: No.

24 BZA CHAIR HILL: Okay. All right. Let's see. Is
25 there anybody hear wishing to speak in support? Is there

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1 anyone here wishing to speak in opposition? Okay. Is there
2 anything else, Ms. Blair, you'd like to add -- I'm sorry, no,
3 yes, Ms. Daniel, you'd like to add at the end?

4 MS. DANIEL: No.

5 BZA CHAIR HILL: Okay. All right. I'm going to
6 close the record. Is the Board ready to deliberate? Okay.
7 I was comfortable with the application, I was comfortable
8 with the burden of proof that the Applicant had provided into
9 the record, as well as the analysis from the Office of
10 Planning.

11 It is very nice to have the Commissioner here with
12 us, so that they can tell us a little bit more about their
13 neighborhood, and hopefully keep this resident there, which
14 I know is something that the Mayor has also been trying to
15 do.

16 So, I'm going to go ahead -- does anybody have any
17 questions or comments?

18 ZC CHAIR HOOD: I would agree, I really appreciate
19 the Commissioner's comments about making sure that the Ward
20 family stays in the city. When we wrote this rule, as you
21 all know, my colleagues and I used to have a problem with
22 giving this waiver, doing this, and proceeding with this, but
23 I think these are exactly what we need to achieve when we're
24 doing this. So, I think this is a right case for this. So,
25 I would agree.

1 BZA CHAIR HILL: Okay, great, thank you. And I'd
2 like to welcome Chairman Hood here from the Zoning
3 Commission. He's been here all day, sitting in the back
4 room, just waiting.

5 ZC CHAIR HOOD: So, Commissioner, I've been here
6 with you all day.

7 BZA CHAIR HILL: Right.

8 ZC CHAIR HOOD: But I've been in the back.

9 BZA CHAIR HILL: Okay.

10 (Laughter.)

11 BZA CHAIR HILL: Right, he's been in the back.

12 ZC CHAIR HOOD: Trying to push them.

13 BZA CHAIR HILL: Right, there you go.

14 (Laughter.)

15 BZA CHAIR HILL: All right. So, that's right. So,
16 I'm going to go ahead and make a motion to approve
17 Application Number 20154 as captioned and read by the
18 Secretary, and ask for a second.

19 VICE CHAIRPERSON HART: Second.

20 BZA CHAIR HILL: Motion made and seconded, all those
21 in favor, say aye.

22 (Chorus of aye.)

23 BZA CHAIR HILL: All those opposed? Motion passes,
24 Mr. Moy.

25 SECRETARY MOY: Staff would record the vote as

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1 4-0-1, and this is on the motion of Chairman Hill to approve
2 the application for the relief requested. Seconded the
3 motion is Vice Chair Hart. Also in support are Ms. John and
4 Zoning Commission Chair Anthony Hood. No other members
5 present.

6 BZA CHAIR HILL: All right. Thank you, Mr. Moy. We
7 are going to jump around just a little bit, Mr. Moy, now.
8 If we could do -- thank you all very much, sorry. Thank you
9 all very much. If we could go ahead and do 20158 next?

10 SECRETARY MOY: Thank you, sir. So, parties to the
11 table to Application Number 20158 of SE Washington
12 Development Associates II LLP, captioned and advertised for
13 a special exception under the new residential development
14 requirements of Subtitle U Section 421.1, to construct a new,
15 three-story, 56 to 68 unit apartment house, RA-1 Zone, this
16 is at 3311 through 3329 14th Place Southeast, Square 5917,
17 Lots 40-41.

18 BZA CHAIR HILL: Okay, great, thank you. Good
19 afternoon. If you could please introduce yourselves for the
20 record, from my right to left?

21 MS. BLOOMFIELD: Jessica Bloomfield, from the law
22 firm of Holland and Knight.

23 MR. FREEMAN: Kyrus Freeman, Holland and Knight.

24 MR. CHOUEIRI: Ralph Choueiri, with Urban Atlantic.

25 BZA CHAIR HILL: I'm sorry, could you say your name

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1 again, sir?

2 MR. CHOUEIRI: Ralph Choueiri.

3 BZA CHAIR HILL: Could you spell your last name

4 MR. CHOUEIRI: Choueiri, C-H-O-U-E-I-R-I.

5 BZA CHAIR HILL: Okay.

6 MS. SHAH: Krutika Shah, Wiencek and Associates,
7 architects and planner.

8 BZA CHAIR HILL: Okay. Could you spell your last
9 name for me, again?

10 MS. SHAH: Shah, S-H-A-H.

11 BZA CHAIR HILL: Okay, great, thank you.

12 MR. MATTIES: Scott Matties with Wiencek and
13 Associates.

14 BZA CHAIR HILL: Could you spell your last name for
15 me too, sir?

16 MR. MATTIES: M-A-T-T-I-E-S.

17 BZA CHAIR HILL: Okay, great, thank you. Is it Mr.
18 Freeman and Ms. Bloomfield that's going to be presenting to
19 us?

20 MR. FREEMAN: I'll start.

21 BZA CHAIR HILL: Okay, great. All right. So, Mr.
22 Freeman, if you could go ahead and just kind of walk us
23 through what your client is trying to achieve, including the
24 standards with which you're meeting where we can grant the
25 application. I'm going to put 15 minutes on the clock, Mr.

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1 Moy, so I know where we are, and you can begin whenever you
2 like.

3 MR. FREEMAN: Thank you, sir. The Applicant filed
4 an application for a special exception to construct a new
5 residential apartment in the RA-1 Zone. The site is
6 presently vacant, it was previously improved with an
7 apartment building, and all buildings in the immediate
8 surrounding area are three-story apartment buildings.

9 The proposed development is a new, again, new
10 three-story apartment building with 67 units, approximately
11 41-plus thousand square feet of gross floor area, a maximum
12 building height of 40 feet, and six surface parking spaces.

13 The building complies with all applicable
14 development requirements, the only reason we're here is for
15 the special exception to approve the apartment building.
16 Most importantly, this apartment building is 100 percent
17 affordable senior housing, 20 percent of the units are
18 dedicated to families at or below 30 percent of AMI or MFI,
19 and 80 percent of the units are dedicated to seniors at or
20 below 50 percent of AMI. So, significantly affordable.

21 And I think someone mentioned earlier, the Mayor's
22 initiative. This project will help achieve the goals set
23 forth in the Mayor's Housing Equity Report, which seeks to
24 create 36,000 new housing units, acknowledges that the
25 production of new affordable housing is not keeping up with

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1 residents' needs, and states that the District needs to plan
2 for a variety of housing types, and I quote, including
3 multi-generational families, seniors, and persons with
4 disabilities. So, this project is directly consistent with
5 those goals.

6 Our prehearing statement, which is including in the
7 record, goes through in significant detail how we meet the
8 standards for the special exception relief, as does the
9 Office of Planning report, which recommends approval.

10 But just quickly, high level, the project is in
11 harmony with the general purpose and intent of the zoning
12 regulations and zoning map. Again, apartment buildings are
13 permitted in the RA-1 Zone. All of the lots surrounding the
14 property are also zoned RA-1 and are improved with
15 three-story apartment buildings. Again, the property itself
16 was previously approved with an apartment building. And as
17 I just stated, the project complies with all applicable
18 zoning requirements.

19 As you go through the special exception standards,
20 we are consistent with many policies across the District,
21 including within the Comprehensive Plan. I think our
22 statement lists like ten of those.

23 The application has received the referrals it's
24 been required to go through. Again, we have an OP report in
25 support. We have a DDOT report in support. Our materials

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1 indicate how the project will not create any adverse traffic
2 impacts, how it's accessible to a variety of public
3 transportation options.

4 Our site is within close proximity of a number of
5 parks and recreation venues. There's a standard that it will
6 not have any adverse impact on schools. Given that this is
7 100 percent affordable senior building project, we're not
8 expecting that any of the residents will utilize surrounding
9 schools.

10 But in any event, I think our application clearly
11 goes through and indicates how we meet all of the special
12 exception standards. With that, that concludes our
13 presentation. Happy to do a full presentation --

14 BZA CHAIR HILL: Okay. No, that's okay --

15 MR. FREEMAN: -- of the plans or just answer
16 questions.

17 BZA CHAIR HILL: -- Mr. Freeman. So, what about,
18 like, your outreach to the ANC 8E?

19 MR. FREEMAN: Sure.

20 BZA CHAIR HILL: And then, also in terms of the
21 conditions that DDOT had put forward --

22 MR. FREEMAN: Sure.

23 BZA CHAIR HILL: -- were you guys in agreement with
24 all those conditions?

25 MR. FREEMAN: So, yes, we're happy to kind of

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1 include all of the DDOT conditions. The client, the
2 Applicant went to the ANC in October, provided a lot of
3 project information, provided additional information in
4 response to questions that were asked by the ANC. One of the
5 asks was, there's an Area Resident Council, client went to
6 the Area Resident Council, presented at that meeting.

7 Went back to the ANC in November, answered all
8 questions at the ANC's November meeting. The ANC took a
9 vote. I guess the vote was to support. There were -- that
10 motion was made and seconded, but that motion did not pass.
11 So, technically, the ANC, at least as of now, isn't
12 officially on the record.

13 BZA CHAIR HILL: When you say the motion did not
14 pass, I don't understand, you're saying they denied the
15 motion? They voted against it or they voted for it?

16 MR. FREEMAN: Well, so, they didn't get enough votes
17 to pass the motion to support.

18 BZA CHAIR HILL: That's okay, I'm just confused.
19 So, there was -- how many people were on the ANC?

20 MR. FREEMAN: There were four.

21 BZA CHAIR HILL: There were four?

22 MR. FREEMAN: Four present.

23 BZA CHAIR HILL: And so, one made a motion --

24 MR. FREEMAN: One --

25 BZA CHAIR HILL: -- one seconded it --

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1 MR. FREEMAN: Right.

2 BZA CHAIR HILL: -- and then?

3 MR. FREEMAN: The vote was three to one.

4 BZA CHAIR HILL: So, wouldn't it have passed?

5 MR. FREEMAN: The motion to support didn't pass.

6 VICE CHAIRPERSON HART: So, you're saying that the
7 vote was three to one against?

8 MR. FREEMAN: Against the motion to support --

9 VICE CHAIRPERSON HART: Yes.

10 MR. FREEMAN: -- correct.

11 VICE CHAIRPERSON HART: Yes. They just didn't vote
12 to --

13 MR. FREEMAN: They didn't vote to support --

14 VICE CHAIRPERSON HART: Yes.

15 MR. FREEMAN: -- they didn't vote to oppose, they
16 didn't vote to take no position.

17 ZC CHAIR HOOD: So, but the motion was three to one
18 not to support?

19 MR. FREEMAN: No, that's not what it was.

20 ZC CHAIR HOOD: What -- say it again?

21 BZA CHAIR HILL: The motion was to support, that
22 motion did not pass. So, then, nobody made a motion after
23 that to --

24 MR. FREEMAN: Oppose.

25 BZA CHAIR HILL: -- oppose?

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1 MR. FREEMAN: Correct.

2 BZA CHAIR HILL: Okay. All right.

3 MR. FREEMAN: But again, what's interesting is that
4 motion was seconded by one of the people who then didn't vote
5 to support the motion. So, it --

6 ZC CHAIR HOOD: The person who voted didn't vote in
7 full, they seconded the motion.

8 MR. FREEMAN: Correct.

9 ZC CHAIR HOOD: I've been in a situation like that.
10 Right here, actually.

11 (Laughter.)

12 BZA CHAIR HILL: Not here.

13 ZC CHAIR HOOD: No, not --

14 BZA CHAIR HILL: Not here, maybe at your thing.

15 ZC CHAIR HOOD: Not during your time.

16 BZA CHAIR HILL: Oh, not during my time.

17 (Laughter.)

18 ZC CHAIR HOOD: But it was --

19 BZA CHAIR HILL: Definitely not during my time.

20 ZC CHAIR HOOD: -- here, though, but --

21 BZA CHAIR HILL: I would have remembered that one.

22 MR. FREEMAN: But I can tell you --

23 BZA CHAIR HILL: Okay.

24 MR. FREEMAN: -- I wasn't there, but I can tell you
25 that, in terms of what was discussed, really had nothing to

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1 do with the standards as it relates to the special exception,
2 approval standards for this building.

3 BZA CHAIR HILL: Okay.

4 MR. FREEMAN: I think their --

5 BZA CHAIR HILL: Okay. Does the --

6 MR. FREEMAN: -- questions were about --

7 BZA CHAIR HILL: -- Board have --

8 MR. FREEMAN: -- other things.

9 BZA CHAIR HILL: -- any questions for the Applicant?

10 ZC CHAIR HOOD: I don't have a question, but I do
11 want to say this, and I know this is not necessarily your
12 purview, but I want to just make a note and just put the
13 Applicant on notice.

14 I appreciate the affordability of this unit, I
15 think that's great, I do like the design. But I am caution
16 about the, I guess is the C-lap siding, which is very light,
17 and a lot of times, that gets dirty. I've noticed that over
18 the years. So, I don't know what you -- if it's cleanable,
19 then that's fine.

20 I know this is all affordable units, but we might
21 want to look at that light. Even though it's all affordable,
22 we still want to make sure that we put some decent materials,
23 so you want to look at that light piece. That's not
24 necessarily in front of us, but I wanted to put that out
25 there. Okay. All right. So, hopefully, it's noted.

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1 BZA CHAIR HILL: Yes, sir, absolutely.

2 ZC CHAIR HOOD: Thank you.

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

5 MS. MYERS: Hello, Crystal Myers with the Office of
6 Planning. The Office of Planning is recommending approval
7 of this case and stands on the record of the staff report.

8 BZA CHAIR HILL: All right. Does anybody have any
9 questions for the Office of Planning? Does the Applicant
10 have any questions for the Office of Planning?

11 MR. FREEMAN: No, sir.

12 BZA CHAIR HILL: Is there anyone here who wishes to
13 speak in support? Is there anyone here who wishes to speak
14 in opposition? Mr. Freeman, is there anything you'd like to
15 add at the end?

16 MR. FREEMAN: Just thank you for your time. Again,
17 we believe we meet all of the standards. And I would add,
18 our application is in for low-income housing tax credits and
19 hopefully we can get a decision today, because that will help
20 us in our application for an allocation of tax credits to
21 move forward with the project. Thank you.

22 BZA CHAIR HILL: Okay. Okay. All right. Let's
23 see. All right. I'll go ahead and close the hearing. Is
24 the Board ready to deliberate? Okay. I can start.

25 I actually was -- I didn't have an issue with the

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1 application, I thought that the Applicant's burden of proof
2 has met the standard for us to grant the relief requested.
3 I would note, again, that DDOT's conditions are all in
4 Exhibit 32, which I would then put forth in our conditions
5 as well.

6 I was curious as to what happened with ANC 8E, I'm
7 a little surprised still, but I do believe the testimony that
8 the Applicant has put forth, the attorney has put forward.
9 And so, I will be voting in favor of the application. And
10 again, I do believe that the Office of Planning's analysis
11 is accurate.

12 Is there anything anyone else would like to add?
13 Okay. Going to make a motion to approve Application Number
14 20158, as captioned and read by the Secretary, including the
15 conditions by DDOT in Exhibit 32, and ask for a second.

16 ZC CHAIR HOOD: Second.

17 BZA CHAIR HILL: Motion made and seconded, all those
18 in favor, say aye.

19 (Chorus of aye.)

20 BZA CHAIR HILL: All those opposed? The motion
21 passes, Mr. Moy.

22 SECRETARY MOY: Staff would record the vote as
23 4-0-1, and that's on the motion of Chairman Hill to approve
24 the application for the relief requested, along with the
25 conditions as listed in the DDOT report. Also seconding is

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1 Zoning Commissioner Chair Anthony Hood. Also in support are
2 Ms. John and Vice Chair Hart. No other members present.

3 BZA CHAIR HILL: All right. Thank you, Mr. Moy.
4 And thank you all very much.

5 MR. FREEMAN: Thank you.

6 MS. BLOOMFIELD: Thank you.

7 ZC CHAIR HOOD: Thank you.

8 BZA CHAIR HILL: All right. Mr. Moy, we can go back
9 to the top of the order now, if you'd like.

10 SECRETARY MOY: Okay. Back to the top, so I believe
11 then that would be Case Application Number 20111 of Trinity
12 Episcopal Church. This is amended for special exception
13 under the use provisions of Subtitle U Section 203.1(h), H
14 as in Hotel, to permit the expansion of an existing child
15 development center from 25 children with six staff members
16 to 62 children with 16 staff members, R-1-B Zone, this is at
17 7005 Piney Branch Road Northwest, Square 3190, Lot 806.

18 BZA CHAIR HILL: Okay. If you could please
19 introduce yourselves for the record, from my right to left?

20 MR. SULLIVAN: Good afternoon, Mr. Chair and members
21 of the Board. My name is Marty Sullivan, with Sullivan and
22 Barros, on behalf of the Applicant.

23 MS. ESPINOSA: My name is Marisol Espinosa, the
24 Applicant.

25 BZA CHAIR HILL: Could you spell your last name for

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1 me?

2 MS. ESPINOSA: E-S-P-I-N-O-S-A.

3 BZA CHAIR HILL: Esinosa?

4 MS. ESPINOSA: Espinosa.

5 BZA CHAIR HILL: Espinosa, Espinosa, okay, I'm
6 sorry.

7 MS. LEE: My name is Mary, my last name is Lee,
8 L-E-E.

9 BZA CHAIR HILL: Great, thank you.

10 REV. HARMON: My name is John Harmon, I'm the rector
11 and pastor at Trinity Church.

12 BZA CHAIR HILL: Welcome Pastor Harmon. Okay.
13 Let's see, now. So, there's a couple of things, in terms of
14 preliminary matters. There was a request to waive the
15 prehearing statement, is that what it was, Mr. Sullivan?
16 You're late, is the prehearing statement late, was that the
17 --

18 MR. SULLIVAN: Yes, we were just -- and it was in
19 response to additional discussions that we had with DDOT.

20 BZA CHAIR HILL: Right. Right, I read that, okay.
21 So, I don't have an issue with waiving the time limit on
22 that. Does anyone else? Okay. So, we're going to go ahead
23 and do that. Then, the affidavit of posting, did you -- we
24 don't have a -- you'll need a waiver for that or did the
25 affidavit of posting get put in?

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1 MR. SULLIVAN: I believe it was put in within five
2 days.

3 BZA CHAIR HILL: All right, okay. Then, it must
4 have been after I reviewed the record. Okay. And then,
5 after that, are there -- there's people here requesting party
6 status, is that correct? Okay.

7 If you could please come forward, is there more
8 than one of you, I forget now? Why don't you guys -- okay,
9 let's see, how are we going to do this? Why don't you just
10 come on, let me see if I have enough chairs first, so go
11 ahead and -- okay.

12 Sure, wait one second, let me just get, it's okay,
13 let me get through a couple of things here. So, if you could
14 first just introduce yourselves for the record from right to
15 left?

16 MR. GOHL: My name is Earl Gohl, I'm here
17 representing Anna Burger.

18 BZA CHAIR HILL: Okay. What's your last name?

19 MR. GOHL: Gohl, G-O-H-L.

20 BZA CHAIR HILL: G-O-L?

21 MR. GOHL: G-O-H-L.

22 BZA CHAIR HILL: G-O-H-L, okay. Miss?

23 MS. GREEN: I'm Sara Green, and do you want my
24 address?

25 BZA CHAIR HILL: No, not yet.

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1 MS. GREEN: Okay.

2 BZA CHAIR HILL: Well, yes, okay, go ahead.

3 MS. GREEN: 7106 Piney Branch, about 200 feet from
4 the entrance to the church. And I also own property across
5 the street, also.

6 BZA CHAIR HILL: Okay. You own property across the
7 street from the church?

8 MS. GREEN: I own property actually across the
9 street from the entrance to the -- diagonal to the daycare
10 center entrance, and the lot, the second lot is across,
11 directly across the street from the daycare entrance.

12 BZA CHAIR HILL: Okay. Please introduce yourself.
13 Yes, thank you.

14 MS. MODI: My name is Manisha Modi, I live at 7100
15 Blair Road. Do you want to know where it is in --

16 BZA CHAIR HILL: No, just that. Could you spell
17 your last name for me?

18 MS. MODI: M-O-D-I.

19 BZA CHAIR HILL: Okay, great. Oh, like the Prime
20 Minister. Okay. All right. Let's see, it wouldn't be such
21 a bad thing.

22 (Laughter.)

23 BZA CHAIR HILL: Let's see, okay. So, I'm -- so,
24 Mr. Gohl, you're here representing Ms. Green, is that what
25 you said?

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1 MR. GOHL: No, Gohl, Burger, Ms. Burger. Ms. Burger
2 asked for party status, she's out of town and she submitted
3 a letter asking me to represent her.

4 BZA CHAIR HILL: Oh, that's right, okay.

5 MR. GOHL: And we live at 500 Dahlia Street.

6 BZA CHAIR HILL: But Ms. Burger's the one who's
7 requesting party status --

8 MR. GOHL: Right.

9 BZA CHAIR HILL: -- right?

10 MR. GOHL: Yes.

11 BZA CHAIR HILL: Okay. So, are you guys familiar
12 with how we determine whether or not somebody should get
13 party status? That would be a no, I guess? Okay. No,
14 that's all right. I mean, I'm just -- if you're familiar
15 with the regulation, that's what I was trying to ask, and I'm
16 looking up the regulation, myself, again. Okay.

17 So, under Y 404.13, and I guess if you guys were
18 here earlier in the morning, we also figured this out again,
19 it was -- the Board shall grant party status only if the
20 persons requesting party status has clearly demonstrated that
21 the persons' interests would likely be more significantly,
22 distinctively, or uniquely affected in character or kind by
23 the proposed zoning action than those of other persons in the
24 general public.

25 And so, as you had maybe heard earlier, we had --

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1 party status doesn't happen just because you're inside 200
2 feet or just because you're inside 75 feet or whatever it is.
3 So, Ms. Modi, I'll start with you, and we can go kind of down
4 the line, if it is, Ms. Modi, Ms. Green, and then, Mr. Gohl
5 telling how Ms. Burger, I guess, is affected more
6 significantly than the general public.

7 And also noting that we have, yes, heard from your
8 ANC. And I suppose all of you did go to your ANC meeting?
9 Okay, you're all nodding yes. All right.

10 So, Ms. Modi, go ahead, could you tell us why you
11 think you're meeting the standard for us to grant party
12 status?

13 MS. MODI: If you don't mind, I'm just going to read
14 from my party status --

15 BZA CHAIR HILL: Sure.

16 MS. MODI: -- criteria statement.

17 BZA CHAIR HILL: Sure.

18 MS. MODI: We're concerned about increased vehicular
19 and foot traffic, it's a very tiny block, and I'm not sure
20 how to introduce things like this little map.

21 BZA CHAIR HILL: You can make copies and introduce
22 it into the record, but just for now, you can just, I guess,
23 tell us about it. Or you can show us, if you hold it up.

24 MS. MODI: So, I'll talk a little bit about my
25 general concerns, which are eroding the residential character

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1 of this really very --

2 BZA CHAIR HILL: Okay.

3 MS. MODI: -- tiny block.

4 BZA CHAIR HILL: So, just before you move on to
5 that, so what we're doing right now is just determining
6 whether or not you guys are going to get party status.

7 MS. MODI: Okay.

8 BZA CHAIR HILL: And really, what party status,
9 again, you would then be a party to the case, right? And so,
10 then you would make a presentation, you would have -- it's
11 the exact same thing that happened earlier, right? Okay.

12 And it takes -- you, as a member of the public,
13 will also have an opportunity to present, if you were not
14 granted party status, you would have an opportunity to
15 present, again as you've seen thus far today, in support and
16 opposition for your testimony. So, right now, you're not
17 giving testimony, it's just why do you think you meet the
18 criteria under Y 404.13?

19 MS. MODI: Okay. Well, this is a little bit
20 complicated and I'll refer --

21 BZA CHAIR HILL: Sure.

22 MS. MODI: -- to the map.

23 BZA CHAIR HILL: Sure.

24 MS. MODI: The entrance to Mi Palacio is right here.

25 My home is right here. This property right next to my home

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1 is owned by Ms. Espinosa, who operates Mi Palacio.

2 And we've observed children from the center using
3 her premises, like 15 feet from my window, daily, up until
4 the summer, I think, when she was informed that she could not
5 do that anymore. But she has, in fact, requested from the
6 neighbors that we continue to allow this practice, along with
7 the use of her driveway for parking, which clogs the very
8 narrow street that my house fronts.

9 So, and I have some pictures, but they're uploaded
10 into the record with my, like, statement. But I have copies,
11 if I --

12 BZA CHAIR HILL: You have copies of what?

13 MS. MODI: Of the pictures that I'm referring to.

14 BZA CHAIR HILL: Oh, oh, but those are in the record
15 right now?

16 MS. MODI: Yes. So, this is --

17 BZA CHAIR HILL: Do you know which exhibit it is?

18 MS. MODI: This is the view from my --

19 BZA CHAIR HILL: That's okay.

20 MS. MODI: Okay.

21 BZA CHAIR HILL: I understand. It's okay, I
22 understand. I'm just trying to get through party status
23 first. I got you.

24 MS. MODI: This is why I'm asking for party status,
25 I mean --

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1 BZA CHAIR HILL: Oh, I see where --

2 MS. MODI: -- they play, like --

3 BZA CHAIR HILL: Okay, all right.

4 MS. MODI: -- 20 feet from --

5 BZA CHAIR HILL: So --

6 MS. MODI: -- my dining room table.

7 BZA CHAIR HILL: So, okay. Go ahead and you can
8 pass the photos up here --

9 MS. MODI: Okay.

10 BZA CHAIR HILL: -- please, you can give them to the
11 Secretary.

12 MS. MODI: Sure.

13 SECRETARY MOY: Mr. Chair, I believe it's under
14 Exhibit 85.

15 BZA CHAIR HILL: Okay. Mr. Sullivan?

16 MR. SULLIVAN: Mr. Chair, yes, we -- I don't think
17 we have an issue that these were filed later than they were
18 supposed to be filed, other than there's a photo of some
19 children in it, that we would prefer not be part of the
20 record.

21 BZA CHAIR HILL: Right. So, but it's already up on
22 IZIS right now?

23 MR. SULLIVAN: Yes, I --

24 BZA CHAIR HILL: Okay.

25 MR. SULLIVAN: -- believe it is.

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1 BZA CHAIR HILL: So, it needs to be taken down then,
2 is what you're saying?

3 MR. SULLIVAN: Yes, and --

4 BZA CHAIR HILL: Yes.

5 ZC CHAIR HOOD: And these are not --

6 MR. SULLIVAN: -- I don't object to the late filing,
7 in general.

8 BZA CHAIR HILL: Yes.

9 ZC CHAIR HOOD: Yes, but these are not very
10 identifiable, trust me.

11 MR. SULLIVAN: Yes, and I don't know what --

12 ZC CHAIR HOOD: They're pixelated and you can't see
13 them, so they're not identifiable. I think what they're
14 doing is the representation. So, I don't -- I'm not an
15 attorney, but I think that this wouldn't -- you can't
16 identify anybody. These are not identifiable. The ones that
17 I have, maybe you have some different ones.

18 MR. SULLIVAN: Okay. And it's not my area of law
19 either, but I just --

20 BZA CHAIR HILL: No --

21 MR. SULLIVAN: -- wanted to err on the side --

22 BZA CHAIR HILL: No, they're not --

23 MR. SULLIVAN: -- of not having it in there. We
24 would stipulate that that took place.

25 BZA CHAIR HILL: If it makes -- and I don't even

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1 know how to get rid of -- I mean, I don't necessarily think
2 the picture of the children are needed. You can put X's
3 there, then, as to what -- so, and I think it's making Ms.
4 Espinosa, then, uncomfortable, is more accurate. And so, I
5 just am being more -- Mr. Moy, if you could just go ahead and
6 pull down the photos with the children are in.

7 SECRETARY MOY: All right. The staff, we can take
8 care of that, sir.

9 BZA CHAIR HILL: Okay, all right. However, we can
10 -- we got what we got here. So, all right. So, how you're
11 more uniquely affected is that you're saying you look out the
12 window into the yard where the child development center would
13 be, that's what you're saying, correct?

14 MS. MODI: Not precisely. The owner of the child
15 development center, Ms. Espinosa, lives across the street
16 from the child development center and adjacent to my
17 property.

18 BZA CHAIR HILL: Right.

19 MS. MODI: She has been using, in the past, and has
20 requested to use again --

21 BZA CHAIR HILL: Okay. So --

22 MS. MODI: -- that property as an adjunct facility.
23 So, she uses it as an outdoor classroom, play area.

24 BZA CHAIR HILL: Okay. So, that's confusing, to a
25 certain extent, because that's not the property that we're

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1 talking about, right, Mr. Sullivan? So, but it sounds a
2 little bit like we might have some questions, I don't know.
3 So, but just to be clear, that's not the property we're
4 speaking of, correct, Mr. Sullivan?

5 MR. SULLIVAN: It's not the property we're speaking
6 of and we're not asking, at this point, for the ability to
7 do that. And also, we don't object to party status for any
8 three --

9 BZA CHAIR HILL: Okay.

10 MR. SULLIVAN: -- of these folks.

11 BZA CHAIR HILL: All right.

12 MS. MODI: I would also add --

13 BZA CHAIR HILL: Wait --

14 MS. MODI: -- that the parking issues affect us
15 uniquely.

16 BZA CHAIR HILL: Okay, all right. How do the --

17 MS. MODI: And the traffic.

18 BZA CHAIR HILL: How do the parking issues affect
19 you uniquely?

20 MS. MODI: The only place to park, we can't park on
21 Blair, we can't park on -- we do have a driveway, but for a
22 second car, we can't park on Blair, we can't park on Piney
23 Branch, so the only place we can park is on Dahlia, which
24 currently is fully occupied in the daytime with --

25 BZA CHAIR HILL: All right. So, that's -- okay.

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1 That's -- all right. I'm just going to move on for one
2 second, then we can, as a Board, can discuss what we think
3 of the party status. Ms. Green, could you now explain why
4 you're more uniquely affected? And Ms. Modi, if you could
5 just turn off your microphone?

6 MS. GREEN: Well, I own two properties within site
7 of the entrance to the daycare and the church. One property
8 is my home, it's 7106 Piney Branch, which is, I guess, the
9 map is -- there's a map even on your file and it will show.
10 The parking and mainly, I'm interested, I'm concerned about
11 maintaining the residential character of that small area,
12 which is very congested and which is also becoming
13 commercialized, in a lot of ways.

14 The other reason is my property, it's a vacant lot
15 at the corner of Piney Branch and Dahlia. It's an
16 unbuildable lot, it's too small. It is directly across the
17 street from the entrance to the daycare center. It is
18 directly next to the property owned by Ms. Espinosa.

19 And we purchased, we were given the property, we
20 spent a lot of money on this tiny little vacant lot. Trees
21 had fallen down --

22 BZA CHAIR HILL: Okay. No, I'm --

23 MS. GREEN: -- what we --

24 BZA CHAIR HILL: I'm trying to --

25 MS. GREEN: All right. We --

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1 BZA CHAIR HILL: I know, I read through the record
2 what you're --

3 MS. GREEN: Okay.

4 BZA CHAIR HILL: -- talking about with the tiny lot.

5 MS. GREEN: We did that because we are very
6 concerned about maintaining the residential character --

7 BZA CHAIR HILL: Okay. Okay.

8 MS. GREEN: -- and we feel that some of the things
9 that could happen, the impact would challenge, would degrade
10 that residential character.

11 BZA CHAIR HILL: Okay.

12 MS. GREEN: That's --

13 BZA CHAIR HILL: All right.

14 MS. GREEN: -- what I would speak to.

15 BZA CHAIR HILL: Okay. Mr. Gohl --

16 MR. GOHL: Gohl.

17 BZA CHAIR HILL: -- on behalf of Ms. Burger?

18 MR. GOHL: Anna Burger owns 500 Dahlia Street. It's
19 adjacent to 502 Dahlia, which is owned by the church. And
20 502 and 500 Dahlia Street have a shared driveway, that goes
21 out onto Dahlia Street. The church often uses the parking
22 lot at 502 Dahlia and the driveway at 502 Dahlia as part of
23 their --

24 BZA CHAIR HILL: Okay.

25 MR. GOHL: -- systems. And --

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1 BZA CHAIR HILL: Okay. Let me do this, I mean, I'm
2 just listening to -- I mean, you have proximity to, and I'll
3 speak to the Board here, proximity to the Applicant. They
4 also, the party status people are talking about parking,
5 about I guess the use.

6 And they seem to have, in my opinion, kind of
7 similar issues, in that if we did grant party status, I would
8 then ask you all to combine your party status into one party
9 and then, you can be represented -- and I think what we might
10 end up doing now, again, is we'll take a break, not a break,
11 we'll let you all go into a room or just hear another couple
12 of cases, and then, one of you guys can represent, one of you
13 all can be the spokesperson and then, go ahead and speak on
14 behalf of the group.

15 And then, if you have any questions, that could
16 also be -- just like what happened earlier today, one person
17 would be doing the speaking. So, that's -- and you can talk
18 about all your issues, but I'm just trying to make this as
19 efficient as possible, in addition to the fact that you all
20 seem to have similar issues.

21 Is that all right with the Board? Okay. So, we're
22 going to go ahead and grant party status. And OAG, I forget
23 how it works when you combine, they all get listed as party
24 status and that -- they don't get called a group or anything,
25 right?

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1 MR. RITTING: That's a question I wasn't --

2 BZA CHAIR HILL: Okay, that's fine.

3 MR. RITTING: -- prepared to answer.

4 (Laughter.)

5 BZA CHAIR HILL: So it doesn't matter. So, but for
6 practical purposes, we're going to, not adjourn, we're going
7 to let you guys go away, we're going to hear a couple of
8 cases, okay? And then, you guys can kind of, the three of
9 you can figure out who's going to talk and how the questions
10 and answers are going to move forward.

11 And as you've seen before with the party status,
12 they'll have a presentation, you'll have a presentation,
13 you'll get to ask questions, they'll get to ask questions,
14 the Office of Planning, they'll get rebuttal, and so, it's
15 a whole process. Okay?

16 MS. GREEN: How much --

17 ZC CHAIR HOOD: Mr. Chairman?

18 BZA CHAIR HILL: Sure. Wait one --

19 MS. GREEN: How much time --

20 BZA CHAIR HILL: -- second, wait one second, wait
21 one second, I've got three things. I'm sorry, go ahead?

22 MS. GREEN: I was asking about time, what kind of
23 time would we have to present?

24 BZA CHAIR HILL: Sure. So, it's usually, well, it's
25 not usually, whatever time the Applicant takes is the amount

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1 of time that you would have. In terms of, I guess, I don't
2 know how long, Mr. Sullivan, you think your presentation is
3 going to go?

4 MR. SULLIVAN: Fifteen minutes, tops.

5 BZA CHAIR HILL: Okay. So, let's go ahead and say
6 15 minutes for your presentation, okay?

7 MS. GREEN: Okay.

8 BZA CHAIR HILL: All right. So --

9 ZC CHAIR HOOD: Mr. Chairman?

10 BZA CHAIR HILL: Yes, please, I'm sorry.

11 ZC CHAIR HOOD: Let me just add that, out of the
12 three people I just heard, the only person who I think was
13 uniquely affected was Ms. Green, out of the testimony that
14 was provided. I don't see any difference -- the other two
15 did not show, from my standpoint, did not show -- but if they
16 merge together, I don't have a problem being one party, as
17 you stated.

18 But out of the submission, I want to make sure, the
19 law says uniquely affected, that's a general concern about
20 pedestrian traffic and -- but I think Ms. Green, you
21 mentioned that your driveway abutted part that was used --
22 or somebody did, whoever said that, I think is the one who
23 should really have party status. But I'm going to go along
24 with the Chairman in this case, because I have to. So,
25 that's me. Thank you.

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1 BZA CHAIR HILL: Well, you don't have to, but you
2 are now.

3 (Laughter.)

4 BZA CHAIR HILL: All right. So, go ahead and we're
5 going to go ahead and call another case and then, we'll call
6 you guys back later, maybe two cases from now, okay? All
7 right, Mr. Moy, you can go ahead and call number nine.

8 SECRETARY MOY: All right. Thank you, Mr. Chairman.
9 I believe it is Application Number 20160, Darcy Scott,
10 captioned and advertised for a use variance from the use
11 requirements of Subtitle U Section 201.1, to permit a
12 two-story rear addition to an existing nonconforming
13 semi-detached flat in the R-2 Zone, this is at 4210 Brooks
14 Street Northeast, Square 5088, Lot 23.

15 BZA CHAIR HILL: All right, great. Could you please
16 introduce yourselves for the record from right to left? You
17 can go first, sure.

18 MR. SCOTT MARTIN: I'm Harper Scott Martin, owner of
19 the property.

20 BZA CHAIR HILL: Okay, great. Mr. Scott Martin, if
21 you could just turn off that microphone to -- there you go,
22 I got feedback. Okay, great. Please, sir?

23 MR. JONES: Kim Jones, I'm the architect for the
24 project.

25 BZA CHAIR HILL: Okay. Mr. Jones, are you -- could

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1 to -- be presenting to us?

2 MR. JONES: Yes.

3 BZA CHAIR HILL: Okay, great. All right. So if you
4 could go ahead, Mr. Jones, and kind of walk us through --
5 well, first of all, I guess, did you guys submit your
6 affidavit of maintenance?

7 MR. JONES: Yes.

8 MR. SCOTT MARTIN: Yes.

9 BZA CHAIR HILL: Okay. Maybe I got it late. Okay.
10 I got it, I got it. Okay, great, thank you. All right. So,
11 that's taken care of. All right. So, Mr. Jones, if you
12 could just walk us through again what your client is trying
13 to do and how you believe that they are meeting the criteria
14 for us to grant the relief requested. I'm going to put 15
15 minutes on the clock up there, so I know where we are, and
16 you can begin whenever you like.

17 MR. JONES: Okay. So, the project involves the
18 property at 4210 Brook Street, which the Scotts have bought.
19 The property is and has always been a two-family flat, but
20 it's located in the R-2 Zoning Area, which prevents
21 two-family flats. So, they're asking for a variance to allow
22 the continued use of the property as a two-family flat.

23 There is renovation, there is a small addition to
24 the rear, and interior renovation, but all of those are
25 within their right. We're not asking for any other relief,

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1 other than to continue to use the property as a two-family
2 flat.

3 BZA CHAIR HILL: Okay. And how did the outreach go
4 with the ANC?

5 MR. JONES: Darcy Scott made several attempts to
6 reach ANC, but received no response.

7 BZA CHAIR HILL: And I think you have that in the
8 record somewhere, correct?

9 MR. JONES: Yes.

10 BZA CHAIR HILL: Okay. All right. Does the Board
11 have any questions? All right. I'm going to turn to the
12 Office of Planning.

13 MS. THOMAS: Good afternoon, Mr. Chair and members
14 of the Board. I'm Karen Thomas with the Office of Planning.
15 We stand on the record of the report with no objection to the
16 continued use as a flat. Thank you.

17 BZA CHAIR HILL: Does the Board have any questions
18 for the Office of Planning? Office of Planning, I was a
19 little -- could you walk me through -- I mean, basically what
20 I got confused by is like, they're here to fix the fact that
21 they've been using it the way they've been using it?

22 MS. THOMAS: Yes. What is basically had happened is
23 that, back in -- earlier on, the property was rezoned in '08,
24 under a series of rezonings. It was previously zoned R-5-A,
25 which would be R-A, which would allow this type of use. But

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1 it was down-zoned to R-2. It was never used as anything than
2 how it, in its existing form, as a flat, which is not now
3 permitted under the R-2. So --

4 BZA CHAIR HILL: So, when it got changed, they
5 should have come before us at that point, is that right? Or
6 why -- how come they're before us now?

7 MS. THOMAS: Well, probably it got vacant and they
8 repurchased it, and because they have to do renovations, they
9 have to get permits and --

10 BZA CHAIR HILL: I got it, okay. The Applicant --

11 MS. THOMAS: Yes.

12 BZA CHAIR HILL: -- I'm just curious again, how did
13 that happen? So, you -- could you explain how you're before
14 us again? I'm kind of curious.

15 MR. JONES: The Scotts purchased property, to find
16 out that the use that they purchased it under was no longer
17 --

18 BZA CHAIR HILL: No, I understand. How long ago did
19 they purchase the property?

20 MR. SCOTT MARTIN: I purchased it about a year ago.

21 BZA CHAIR HILL: Okay.

22 MR. SCOTT MARTIN: And it had been unoccupied slash
23 abandoned for --

24 BZA CHAIR HILL: Got it.

25 MR. SCOTT MARTIN: -- many years at that point.

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1 BZA CHAIR HILL: Okay. All right. Does anybody
2 have any questions for the Office of Planning? Does the
3 Applicant have any questions for the Office of Planning? You
4 have to say no, on the microphone.

5 MR. JONES: No questions.

6 MR. SCOTT MARTIN: No.

7 BZA CHAIR HILL: Thank you. Is there anyone here
8 who wishes to speak in support? Is there anyone here who
9 wishes to speak in opposition? All right. Mr. Jones, is
10 there anything you would like to add at the end?

11 MR. JONES: No.

12 BZA CHAIR HILL: Okay. I'm going to close the
13 hearing. Si the Board ready to deliberate? Okay. Again,
14 I just thought it was kind of -- I understand now why they're
15 here. I think it's relatively straightforward. I think that
16 I agree with the analysis that the Office of Planning has
17 provided, as well as the burden of proof from the Applicant.
18 And I'm going to be voting in support. Is there anything
19 anyone else would like to add?

20 Going to make a motion to approve Application
21 Number 20160 as captioned and read by the Secretary, and ask
22 for a second.

23 MEMBER JOHN: Second.

24 BZA CHAIR HILL: Motion made and seconded, all those
25 in favor, say aye.

1 (Chorus of aye.)

2 BZA CHAIR HILL: All those opposed? Motion passes,
3 Mr. Moy.

4 SECRETARY MOY: Staff would record the vote as
5 4-0-1, and that's on the motion of Chairman Hill to approve
6 the application for the relief requested. Seconded the
7 motion is Ms. John. Also in support are Vice Chair Hart and
8 Zoning Commissioner Chair Anthony Hood. No other members
9 present. Again, the vote was 4-0-1.

10 BZA CHAIR HILL: Okay, great, thank you. Thank you
11 all very much. Oh, and if you have witness cards there, if
12 you can give them to the -- and, Mr. Jones, if you could turn
13 off that microphone right there also? Thank you so much.

14 SECRETARY MOY: All right. The next case
15 application is 20164, Ford's Theatre Society, as amended, for
16 special exceptions under Subtitle C Section 1504.1 from the
17 penthouse setback requirements of Subtitle C Section
18 1502.1(b-c), and under Subtitle I Section 205.5 from the rear
19 yard requirements of Subtitle I Section 205.1, to construct
20 a two-story addition and a penthouse addition to the building
21 at 512 10th Street Northwest and to renovate and combine the
22 two existing mixed-use buildings, D-7 Zone, at 512-514 10th
23 Street Northwest, Square 347, Lot 21 and 825.

24 BZA CHAIR HILL: Okay, great. If you could please
25 introduce yourselves for the record, from my right to left.

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1 MR. HUGHES: Good afternoon, Mr. Chair. Dennis
2 Hughes with Holland and Knight, counsel on behalf of the
3 Applicant.

4 MR. MARTINEZ: Good afternoon, Mr. Chair. Gary
5 Martinez with OTJ Architects, working for the client.

6 BZA CHAIR HILL: Okay, great. So, Mr. Hughes,
7 there's a lot of your people here today.

8 MR. HUGHES: Just a couple, yes.

9 BZA CHAIR HILL: Yes, a couple here today. And so,
10 yes. And then, are there other people here, with Ford's
11 Theatre, with you today?

12 MR. HUGHES: We have a couple representatives, yes.

13 BZA CHAIR HILL: Oh, okay. Okay. I'm going to have
14 some questions later. So, all right. So, Mr. Hughes, if you
15 could go ahead and kind of walk, I guess you're going to be
16 presenting, correct?

17 MR. HUGHES: We can -- whatever the Chair's
18 preference --

19 BZA CHAIR HILL: Yeah, yeah, yeah --

20 MR. HUGHES: -- is. We --

21 BZA CHAIR HILL: No --

22 MR. HUGHES: -- believe the record is complete, but
23 we can certainly summarize --

24 BZA CHAIR HILL: No, yeah, please do walk us through
25 the presentation, if you could. I mean, I guess part of why

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1 I'm kind of laughing is, I live around the corner and so, I'm
2 very familiar with the property.

3 And what I was going to comment upon is that, and
4 since it's late in the day and I can just, I'm trying to stay
5 awake, the little planters that are in front of Ford's
6 Theatre, you have a little sign that says no pets, trying to
7 keep the pets out, I don't think you're allowed to do that,
8 I think that's kind of like, that's public space. So, just
9 to let you all know.

10 All right. So, that's -- and I'm disclosing, I'm
11 disclosing that I live in the neighborhood. Okay? Right,
12 yes, I can testify.

13 ZC CHAIR HOOD: So, since you testifying, can I ask
14 you a question? So, the pet signs --

15 BZA CHAIR HILL: Yes.

16 ZC CHAIR HOOD: -- the issue is the pet signs?

17 (Laughter.)

18 BZA CHAIR HILL: Well, there -- if you'll see, there
19 is some --

20 ZC CHAIR HOOD: Okay.

21 BZA CHAIR HILL: -- questions from DDOT, I think,
22 when they're talking about, like, planters and so, if there's
23 going to be additional planters, I'd just like to kind of be
24 on the record that I don't think those signs in the planters
25 they have now are legal.

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1 But -- okay. So, that being the case -- and as you
2 can tell, it's been a long day and we're starting to get
3 punchy. So, Mr. Hughes, if you can kind of, again, walk us
4 through the application --

5 MR. HUGHES: Sure.

6 BZA CHAIR HILL: -- tell us a little bit about what
7 your client is trying to achieve, and also the standard with
8 which you believe you are meeting, so we can grant the
9 application. The design looked very interesting and so, it
10 would be nice to hear a little bit about the design.

11 I'm going to put 15 minutes up on the clock. And
12 since, as you've seen, we gave somebody some party status and
13 they're working time out, then I have a little bit more time
14 than I thought I was going to have. So, please, go ahead.

15 MR. HUGHES: Okay, great. Thank you, Mr. Chair. We
16 appear before you today to request two special exceptions
17 related to building setbacks, as part of a renovation and
18 expansion the Applicant is proposing within two historic
19 buildings located immediately across 10th Street Northwest
20 from Ford's Theatre and immediately south of Petersen House.

21 Before I turn to Mr. Martinez's testimony, I'd like
22 to note that the hearing record includes a recommendation of
23 approval from the Office of Planning, along with a report of
24 DDOT, as you noted, Mr. Chair, indicating no objection.

25 In the Office of Planning's report, they suggested

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1 the Applicant may need to supplement its penthouse setback
2 special exception request to include relief from both the
3 rear building wall and the side building wall. And we
4 subsequently met with the Zoning Administrator, after the
5 Office of Planning report, the timing didn't work out, the
6 OP report had to go in by Monday and we had a meeting with
7 Mr. LeGrant, I believe it was on the next, on the following
8 day.

9 And he confirmed -- out of an abundance of caution,
10 we've asked for relief from an additional subsection. And
11 we supplemented the record to note that and there was a
12 request to accept a late, or I guess, our late filed
13 response.

14 BZA CHAIR HILL: Yes, I saw the late filing, thank
15 you. And I don't have any issue with that late filing,
16 unless someone else on the Board does. So, it's relief
17 again, from 1502.1(c)?

18 MR. HUGHES: We're requesting from Subtitle C 1502.1
19 Subparagraph (b), for rear building wall, as well as (c), for
20 side building wall. We supplemented by adding the (c).

21 BZA CHAIR HILL: You're supplementing by adding the
22 (c), you already have the (b)?

23 MR. HUGHES: We already have --

24 BZA CHAIR HILL: Got you, I see.

25 MR. HUGHES: We already had the (b), yes.

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1 BZA CHAIR HILL: Okay, great, thank you.

2 MR. HUGHES: And we certainly appreciate OP's
3 thorough review and input. And then, I guess, finally, at
4 the outset, I'd like to note that we met with Advisory
5 Neighborhood Commission 2C at its October 2019 public
6 meeting, at which the ANC voted unanimously to recommend the
7 Board approve the application, and I believe the Board has
8 the letter of support in the record.

9 BZA CHAIR HILL: Okay.

10 MR. HUGHES: And with that, I'll turn the microphone
11 over to Mr. Martinez --

12 BZA CHAIR HILL: Sure, that would be great.

13 MR. HUGHES: -- to give an overview.

14 BZA CHAIR HILL: Sure, that would be great.

15 MR. HUGHES: Thank you.

16 MR. MARTINEZ: Good afternoon, Mr. Chairman and
17 members of the Board. I'm very pleased to be here with you
18 this afternoon, I know it's been a long day for you. And I
19 will make this a very direct presentation, any questions that
20 you have, happy to answer.

21 So, the project includes essentially building,
22 address, I'm sorry, 512 on 10th Street. And in the rendering
23 that you, I believe, see before you, it is the Art Deco-ish
24 building, sort of with the light blue panels on it. Top of
25 that building is an addition, which is several stories tall.

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1 Now, for this particular project, went through the
2 Historic Preservation Review Board and one of the main points
3 that I am going to be speaking to, but I want to talk about
4 it here now, is the setback of the new part of the building,
5 which is above the original facade of the original building,
6 and how far it was pushed back from 10th Street.

7 The lot itself is 95 feet deep. And a fair amount
8 of space, given the sight lines that they normally require
9 at HPRB for new additions on top of historic buildings. That
10 is the design reason why you see the upper part of the
11 building recessed back.

12 This project is being treated as an addition and
13 alteration to 514, which is the taller thin building, just
14 to the north of the subject property. I'm just going to make
15 a note that, since we made the application, subdivision of
16 these two properties has been granted, so these are two
17 buildings on one lot.

18 VICE CHAIRPERSON HART: And, Mr. Martinez, just so
19 you're aware --

20 MR. MARTINEZ: Yes?

21 VICE CHAIRPERSON HART: -- I'm the one that's
22 actually doing the drawing for --

23 MR. MARTINEZ: Oh, that's wonderful.

24 VICE CHAIRPERSON HART: -- folks, so that they can
25 actually see some of this. You have the ability to make

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1 drawings, see the --

2 MR. MARTINEZ: Can I do --

3 VICE CHAIRPERSON HART: -- this gray panel, no
4 behind the computer, there's a gray panel, the monitor,
5 sorry, that monitor is --

6 MR. MARTINEZ: This?

7 VICE CHAIRPERSON HART: -- yes, you're able, if you
8 tap on it, the image will come up and you'll be able to
9 actually draw stuff on, to be able --

10 MR. MARTINEZ: Wonderful.

11 VICE CHAIRPERSON HART: -- so you can at least point
12 out, when --

13 MR. MARTINEZ: Okay.

14 VICE CHAIRPERSON HART: -- you're talking about
15 stuff. It would also help me, because I'm kind of guessing,
16 what I'm listening to you say.

17 MR. MARTINEZ: You've done an amazing job, actually.

18 VICE CHAIRPERSON HART: Well, I'm --

19 (Laughter.)

20 MR. MARTINEZ: So, thank you. Can you see, if I use
21 the --

22 VICE CHAIRPERSON HART: Well, I just --

23 MR. MARTINEZ: -- cursor, can you see that as well?

24 VICE CHAIRPERSON HART: It's much harder to see,
25 that's why we had this other --

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1 MR. MARTINEZ: Okay, all right.

2 VICE CHAIRPERSON HART: -- you can see, like we just
3 saw you moved it a little bit, but it's just easier to be
4 able to --

5 MR. MARTINEZ: I'll use this.

6 VICE CHAIRPERSON HART: -- the screen, because then
7 you can kind of circle this, and this is what we're trying
8 to do.

9 MR. MARTINEZ: Okay. Thank you.

10 VICE CHAIRPERSON HART: If it goes away, you should
11 just be able to tap it and it'll come back.

12 MR. MARTINEZ: Great. Well, thank you very much, I
13 appreciate --

14 VICE CHAIRPERSON HART: No problem.

15 MR. MARTINEZ: -- that. So, we wanted to just start
16 by showing some of the properties that Ford's either owns,
17 Ford's Theatre Society either owns or they manage and operate
18 or they lease. And you can see that it's really a cluster
19 of buildings along 10th Street. The subject property for
20 today is Building 1, which is 512.

21 They also have the Center for Education and
22 Leadership, just to the north, number two, the Peterson
23 House, which of course is where Lincoln was taken after he
24 was shot, number three. But then, the Theatre itself,
25 directly across the street, with the addition of the Star

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1 Saloon to the south, and then, a little lobby and entry to
2 the Theatre, item number four, to the North. Somewhat of a
3 campus, if you will.

4 BZA CHAIR HILL: The Star Saloon? Oh, yes, okay.

5 MR. MARTINEZ: That's it, right there, number six,
6 it's a small adjacent building that's used for support of the
7 complex.

8 So, here, we see the two buildings that we are
9 speaking of, but 512 is the building that we are talking
10 about, in terms of the relief. And that is the building, the
11 smaller building that you saw in the rendering moments ago.

12 This is a first floor plan view. And the area
13 which is in blue is 512. We are retaining facades and
14 building walls of that building, and then, we are building,
15 we're going to be building inside of that envelope, if you
16 will, and going up and above the existing facade, by several
17 floors.

18 You see 10th Street on the right-hand side of the
19 drawing. And then, there's a ten-foot public alley, which
20 runs north-south. As it gets to the southern end of the
21 alley, you can see the building, 512 takes a dogleg right
22 here and then, kind of comes around that corner. I'm clearly
23 not as good as you are, Mr. Hart, at this, I beg your pardon.

24 VICE CHAIRPERSON HART: I've had a lot of practice.

25 MR. MARTINEZ: So, at any rate. 512 is being

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1 connected to 514, that was one of the reasons for the
2 subdivision. Let me just -- if I -- how do I -- to clear
3 this, do I just -- I'll just go to the next slide.

4 A couple of photos of the, looking up and down 10th
5 Street. You can see the existing condition of the Art Deco
6 building, in this location. And again, it's being co-joined
7 to the building just to the north.

8 I would point out, as you get further down 10th
9 Street, because of the slope of the street, you tend to see
10 quite a bit of this area, and this is one of the viewsheds
11 that HPRB was particularly interested in, so that's why we
12 have these kinds of exhibits for the project.

13 VICE CHAIRPERSON HART: And is that, the long narrow
14 building is 514, that you see?

15 MR. MARTINEZ: The long narrow building, just behind
16 that, yes, that's 514.

17 VICE CHAIRPERSON HART: And HPRB is trying to
18 protect that --

19 MR. MARTINEZ: Well, the --

20 VICE CHAIRPERSON HART: -- the view?

21 MR. MARTINEZ: -- issue here, where I drew the red
22 circle, is where 512 and the addition --

23 VICE CHAIRPERSON HART: Yes.

24 MR. MARTINEZ: -- on top of it will be seen from
25 below. 514 is completed, it did go before the Board as well,

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1 but it's a completed building and Ford's Theatre Society
2 occupies it.

3 VICE CHAIRPERSON HART: And these buildings are
4 connected?

5 MR. MARTINEZ: They're not connected at this time --

6 VICE CHAIRPERSON HART: No, no, but I'm --

7 MR. MARTINEZ: -- but they will be.

8 VICE CHAIRPERSON HART: -- saying, they will be --

9 MR. MARTINEZ: They will be --

10 VICE CHAIRPERSON HART: -- connected?

11 MR. MARTINEZ: -- connected, yes.

12 VICE CHAIRPERSON HART: And are those at-risk
13 windows on the southern facade of the 514? At least a
14 portion of them?

15 MR. MARTINEZ: They are considered at-risk windows,
16 because they were on what was a property line. Now --

17 VICE CHAIRPERSON HART: Yes.

18 MR. MARTINEZ: -- that it's one lot, I mean, we're
19 treating them, as we design the new building, we're treating
20 those windows and taking care of the spaces behind them.

21 VICE CHAIRPERSON HART: But they will be, they're
22 going to be closed, that's what --

23 MR. MARTINEZ: Some of them will be closed.

24 VICE CHAIRPERSON HART: Yes, because --

25 MR. MARTINEZ: So, the ones --

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1 VICE CHAIRPERSON HART: -- of the one level is lower
2 than -- the building that is now on 512 is lower than
3 building that's on 514, so --

4 MR. MARTINEZ: That is correct.

5 VICE CHAIRPERSON HART: -- the windows that you'll
6 be covering up are a portion of the -- I'm sorry I'm using
7 the numbers, it's easier to talk about them that way.

8 MR. MARTINEZ: So, I can point out, these windows
9 here will be covered up by the addition. The windows at a
10 higher location, sort of up in this area, over here on the
11 left-hand photo, they'll remain.

12 VICE CHAIRPERSON HART: Thank you.

13 BZA CHAIR HILL: And then, since we're talking about
14 windows, because I was curious about this when I was looking
15 at the design, so what about the windows that you'll be
16 blocking from the office building? I guess there's just kind
17 of like that small alley, in terms of the light and air for
18 those windows, correct? The office building to the west.

19 MR. MARTINEZ: There is an office building to the
20 west, that's this structure right here. Just to look in the
21 alley, here is the existing condition of the alley. So, you
22 can see in the center slide, 514, which exists, and this is
23 the existing wall of 512, we will be building up from this
24 point, not as high as 514, but up in this area. And you can
25 see in the photograph on the left, the nature of the alley,

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1 sort of for its full height. This is looking from the north
2 to the south.

3 BZA CHAIR HILL: Right. So, I'm just saying, and I
4 was curious as to what that -- I mean, you're going to block
5 about, like, three floors of windows, I guess, it looks like?

6 MR. MARTINEZ: Well, we'll be, the same distance
7 that you see in the left-hand side, we'll be that distance
8 --

9 BZA CHAIR HILL: Right, all the --

10 MR. MARTINEZ: -- away from those windows.

11 BZA CHAIR HILL: -- way up, but I'm saying, that's
12 how close you'll be to those windows. Did the property owner
13 say anything about those windows? I was just curious.

14 MR. HUGHES: The adjacent property owner?

15 BZA CHAIR HILL: In the office building to the west,
16 the one that's going to have, now they're going to have a
17 small alley as opposed to at least they were looking over 512
18 before.

19 MR. HUGHES: We did not approach the neighboring
20 property owner, if that's the question. We've not heard
21 anything from them, from our various notice, posted placards
22 submitted to the --

23 BZA CHAIR HILL: Okay.

24 MR. HUGHES: -- through the mail and so forth.

25 BZA CHAIR HILL: And I --

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1 MR. HUGHES: Mr. Martinez's office is in that
2 building.

3 BZA CHAIR HILL: No, I'm just curious, and maybe I'm
4 misunderstanding the --

5 MR. HUGHES: Right.

6 BZA CHAIR HILL: -- architectural plans, which is
7 that it seemed as though that the addition that you're
8 putting would block some windows that are over in that office
9 building to the west. Is that -- am I wrong?

10 MR. MARTINEZ: This wall -- no, you are correct. I
11 mean, block in the sense that they'll be the full ten feet
12 away fro those windows.

13 BZA CHAIR HILL: Right, there will be an alley there
14 --

15 MR. MARTINEZ: There will be an alley.

16 BZA CHAIR HILL: -- as opposed to now, they're
17 looking over 512.

18 MR. MARTINEZ: They look over 512, to some degree --

19 BZA CHAIR HILL: Okay, great.

20 MR. MARTINEZ: -- at this point in time, yes.

21 BZA CHAIR HILL: Okay.

22 MR. MARTINEZ: It's important to note, however,
23 that, as you see in the photo here, both the existing
24 building as well as the addition on top, will not have any
25 windows in them. So, it will be a solid wall. There won't

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1 be an issue of invasion of privacy or anything like that,
2 because there won't be any further windows in the part of the
3 building that's up in that area.

4 BZA CHAIR HILL: So, there will just be a wall?

5 MR. MARTINEZ: It's just a wall. I can explain that

6 --

7 BZA CHAIR HILL: Okay.

8 MR. MARTINEZ: -- momentarily.

9 BZA CHAIR HILL: Sure.

10 MR. MARTINEZ: So, again, this is the view from the
11 rendering that we just talked about a moment ago. And here,
12 just now, I can point out, in the drawing, you can see some
13 of the windows in the 514 building that are left open, on
14 that southern wall.

15 BZA CHAIR HILL: Yes, 514 is, I mean, that's you
16 guys. So, like --

17 MR. MARTINEZ: It is.

18 BZA CHAIR HILL: Right. And --

19 MR. MARTINEZ: Yes.

20 BZA CHAIR HILL: -- I'm just more curious with that,
21 again, that office building to the west --

22 MR. MARTINEZ: You're thinking --

23 BZA CHAIR HILL: -- I mean, you can see --

24 MR. MARTINEZ: -- about windows that are below --

25 BZA CHAIR HILL: Yes, like --

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1 MR. MARTINEZ: -- that point? Yes.

2 BZA CHAIR HILL: Yes, exactly, below that point,
3 because you're adding that, what, five stories there?

4 MR. HUGHES: Three stories.

5 BZA CHAIR HILL: Three stories?

6 MR. MARTINEZ: Right.

7 VICE CHAIRPERSON HART: But this is something that
8 the building envelope that would have been allowed there
9 regardless is taller than what you are proposing? So, the
10 building massing that would have been allowed at 512, that's
11 allowed under zoning, is taller than what you're proposing?

12 MR. MARTINEZ: The building height is taller than,
13 the allowable building height is --

14 VICE CHAIRPERSON HART: Yes.

15 MR. MARTINEZ: -- taller than the building that we
16 are --

17 VICE CHAIRPERSON HART: Yes.

18 MR. MARTINEZ: -- building, that's correct, yes.

19 VICE CHAIRPERSON HART: So, this is actually lower
20 than that. While I understand the issue about the views, as
21 we've always said, the views are not protected, in that it
22 is something that they're going to have to -- that will be
23 an adjustment for the building that's to the west. But the
24 massing has always been, the allowable massing and height has
25 always been --

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1 MR. MARTINEZ: The height has always --

2 VICE CHAIRPERSON HART: Yes, I shouldn't say massing

3 --

4 MR. MARTINEZ: So, if we --

5 VICE CHAIRPERSON HART: -- I meant height.

6 MR. MARTINEZ: If we were the 19 feet away, we would
7 simply be some number of feet further away, but the height
8 would still be there. That, I think, is the point. I do
9 have another exhibit that we can talk about that, and I can
10 show you --

11 BZA CHAIR HILL: Okay, thank you.

12 MR. MARTINEZ: -- that relationship.

13 MEMBER JOHN: While you're pulling that up, did I
14 read somewhere that the distance is ten feet between --

15 MR. MARTINEZ: The public alley itself is ten --

16 MEMBER JOHN: Yes. So --

17 MR. MARTINEZ: -- feet, yes. And so --

18 MEMBER JOHN: -- there is still --

19 MR. MARTINEZ: -- that distance would be --

20 MEMBER JOHN: -- a separation? Okay.

21 MR. HUGHES: Correct.

22 MR. MARTINEZ: It's a ten-foot separation, yes,
23 which is not unusual for alleys in this part of the city.
24 So, here, just a diagram of the uses. Again, this being 514.

25 And what's interesting about this, I'll make the

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1 point here, you can see there's our Studio A and Studio B,
2 these are rehearsal spaces that are desperately needed by
3 Ford's Theatre. They have no place to actually rehearse the
4 shows, so they currently use the stage.

5 And the important aspect, one of the very important
6 aspects to this particular project, they're very unique uses.
7 And the purpose of a rehearsal space is that it have enough
8 area to duplicate as closely as possible the performance
9 space in the Theatre itself.

10 So, as the actors practice the show in the
11 rehearsal room, the movements and the space that they have
12 to occupy, that's almost as though they're occupying the
13 stage, will be the same as when they actually do get on stage
14 and they're performing the show.

15 So, this area, Studio B, which is a new piece that
16 we're building, is as close to the size of the stage over
17 across the stage in Ford's Theatre as we can possibly make
18 it, given the setbacks that we had to make at the front of
19 the building to satisfy HPRB.

20 So, here, we see, just to go back a moment, sir,
21 it's keyed in the same color, the Function Room. This is
22 also going to be a location where the board can meet. Here's
23 a plan of the Function Room.

24 What you see in the gray on the left-hand side,
25 over here and down here, are the existing buildings around

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1 512, which is in the salmon color and the light green color.

2 BZA CHAIR HILL: Mr. Martinez?

3 MR. MARTINEZ: 10th Street is on the right-hand side
4 of the drawing. Sorry, yes, sir?

5 BZA CHAIR HILL: Yeah, no, just I was curious when
6 I was even looking at it, how come you guys did it at an
7 angle like that? Just, there wasn't a zoning reason why you
8 did the angled wall?

9 MR. MARTINEZ: No, it wasn't a zoning reason, it was
10 really to diminish the mass, the apparent mass of the
11 addition, as it sits on top of the building below.

12 BZA CHAIR HILL: Got it.

13 MR. MARTINEZ: Here's the face of the building
14 below. So, as we fall away from it, it actually pulls us out
15 of the site line, as you're coming down --

16 BZA CHAIR HILL: Got it.

17 MR. MARTINEZ: -- south from the north.

18 BZA CHAIR HILL: Okay, thank you.

19 VICE CHAIRPERSON HART: And so, this is really about
20 the view from the south towards this?

21 MR. MARTINEZ: It is.

22 VICE CHAIRPERSON HART: Okay. Because --

23 MR. MARTINEZ: And so --

24 VICE CHAIRPERSON HART: -- it'll make it, the
25 massing, because this shorter end is closer to you --

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1 MR. MARTINEZ: Right.

2 VICE CHAIRPERSON HART: -- it'll make it look a lot
3 --

4 MR. MARTINEZ: Exactly.

5 VICE CHAIRPERSON HART: -- smaller?

6 MR. MARTINEZ: This piece right here will be shorter
7 than it normally would had we just brought it straight down.
8 And you can see that we're 21 feet, at this location, 21 feet
9 back from the street edge of 10th Street. That's where the
10 facade is that we're retaining.

11 And these rooms are, except for the support space,
12 which has some smaller room on the floor, for the main floors
13 and the main uses of this part of the building, the rooms
14 take up virtually the entire floor plate.

15 You can see over here, on the left-hand side of the
16 drawing, measuring from the center line to the alley, this
17 dotted line is the location as to sort of where the building
18 would need to be set back to to meet the requirement for the
19 required rear yard, given the height of the building.

20 The elements which we have put into, in this case,
21 a wall which mimics the wall below, so in other words, this
22 profile is sitting right on top of the existing building wall
23 below, are functional spaces. I mean, it's an elevator, a
24 service elevator. It is just shafts for mechanical
25 equipment. And a vestibule for connection from this building

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1 into the stairwell, which is in 514.

2 Without this relief, these elements wind up being
3 in here, diminishing, virtually to a point that makes the
4 floor plate unusable, the space that we have for the Function
5 Room. While it's critical here, it's absolutely necessary
6 for both of the studio spaces to have this location for the
7 elevator.

8 And this goes to one of the reasons for the special
9 exception, in that it's just virtually unusable without the
10 relief at this point.

11 Here, we have Studio B, this is the top part of the
12 building. In the Facilities area, we have a fire stair, we
13 have mechanical ductwork space, we have an elevator, and we
14 have restrooms. This is the studio space itself. And again,
15 that same relationship, these facilities over here on the
16 west side of the building just carry straight up. That's the
17 reason we can have this back wall, we don't need any windows
18 in this back wall.

19 VICE CHAIRPERSON HART: But this is also being
20 pushed back because of the setback that you're having to do
21 along 10th Street? I mean, otherwise --

22 MR. MARTINEZ: Correct.

23 VICE CHAIRPERSON HART: -- you could have had this
24 space --

25 MR. MARTINEZ: Well, we could have taken this space

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1 and we could be out here with it --

2 VICE CHAIRPERSON HART: Yes.

3 MR. MARTINEZ: -- and we'd have all of this space --

4 VICE CHAIRPERSON HART: Yes.

5 MR. MARTINEZ: -- to work with.

6 VICE CHAIRPERSON HART: Yes, okay.

7 MR. MARTINEZ: That's exactly correct --

8 VICE CHAIRPERSON HART: Thank you.

9 MR. MARTINEZ: -- yes, sir. Now, to move to the
10 second point, the second --

11 BZA CHAIR HILL: Okay, Mr. Martinez, I'm sorry --

12 MR. MARTINEZ: Yes, sir.

13 BZA CHAIR HILL: -- I was kind of interested in
14 seeing more of the --

15 MR. MARTINEZ: Okay.

16 BZA CHAIR HILL: -- design and kind of walking
17 through --

18 MR. MARTINEZ: Oh, okay.

19 BZA CHAIR HILL: -- what you did and so, I don't --
20 in terms of the relieving request, I was, again, I was just
21 also enjoying the -- I mean, I literally live -- I mean, I
22 walk up and down that street three times, four times a day.
23 And so -- because I have a dog. And so, we've already
24 established that.

25 (Laughter.)

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1 BZA CHAIR HILL: And so, I'm very familiar with --
2 can you show me the planters I'm going to get over here?

3 (Laughter.)

4 VICE CHAIRPERSON HART: And now it's on the record,
5 Mr. Chairman.

6 BZA CHAIR HILL: Where are the planters?

7 MR. MARTINEZ: I don't know that --

8 BZA CHAIR HILL: Where are the planters?

9 MR. MARTINEZ: -- I have the planters --

10 BZA CHAIR HILL: I saw some planters --

11 MR. MARTINEZ: Did you?

12 BZA CHAIR HILL: -- there were trees --

13 MR. MARTINEZ: Let me go back --

14 BZA CHAIR HILL: Right.

15 MR. MARTINEZ: -- to the --

16 BZA CHAIR HILL: They were already --

17 MR. MARTINEZ: Right there?

18 BZA CHAIR HILL: No, it was --

19 MR. MARTINEZ: I might have to defer to the --

20 BZA CHAIR HILL: Oh, yes, right.

21 MR. MARTINEZ: -- building owner to --

22 BZA CHAIR HILL: That's okay.

23 MR. MARTINEZ: -- about the planters.

24 BZA CHAIR HILL: I was just looking where I'm going
25 to be visiting.

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1 MR. MARTINEZ: I would --

2 BZA CHAIR HILL: Okay.

3 MR. MARTINEZ: -- say just, on that point --

4 BZA CHAIR HILL: Sure. DDOT did have a question
5 about the planters, right? Or they were kind of like asking
6 about them? I can't remember what they wanted to --

7 MR. MARTINEZ: They did, and we have been to DDOT
8 for approval of the marquee that I just circled and the work
9 that we're doing at the ground level.

10 If you -- since you walk by it all the time, I'm
11 sure you know that the base of that building is very, very
12 high. And we are literally opening that up, there is a
13 retail use there that's associated with Ford's Theatre
14 Society and Ford's Theatre. So, I think you'll find that to
15 be a tremendous improvement over the very tall wall --

16 BZA CHAIR HILL: If it does --

17 MR. MARTINEZ: -- which currently exists --

18 BZA CHAIR HILL: If this does get approved, do you
19 know how long it's supposedly going to take?

20 MR. MARTINEZ: If it gets, I'm sorry?

21 BZA CHAIR HILL: If it does get approved, do you
22 know how long it's supposedly going to take?

23 MR. MARTINEZ: Well, we are looking to break ground
24 in the first part of the year here and we're looking at about
25 a 12-month, 12 to 14-month time period.

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1 BZA CHAIR HILL: Okay. All right. Okay. Does the
2 Board have any questions for the Applicant? All right. I'm
3 going to turn to the Office of Planning.

4 MR. KIRSCHENBAUM: Good afternoon, Chair Hill and
5 members of the Board. Jonathan Kirschenbaum for the Office
6 of Planning. We recommend approval of the rear yard special
7 exception, and we also recommend approval of the special
8 exemption for rear and side penthouse setbacks, under
9 Subtitle C 1502.1(b) and (c). Please let me know if you have
10 any questions. Thank you.

11 BZA CHAIR HILL: Okay. So, right, you did see,
12 right, you said (b) and (c), correct? Right, okay. And
13 then, no. Does the Board have any questions for the Office
14 of Planning? Does the Applicant have any questions for the
15 Office of Planning?

16 MR. HUGHES: No questions, but I would just like to
17 tell Mr. Kirschenbaum, this was my first time to work with
18 him, and I appreciate it.

19 BZA CHAIR HILL: Okay, great. Very good, Mr.
20 Kirschenbaum. Let's see, so it's kind of you to say also,
21 Mr. Hughes.

22 So, the -- and I'm kind of joking about it, but not
23 really, just DDOT did make a comment that a public space
24 permit would be required for several elements of the project
25 and encourages the Applicant to include more plantings or

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1 green features into the public realm on 10th Street
2 Northwest, while maintaining at least ten feet of pedestrian
3 clear space. I was just pointing that thing out, that you
4 all talked to DDOT about that, right? Okay.

5 Is there anyone here who wishes to speak in
6 support? Is there anyone here who wishes to speak in
7 opposition? Is there anything else, Mr. Hughes, you'd like
8 to add at the end?

9 MR. HUGHES: Only, Mr. Chair, that, to repeat what
10 Mr. Martinez said about the subdivision. We filed this
11 application as Square 347, and I don't have the lot numbers
12 in front of me, but it was a tax lot and another lot, and
13 it's now Lot 24. So, I just wanted to --

14 BZA CHAIR HILL: So, it's Square 347, Lot 24?

15 MR. HUGHES: Correct.

16 BZA CHAIR HILL: So, it's no longer Lots 21 and 825?

17 MR. HUGHES: Exactly.

18 BZA CHAIR HILL: Okay. I'm sorry, you said Lot 24?

19 MR. HUGHES: Correct.

20 BZA CHAIR HILL: Square 347, Lot 24?

21 MR. HUGHES: Yes.

22 BZA CHAIR HILL: Okay.

23 VICE CHAIRPERSON HART: Do we -- have you submitted
24 something on the record that says it's Lot 24?

25 MR. HUGHES: No, sir, I just learned that while we

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1 were here this morning.

2 VICE CHAIRPERSON HART: I'm only wondering because
3 since we don't actually have anything that says that, I don't
4 want to necessarily -- unless we could -- I don't know when
5 you get --

6 MR. HUGHES: I can submit a subdivision plot, if you
7 leave the record for a subdivision plot.

8 VICE CHAIRPERSON HART: Or maybe make that --

9 MR. RITTING: I don't even think that's necessary,
10 I mean --

11 MR. HUGHES: I just --

12 MR. RITTING: -- we could just approve it as the
13 application is now and perhaps we could -- I can send a
14 message to Ms. Myers, stating that the order could have a
15 footnote or some reference to --

16 VICE CHAIRPERSON HART: Yes, that's fine --

17 MR. RITTING: -- that recognizes that --

18 VICE CHAIRPERSON HART: -- I just wanted to make
19 sure that -- I didn't want us to kind of change it now, then
20 we don't actually have any drawings to say that, when we have
21 drawings that say it's 21 and 825.

22 MR. RITTING: Right.

23 MR. HUGHES: No, I appreciate that, Mr. Hart.

24 VICE CHAIRPERSON HART: Yes. And --

25 MR. HUGHES: And I don't mean to get ahead of

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1 things, I just --

2 VICE CHAIRPERSON HART: No, no, it's fine.

3 MR. HUGHES: -- in the event the Board were to find
4 favorably on this application, I just wanted to make sure we
5 didn't run into stumbles with --

6 VICE CHAIRPERSON HART: Yes, I don't --

7 MR. HUGHES: -- the DCRA.

8 VICE CHAIRPERSON HART: -- think this is a big
9 issue, I just wanted to make sure that we were just
10 consistent, while it may be a new number now, we do have two
11 numbers that we know that it is. And I think we probably
12 should just use that, and then, as OAG has said, just maybe
13 make a footnote that that lot has been combined now and it
14 is Lot, now, 24, so that there's a connectivity there.

15 MR. HUGHES: Great.

16 VICE CHAIRPERSON HART: So, that's it.

17 MR. HUGHES: Thank you very much.

18 BZA CHAIR HILL: So, to that note, so then, is it
19 512 and 514 10th Street anymore? Or I have to change that,
20 I'm trying to --

21 MR. HUGHES: I don't believe that's changed.

22 BZA CHAIR HILL: That doesn't change, right? It's
23 just the -- so, I can still read it as 512 and 514 10th
24 Street, correct, OAG?

25 MR. RITTING: Yes.

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1 BZA CHAIR HILL: Okay, all right, fine. Okay.
2 Well, I just don't -- I also just want to say, it's a lovely
3 theater, Ford's Theatre is a lovely theater, the space is
4 really a great space. I mean, I didn't know that that Saloon
5 was part of the group there.

6 And, yes, it's just a great thing to have there in
7 the neighborhood. And now just, I live in, it's Bishop's
8 Alley, is the alley that used to be behind, that, what's the
9 name, jumped out the window. Or not jumped out of the --
10 yes, he did, he jumped out of the back, right? Yes, but I
11 know what his name is, I don't mention his name. Okay. All
12 right.

13 So, all right. With that, I'm going to go ahead
14 and close the record. Is the Board ready to deliberate?
15 Okay, I can start.

16 I would be in agreement with the burden of proof
17 that was put forth by the Applicant. I think, as I stated
18 on the record, that it looks like a wonderful project and
19 something that would be of benefit to the neighborhood. I'm
20 happy to see that the ANC has voted in approval, as well as
21 the Office of Planning. I would also agree with the analysis
22 that was provided by the Office of Planning, for all of the
23 requested relief, including 1502.1(c). And I will be voting
24 in favor.

25 Is there anything anyone else would like to add?

1 ZC CHAIR HOOD: I would just say, Mr. Chairman, I do
2 like the design as well, especially where we're breaking up
3 the density. So, I do like the design, great job.

4 BZA CHAIR HILL: All right. Thank you, Mr.
5 Chairman. I'm going to go ahead and make a motion, I'm going
6 to read it because there was some things to change.

7 Make a motion to approve Application Number 20164,
8 of Ford's Theatre Society, pursuant to 11 DCMR Subtitle X,
9 Chapter 9, for special exceptions under Subtitle C 1504.1
10 from the penthouse setback requirements of Subtitle C
11 1502.1(b) and (c), and under Subtitle I 205.5 from the rear
12 yard requirements of Subtitle I 205.1, to construct a
13 two-story addition and a penthouse addition to the building
14 at 512 10th Street Northwest and to renovate and combine the
15 two existing mixed-use buildings of the D-7 Zone of premises
16 512-514 10th Street Northwest, Square 347, Lot 24, and ask
17 for a second.

18 MEMBER JOHN: Second.

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

21 (Chorus of aye.)

22 BZA CHAIR HILL: All those opposed?

23 The motion passes, Mr. Moy.

24 SECRETARY MOY: Staff would record the vote as
25 4-0-1, and this is on the motion of Chairman Hill to approve

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1 the application for the relief requested. Seconding the
2 motion is Ms. John. Also in support are Vice Chair Hart and
3 Zoning Commissioner Chair Anthony Hood. No other members
4 present.

5 MR. HUGHES: Thank you very much.

6 BZA CHAIR HILL: Okay. Thank you, Mr. Moy.

7 MR. MARTINEZ: Thank you.

8 BZA CHAIR HILL: Thank you, gentlemen. Thank you.
9 All right. Mr. Moy, we can call our second to last case, is
10 that right?

11 SECRETARY MOY: Yes.

12 BZA CHAIR HILL: Okay, yes, second to last case.
13 And then, we'll probably take a break before we come back for
14 -- yes, we'll see what happens. Okay. Go ahead, Mr. Moy.

15 SECRETARY MOY: All right. If we can have the
16 Applicant to the table for Case Application Number 20121, of
17 Bridges 2 Psychological Services and Consultation, LLC. This
18 is captioned and advertised for a use variance from the use
19 requirements, Subtitle U Section 201.1, to convert an
20 existing detached residential building to a medical office
21 building, in an R-2 Zone, at 639 Atlantic Street Southeast,
22 Square 3105, Lot 72.

23 BZA CHAIR HILL: All right. Well, good afternoon.
24 If you could please introduce yourselves for the record, from
25 my right to left.

1 MR. BELLO: Good evening, good afternoon. Toye
2 Bello, representing the Applicant.

3 DR. DICKERSON: Angelina Dickerson, owner.

4 MR. WEBB: B. W. Webb, Royce LTD, contractor.

5 BZA CHAIR HILL: Okay. So, Mr. Bello, I assume
6 you're going to be presenting to us?

7 MR. BELLO: That's correct, sir.

8 BZA CHAIR HILL: Okay. So, if you want to go ahead
9 and walk us through your client's application and why you
10 believe they're meeting the criteria for us to grant the
11 application.

12 I will note, as you know, unless something changed,
13 which I don't think it has, that the Office of Planning is
14 currently not in support of your application. And so, that's
15 one. Then, the other is, I don't actually have anything from
16 the ANC 8E yet.

17 So, you kind of have two strikes against you
18 starting right away. So, if you want to go ahead and kind
19 of walk us through that, as I said, and your argument why the
20 use variance should be granted. I'm going to put 15 minutes
21 on the clock, Mr. Moy, just so I know where we are, and you
22 can begin whenever you like.

23 MR. BELLO: Thank you very much. I just wanted to
24 qualify Mr. Webb as an expert in construction, we have his
25 resume on the record.

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1 BZA CHAIR HILL: Okay. Which, I didn't see a
2 request for an expert witness, but which exhibit is his
3 resume?

4 MR. BELLO: I think it's Exhibit 50. Thank you,
5 sir.

6 VICE CHAIRPERSON HART: And you said expert in what,
7 again?

8 MR. WEBB: Construction and construction custom.

9 MR. BELLO: Thank you.

10 BZA CHAIR HILL: All right. Mr. Webb, if you
11 wouldn't mind just telling us a little bit about your
12 background and experience level in what Mr. Bello is claiming
13 that you're an expert in?

14 MR. WEBB: I've been in the contracting --

15 BZA CHAIR HILL: You need to push the microphone,
16 sir.

17 MR. WEBB: I've been in the contracting business, in
18 renovations and remodeling and building, for 30 years. I've
19 been, since 1985, been a corporation since 1995, licensed,
20 bonded, and insured, and have done various projects in the
21 residential and commercial area, from ground-up to
22 renovations.

23 BZA CHAIR HILL: Okay. After looking at your resume
24 and also hearing some of your background, I don't have any
25 issues with you being used as an expert witness. Does the

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1 Board?

2 ZC CHAIR HOOD: I would just say, I would suggest
3 you tighten your resume up, exactly what you said, because
4 I see some things and you might want to list a little more
5 projects, as obviously you've been in it for 30 years --

6 MR. WEBB: Yes, sir.

7 ZC CHAIR HOOD: -- but you want your resume to
8 reflect what you spoke of.

9 MR. WEBB: All right, thank you.

10 BZA CHAIR HILL: Okay. So, we'll go ahead, Mr.
11 Bello, and accept Mr. Webb as an expert witness. Then, you
12 can again begin whenever you like.

13 MR. BELLO: Yes, thank you. So, the Applicant seeks
14 use variance to use this premises for purposes of a medical
15 office use. When the time comes, the owner would describe
16 in more detail what her -- the nature of what she does. But
17 that is actually the category of use that the Zoning
18 Administer determined that the Applicant needs to seek relief
19 under.

20 For use variance, again, the three-pronged test is
21 one of either uniqueness or extraordinary situation or
22 condition of property, and how that condition results in
23 hardship upon the owners, because we're asking for a use
24 variance here, and then, that the Board can grant the relief
25 without substantial detriment to the public good or the

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1 intent and purpose of the zoning regulations.

2 So, the uniqueness of the property here is both in
3 the size and shape of the property and extraordinary
4 situation of condition of property. The property underwent
5 a zoning change in 2008. The predominant zoning for this
6 area was R-5-A. All the properties were down-zoned to R-2,
7 which is the current zoning classification for the property.

8 While that zoning change was proper for the type of
9 structures that is in this neighborhood, which is largely
10 apartment houses and semi-detached single-family dwellings,
11 this property is the only single-family or single detached
12 structure on the property, sitting on almost a little over
13 8,000 square feet of lot area, where most of these lots were
14 actually no more than 2-3,000 square feet.

15 So, the zoning change, for the intents and
16 purposes, did really not make the kind of correction for this
17 property that it did for most of the other property, because
18 it's out of place, and it's akin more to a property that's
19 located in an R-1 Zone.

20 Number two, the property was constructed from
21 inception for purposes of community residence facility for
22 the handicapped. So, the building was never constructed for
23 purposes of a private home use, so it features handicapped
24 accessibility features that are not common to a single-family
25 dwelling.

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1 You have commercial grade sprinkler system, fire
2 alarm systems, very wide corridors. And I'll leave a little
3 bit more to Mr. Webb to describe those elements when he gets
4 to his testimony. So, those elements would make the property
5 comply with the first test of the variance request.

6 How does this result in extraordinary or hardship,
7 particular hardship upon the owner? Well, the owner, we have
8 it on record that the owner is unable to attract the kind of
9 use that would be allowed as a matter-of-right and still be
10 able to service the debt on this property.

11 The property is classified, for purposes of the tax
12 assessment, as a commercial property, in the zone. We have
13 exhibits to that effect.

14 And the owner will testify that, just to service
15 the debt alone and pay property taxes, without maintenance
16 or paying utilities for this property, would run her about
17 \$3100, but if you add utilities and maintenance cost, then
18 you're looking at \$4600.

19 So, the hardship upon the owner is that this
20 property is unable to attract a use that's permitted as a
21 matter-of-right which would pay the kind of rents that the
22 owner would require to be able to service the debt on that
23 property. I think there's case law to the effect that an
24 owner has an expectation of a reasonable return on
25 investment, in order to be able -- as a basis for the

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1 granting of a use variance.

2 The operation of the owner is such that it's akin
3 to a home occupation, because operations would be a sole
4 operation would be, if she's going to take in a staff, I
5 think down the road, she plans to have maybe one staff, under
6 home occupation, you can actually have two staff who do not
7 reside on premises.

8 So, in terms of intensity of use, the proposed use
9 actually is less intensive than the historical use of the
10 property, which housed six individuals and two live-in staff
11 and several staff going in and out.

12 The property can park close to four or five parking
13 cars onsite. So, there will be very minimal traffic to the
14 property, because she's involved more in counseling, and does
15 a whole lot of -- I think that maybe she has no plan on
16 having more than five to seven people on any given day coming
17 through the house for the services that she renders. So, the
18 property would be compatible with what is in the
19 neighborhood.

20 In fact, DCRA had to issue a temporary certificate
21 for her to occupy the premises, because she was misinformed
22 and had expended a lot of money renovating the building, to
23 bring it up to certain codes the DCRA wanted before she found
24 out that she couldn't really occupy the place for purposes
25 of her use under the zoning regulations.

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1 BZA CHAIR HILL: Who's that? Are you're speaking
2 about Ms. Dickerson now?

3 MR. BELLO: Ms. Dickerson is the owner, that's
4 right.

5 BZA CHAIR HILL: Right. Okay. So, when you bought
6 the property, you had intended to use it for this service,
7 is what you're saying? And also, because I've been looking
8 through the record, I'm having a hard time finding what the
9 layout is currently of the property. Is it what's in -- is
10 it in your current architectural drawings, that's already
11 been done with offices? I mean, what's the inside like now?

12 MR. BELLO: We have floor plans. I'm sorry, I
13 couldn't print the exhibit earlier this morning, let me see
14 if I can get to it.

15 VICE CHAIRPERSON HART: Will you -- are you looking
16 for the internet?

17 MR. BELLO: Yes, sir. I'm trying to get to IZIS.

18 VICE CHAIRPERSON HART: I think it's just the little
19 plus to -- or you can -- I don't, actually, I'm not sure how
20 to get into it on this. I think we may need -- oh, maybe
21 that's, there it is. No? That's weird.

22 BZA CHAIR HILL: Mr. Bello, I don't think you have
23 to do all that. I don't --

24 MR. BELLO: I'm sorry?

25 BZA CHAIR HILL: You see how to search, Zoning Case

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1 Search, the little -- yes. There you go. And Ms. Dickerson,
2 I mean, I don't mean to crisscross, since Mr. Bello's here,
3 or anything, but when you bought it, what did you intend,
4 what was your intended use?

5 DR. DICKERSON: I had -- it was advertised as a
6 commercial property, so I had purchased thinking it was a
7 commercial investment, so that I could provide mental health
8 services in the foreseeable future. Because I did a lot of
9 research, I know that area, particular area, is an area
10 that's underserved for mental health services and also --

11 BZA CHAIR HILL: And that's what --

12 DR. DICKERSON: -- psychiatric services and --

13 BZA CHAIR HILL: -- you actually do? That's your --

14 DR. DICKERSON: I'm a psychologist --

15 BZA CHAIR HILL: Right.

16 DR. DICKERSON: -- by trade.

17 BZA CHAIR HILL: Okay. So, you bought it to be able
18 to run the clinic or provide those services in that
19 commercial space?

20 DR. DICKERSON: Yes.

21 BZA CHAIR HILL: So, you didn't have an opportunity
22 to go through -- you didn't talk to a zoning attorney --

23 DR. DICKERSON: No.

24 BZA CHAIR HILL: -- or anything like that, you just
25 bought it the way it was advertised?

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1 DR. DICKERSON: As a -- yes.

2 BZA CHAIR HILL: And so, and Mr. Bello, yes, I saw
3 these. I mean, this is what it is now? It looks as though
4 this is what it's going to be.

5 MR. BELLO: Yes, it's -- the floor plan is pretty
6 much the way it is now.

7 BZA CHAIR HILL: Right. This is the way the floor
8 plan is now?

9 MR. BELLO: Exactly.

10 BZA CHAIR HILL: Okay. And I'm just kind of
11 curious, when you say exactly, I mean, is this or is this not
12 the floor plan the way it is now?

13 MR. BELLO: This is largely the way it is, with the
14 corridors they are and --

15 BZA CHAIR HILL: So, you guys -- so, the refitting
16 that you all are doing is, you're just putting in new walls
17 exactly where the new walls are?

18 MR. BELLO: The walls are mostly in place. These
19 were bedrooms, we're just basically turning them to offices.

20 BZA CHAIR HILL: I see. Sure, of course, please.

21 VICE CHAIRPERSON HART: So, Mr. Bello, I think the
22 issue, the problem that we're having, not having, it would
23 be helpful for us to understand, when you say they are mostly
24 in place or they are -- mostly means that they're not all in
25 place, so that means there's some change going on.

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1 And so, we don't know what that change is and
2 you're giving us a descriptor for it, for what changes are.
3 And I don't know, maybe Mr. Webb can give us some information
4 about what those changes are that are being proposed, so that
5 we have at least an understanding of what mostly means.

6 MR. BELLO: Well --

7 VICE CHAIRPERSON HART: Because no one goes in and
8 puts in walls exactly where they were, so there's some change
9 happening, and we're just not sure what that change is. So,
10 maybe it's Mr. Webb that can answer that question.

11 MR. BELLO: Well, actually, I can, because I've been
12 to the property. There are no walls being moved at all.

13 VICE CHAIRPERSON HART: So, what does mostly mean?

14 MR. BELLO: Well, the -- some of the changes that
15 the owner had to go through on the instruction of DCRA was
16 basically the upgrades or the servicing of the commercial
17 fire alarm systems and --

18 VICE CHAIRPERSON HART: But that has nothing to do
19 with the walls.

20 MR. BELLO: Well, the walls are not moving, is what
21 I'm saying.

22 VICE CHAIRPERSON HART: So, the walls --

23 MR. BELLO: All the walls --

24 VICE CHAIRPERSON HART: -- are staying exactly the
25 way that they are right now --

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1 MR. BELLO: Exactly.

2 VICE CHAIRPERSON HART: -- there is no change to any
3 of the walls in the --

4 MR. BELLO: No, there's not.

5 VICE CHAIRPERSON HART: -- so, what we're seeing
6 here is the exact floor plan for what is existing there
7 currently?

8 MR. BELLO: That's correct.

9 VICE CHAIRPERSON HART: And that's what's also being
10 proposed?

11 MR. BELLO: Correct, sir.

12 VICE CHAIRPERSON HART: It's just what they're being
13 used for is different from what's there? That's the part --

14 MR. BELLO: That's it.

15 VICE CHAIRPERSON HART: Okay. We're fine, I don't
16 have any other questions on that. Thank you.

17 BZA CHAIR HILL: Okay. And the reason why I was
18 asking, Mr. Bello, is that trying to figure out exactly what
19 then this was or what this is now, and your hardship with
20 keeping it as a residential property, right? And so, you're
21 saying that this is what it looks like now and so, these were
22 like, as you said, bedrooms, right?

23 MR. BELLO: Correct.

24 BZA CHAIR HILL: So, okay. All right. Please
25 continue.

1 MR. BELLO: Okay. So, what we're saying, in
2 essence, is that this property was constructed from the very
3 beginning for the purpose of community residence facility for
4 the physically challenged.

5 So, it's not your typical private residence layout,
6 that's why you have the laundry, the handicapped bathrooms,
7 and the large rooms that are being turned into offices. What
8 is being used at this point as a conference room, essentially
9 what was the common dining room for the residents and the
10 staff that used to be there.

11 So, our testimony is that, one, the property has
12 been held out for lease for close to a year, without any
13 interest from any --

14 BZA CHAIR HILL: Lease as a residential property?

15 MR. BELLO: Without any restrictions. It --

16 BZA CHAIR HILL: Well, it has to be a residential
17 property --

18 MR. BELLO: Well --

19 BZA CHAIR HILL: -- it can't be commercial.

20 MR. BELLO: Well, in other words, if a residential
21 interest could be there, they wouldn't be able to pay the
22 kind of rent that would allow the owner to service the debt.

23 BZA CHAIR HILL: Okay.

24 MR. BELLO: Yes.

25 BZA CHAIR HILL: I mean, it depends on how much the

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1 owner paid for the property and whether the owner overpaid
2 for that property.

3 MR. BELLO: Well, we have on the record the mortgage
4 payments, we submitted that to the records. We submitted
5 evidence that the property is taxed commercially. And just
6 those two elements would run the owner about \$3,100. We
7 submitted to the record rental schedules for that property
8 and --

9 BZA CHAIR HILL: I'm sorry, Mr. Bello, why is it
10 taxed at commercial if it's not being able to be used as
11 commercial?

12 MR. BELLO: Well, that's, in fact, the problem.
13 Because OTR's idea of what commercial property is is
14 different from Zoning deems it to be. Community residence
15 facility, notwithstanding that the zoning regulations deem
16 it residential use, but OTR classifies it, and has classified
17 it from inception, as commercial property.

18 BZA CHAIR HILL: Okay. All right. Okay. Is there
19 anything else?

20 MR. BELLO: That's it. I'll let Ms. -- do you want
21 to speak to experience with DCRA, what you went through?

22 DR. DICKERSON: Yes. It's been, with regards to the
23 taxes, I've been -- it's been taxed commercial since I bought
24 it. So, the utilities is being paid at commercial rate.

25 And I didn't -- in the interim, when I was trying

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1 to rent the property, I had to go to DCRA, because the
2 prospective tenant went to go obtain the C of O and he was
3 denied and he was told that it wasn't a commercial, it was
4 residential property.

5 And from that point, I was going to DCRA, like
6 literally twice, three times a week, to find out what I need
7 to do, what's going on, because I'm paying commercial rate,
8 utilities commercial rate, but yet, this department is
9 telling me it's not a commercial property.

10 And then, I went and they told me initially that
11 all I needed to do was complete the Certificate of Occupancy
12 application. And I did that. And I had went, a person over
13 there told me to go and get a memorandum to complete the
14 Certificate of Occupancy application. And when I went there,
15 that person told me to go speak with a supervisor.

16 And I spoke with a supervisor, on that particular
17 day, it was February 27, and he had told me basically that
18 he would be willing to give me the Certificate of Occupancy,
19 but he needed an inspector to go there, to go to the place
20 to inspect it, to make sure everything is okay.

21 So, the inspector went there the next day, I met
22 him there. And after he left, I went to DCRA again. And
23 then, the supervisor told me that he would not be able to
24 issue the Certificate of Occupancy until certain things were
25 fixed that the inspector had noted.

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1 BZA CHAIR HILL: Oh, wait, I'm going to just stop
2 you. I know, I --

3 DR. DICKERSON: Yes.

4 BZA CHAIR HILL: -- I've been down this road
5 unfortunately --

6 DR. DICKERSON: Yes.

7 BZA CHAIR HILL: -- before. So, then, what
8 happened? So, you're saying that, fine, you went and you
9 changed the --

10 DR. DICKERSON: I was attempting.

11 BZA CHAIR HILL: -- you went ahead and did the
12 changes, to try to still get the Certificate of Occupancy
13 from DCRA, and then you found out that it wasn't zoned
14 commercial?

15 DR. DICKERSON: No, I went to -- I found out that it
16 wasn't zoned commercial when I went back to, after the
17 inspector, he told me that I have to fix all these things,
18 like commercial grade repairs, in order for them to give me
19 --

20 BZA CHAIR HILL: Yes, yes, you --

21 DR. DICKERSON: -- the C of O.

22 BZA CHAIR HILL: You had to come into compliance,
23 the inspector came in and --

24 DR. DICKERSON: Yes.

25 BZA CHAIR HILL: -- he was trying to tell you how

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1 you had to come into compliance to get your C of O as a
2 commercial --

3 DR. DICKERSON: As a commercial.

4 BZA CHAIR HILL: -- building, right?

5 DR. DICKERSON: Yes.

6 BZA CHAIR HILL: And so, then, when did you find out
7 that it wasn't zoned commercial?

8 DR. DICKERSON: It was probably about --

9 BZA CHAIR HILL: It was after that --

10 DR. DICKERSON: Yes.

11 BZA CHAIR HILL: -- still, correct? So, did you
12 make all the changes that DCRA had you to make?

13 DR. DICKERSON: Yes, I did all the required repairs,
14 and it took me probably about two-three months, just to get
15 that done, the inspector to go back to confirm the repair,
16 to close the permit. And I actually had to go up to the
17 supervisory level, because I was having a lot of difficulties
18 with --

19 BZA CHAIR HILL: So, you made all --

20 DR. DICKERSON: -- the inspector --

21 BZA CHAIR HILL: You made all the changes, right?

22 DR. DICKERSON: Yes.

23 BZA CHAIR HILL: And then, you found out that it
24 wasn't zoned commercial, only after all that?

25 DR. DICKERSON: I made all the repairs and I went to

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1 the person that said that once the repairs done, they're
2 going to give me the Certificate of Occupancy. And I told
3 them, well, everything's done, the permit's closed. Then,
4 he went and told me, I will not be able to give you this
5 until a BZA, until I have a BZA application number.

6 BZA CHAIR HILL: Right, until -- wait a minute.

7 DR. DICKERSON: That's what took about --

8 BZA CHAIR HILL: Wait a minute, so he --

9 DR. DICKERSON: -- five months.

10 BZA CHAIR HILL: -- said he would give you a
11 Certificate of Occupancy if --

12 DR. DICKERSON: Provisional.

13 BZA CHAIR HILL: -- you had a, oh, a provisional
14 Certification of Occupancy, if you had a BZA application
15 number?

16 DR. DICKERSON: This was after I did all the
17 requested commercial grade repairs that they wanted me to do.

18 BZA CHAIR HILL: Mr. Bello, is that kind of how --
19 and I can't remember exactly, they'll give you a provisional
20 if you just have the application number, but you don't
21 actually have a ruling from the BZA? Just the fact that you
22 have the application number, they might actually give you a
23 provisional C of O?

24 MR. BELLO: Well, no, the provisional C of O was
25 given to her because she had been misinformed all along,

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1 thinking she was working towards getting a Certificate of
2 Occupancy --

3 BZA CHAIR HILL: I see.

4 MR. BELLO: -- and incurring --

5 BZA CHAIR HILL: Who gave them the provisional C of
6 O because they were misinformed? DCRA?

7 MR. BELLO: Yes, DCRA, she's had a provisional C of
8 O --

9 DR. DICKERSON: Since August 31.

10 MR. BELLO: -- since August, that expires at the end
11 of this month.

12 BZA CHAIR HILL: Got it. And do you have tenants
13 now in there? No? Okay. All right. Does anybody have any
14 -- we're going to get over to the Office of Planning here.
15 So, does anybody have any questions for the Applicant? I
16 mean, by the way, I'm sorry about the DCRA thing. Like, I
17 don't -- it just sounds terrible.

18 ZC CHAIR HOOD: I may have, I may come back, Mr.
19 Chairman, if you don't mind.

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

22 MS. MYERS: Hello, Crystal Myers with the Office of
23 Planning. The Office of Planning is unable to support this
24 requested use variance. Our concern is that this property
25 is an R-2 Zone property, it is residential, it has always

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1 been residential.

2 And so, the Applicant's request to switch it from
3 residential to a nonresidential use is one that we would not
4 be able to support, based off of the arguments that have been
5 presented into the record. We did not feel that any of those
6 -- the plea was mostly a rent market study information, we
7 didn't feel that that was sufficient.

8 And I think the other main part of their argument
9 was about the configuration of the building being a problem.
10 And we still feel that it's still a residential
11 configuration.

12 The other main thing I would point out for our side
13 of it is that, the property is over 8,000 square feet. So,
14 it is more than large enough to be subdivided into two lots.
15 And when we looked in the historic maps, the property was
16 actually large enough, at one point in time, it was
17 considered, the regulations obviously were different at the
18 time, it was split into three lots.

19 But it could, at this point in time, it could be
20 split into two lots. So, the Applicant still has the option
21 of subdividing the property, if they wanted to go that route
22 instead. But we would not be able to support it not being
23 a matter-of-right use.

24 So, what we're saying is that, since it's always
25 been residential, the property is more than large enough to

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1 perhaps reduce -- to create two lots. You could still do
2 residential uses on this property, even if you wanted to
3 reduce the size of the lot, if you thought that the market
4 would not support a lot this size.

5 So, we don't think that there's sufficient
6 arguments saying that this property is unable to be used as
7 a residential use. And with that, again, we recommend denial
8 of this use variance.

9 BZA CHAIR HILL: Okay. Mr. Bello, just real quick
10 again, when you're -- the use that it was before was what,
11 again? I'm saying -- there are wheelchair accessible, it was
12 a wheelchair accessible what?

13 MR. BELLO: Well, the property was constructed in
14 the early '90s, I believe, for purposes of a community
15 residence facility, not a private home. And that facility
16 catered to the handicapped.

17 BZA CHAIR HILL: So, that would be a commercial use?

18 MR. BELLO: Well, by definition, technically, in the
19 zoning regulations, a CRF is considered a residential use.
20 But it is not --

21 BZA CHAIR HILL: Right.

22 MR. BELLO: -- a private home use.

23 BZA CHAIR HILL: Right.

24 MR. BELLO: And that particular kind of community
25 residence facility had ADA requirements that subjected the

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1 property to wider corridors, handicapped bathrooms,
2 commercial grade fire alarm systems, and sprinkler systems.

3 BZA CHAIR HILL: Okay.

4 MR. BELLO: So, the property has never been occupied
5 as a private home --

6 BZA CHAIR HILL: It was a CRF, right.

7 MR. BELLO: -- in that sense of it.

8 BZA CHAIR HILL: Well, I mean, it was a CRF. It
9 wasn't --

10 MR. BELLO: Correct.

11 BZA CHAIR HILL: -- it was never used commercial, it
12 was a CRF when it was --

13 MR. BELLO: Correct.

14 BZA CHAIR HILL: -- first --

15 MR. BELLO: It was constructed --

16 BZA CHAIR HILL: -- created.

17 MR. BELLO: -- as one, yes.

18 BZA CHAIR HILL: Right. And with Office of
19 Planning, when you're speaking about splitting the lot,
20 you're not actually necessarily talking about splitting --
21 I'm just a little confused as to what -- splitting this
22 building, right? Like, you would still -- you're talking
23 about tearing down the building and creating two new
24 buildings?

25 MS. MYERS: It is an option that they have, if they

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1 wanted to redevelop the property into two separate lots. I
2 believe that would actually be a semi-detached --

3 BZA CHAIR HILL: Okay.

4 MS. MYERS: -- configuration. But you could also
5 still use this as another CRF. Whatever matter-of-right uses
6 --

7 BZA CHAIR HILL: I see.

8 MS. MYERS: -- are allowed in the R-2 Zone. Or you
9 could use it as a private house. What we're saying is that
10 there are other options for this property and we would not
11 be able to support changing it to a non or another option
12 besides a matter-of-right option, because we don't feel that
13 the Applicant has provided a sufficient argument to support
14 that.

15 BZA CHAIR HILL: Okay. Does the Board have any
16 questions for the Office of Planning?

17 MEMBER JOHN: I have a question. Yes, just looking
18 at the lot, I'm not sure how it could be subdivided. Because
19 the house seems to be, looking at the diagram in OP's report,
20 almost on two-thirds of the property. So, there's just a
21 small sliver of land to the right. So, are you saying they
22 should raze this building and then build two houses?

23 MS. MYERS: What I'm saying, strictly from just the
24 dimensions of this lot -- it does have access off of Atlantic
25 Street Southeast. This lot is 75 feet wide. The minimum

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1 width requirement, I believe, for semi-detached is, I believe
2 it's 30 feet. So, right there, you're looking at this
3 potentially being two more than 30 feet wide lots. And since
4 they have over 8,000 square feet, there potentially could be
5 a possibility of this being two lots.

6 But the Applicant could sell the property, that's
7 another option for them as well. But if you were to
8 redevelop the property, this property could potentially have
9 two houses on it.

10 I mean, our bottom line concern is, we would not
11 want to see the loss of residential lots, which is what we
12 are essentially discussing here, is going from a residential
13 zoning and the matter-of-right options that would be
14 residential under the R-2 Zone, and now moving into a
15 nonresidential category.

16 And we don't feel that there's sufficient argument
17 from the Applicant supporting the need to look at a
18 nonresidential option for this property.

19 ZC CHAIR HOOD: Mr. Chairman, I can't really open up
20 right now, well, I'm -- have a few technical problems. But
21 Ms. Myers, let me ask you, as far as the -- and you all may
22 have discussed this, but I've been trying to deal with some
23 other things, trying to get my computer straight.

24 But how -- is there an argument to be made, and
25 maybe I'll ask the Applicant as well, to be made about this

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1 -- can we talk about substantial detriment to the zoning
2 plan? Can we elaborate? And I'm sure you elaborate that on
3 your report.

4 MS. MYERS: Yes, I'm -- our position is that loss of
5 residential land use or be able to use this land for
6 residential purposes would be a substantial detriment to the
7 zoning regulations.

8 We would be, in our point of view, we would look at
9 this as being as the integrity of the zoning regulations
10 would be eroded, because the zoning -- in order to do a
11 variance, you have to make an argument that there's an
12 exceptional circumstance that leads you to agreeing that, or
13 I'm sorry, it would be an exceptional circumstance that would
14 result in undue hardship to the owner.

15 And right now, we're saying that not enough
16 evidence has been provided. In our point of view, we don't
17 see that there's enough evidence been provided that has shown
18 that there's an undue hardship to the owner, because there
19 is still other matter-of-right options available to them.
20 Or they could sell the property.

21 We also think it would be unfortunate, when it
22 comes to loss of residential land. The way we would see it
23 is that, like I said a few times here, I don't want to sound
24 like I'm just repeating myself, but --

25 ZC CHAIR HOOD: No, I'm sorry to have you--

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1 MS. MYERS: -- I apologize, but I just wanted to
2 look at the fact that they do have the option of subdividing
3 the property or do another CRF use or using the property as
4 a single-family home or whatever, or many of the other
5 matter-of-right options in the Zone, and we don't feel that
6 the Applicant's evidence supports looking at that
7 differently.

8 ZC CHAIR HOOD: Okay. This has come before and I
9 just can't remember how everything ended up and I'm just
10 trying to refresh my memory, because we've had instances
11 where an Applicant was given wrong information, and I'm not
12 sure, when it came to the Board, exactly what -- but anyway,
13 you answered my question for now. Thank you.

14 BZA CHAIR HILL: Right. Well, I'll follow that line
15 there, for the Chairman, in terms of the Office of Planning.
16 I don't know how that -- I can't remember when there was
17 cases with that.

18 In other words, it sounds as though, what do you
19 think of the fact -- is there any kind of argument, in terms
20 of the fact that if the Applicant was following along what
21 DCRA had said, like they bought it, it was advertised as
22 commercial, they bought it as commercial, they're paying
23 commercial taxes, they go to DCRA, DCRA says make everything
24 work as commercial and we'll give you your Certificate of
25 Occupancy, and then, they find out it's not zoned commercial,

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1 is there any argument to that?

2 MS. MYERS: I mean, the only thing I heard, it
3 sounds like, outside of DCRA, misinformation was provided to
4 the Applicant. And the DCRA, it sounds like, tried to work
5 with the Applicant.

6 BZA CHAIR HILL: DCRA did?

7 MS. MYERS: It sounds like, I'm not fully, but it
8 sounds like the Applicant was misinformed and then, DCRA
9 provided, I guess, a provisional permit, in light of the fact
10 the Applicant had already started to pay a certain amount,
11 but that's just from what I'm understanding, from what was
12 spoken about today.

13 I will say that I recall a case that I worked on,
14 like a year or two ago, where DCRA themselves actually made
15 a mistake at one point in time, but in that case, there was
16 a permit that was issued incorrectly. And that was actually
17 submitted to the record.

18 We requested that detailed information from them,
19 I recall that was something that was one of the reasons why
20 the Board was --

21 BZA CHAIR HILL: And they built it that way, right?
22 There was something that --

23 MS. MYERS: Yes, in that case, the owner inherited
24 their property. And the previous owner, I guess their
25 father, had a bad permit. And when they did the historical

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1 research into it, they found out, I think it was from, like,
2 the early 2000s, but there was a permit on record that should
3 not have been issued. But that was sort of the grounds for,
4 I guess, the BZA supporting it. But in that case, there was
5 a permit, documented information --

6 BZA CHAIR HILL: Okay.

7 MS. MYERS: -- that the BZA asked for --

8 BZA CHAIR HILL: Okay.

9 MS. MYERS: -- and was able to get from DCRA that
10 showed that.

11 BZA CHAIR HILL: Okay.

12 MS. MYERS: In this case, I'm not aware of a permit
13 that was issued incorrectly on this case.

14 ZC CHAIR HOOD: So, let me ask this question. I
15 remember a case, and I can't remember, and I'm sure we'll
16 talk to our legal folks, but I think the Applicant put out
17 a lot of money, I think, and that may have happened in this
18 case, I'm not sure, and we asked for some financials.

19 I can't remember, I may be going off key, I may be
20 talking about something totally different, but we asked for
21 some financials and I think it was, we went to an undue issue
22 at that time.

23 But let me just sit back and -- because I think we
24 might be going down that line, if it balances out. But I do
25 have a problem with changing the zoning plan, but if this

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1 Applicant was misled by -- was misled by DCRA?

2 MR. BELLO: That's the owner's testimony, yes.
3 Because she expended, so far, how much?

4 DR. DICKERSON: I had, based on the inspector's --

5 ZC CHAIR HOOD: You want to turn your mic on.

6 DR. DICKERSON: Oh, sorry. Based on the inspector's
7 request to do needed repairs, and trying to get -- he told
8 me that I needed to get a structural engineer in there to go
9 and view the property.

10 Even a structural engineer went and he's like, what
11 is he talking about?, basically stating that about the
12 inspector. But he went and did the drawing and everything.
13 And I even sent it to the inspector, to confirm the work.
14 He's like, well, it's up to the structural engineer. I'm
15 like --

16 ZC CHAIR HOOD: Okay. So, let me just --

17 DR. DICKERSON: -- so I spent about close to about
18 \$8,000 fixing commercial --

19 ZC CHAIR HOOD: So, you spent --

20 DR. DICKERSON: -- fixing the repairs --

21 ZC CHAIR HOOD: -- about \$8,000? Okay.

22 DR. DICKERSON: -- that was requested --

23 ZC CHAIR HOOD: All right.

24 DR. DICKERSON: -- based on commercial.

25 ZC CHAIR HOOD: So, you spent about \$8,000?

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1 DR. DICKERSON: Yes.

2 ZC CHAIR HOOD: Okay. So, again, it goes back to
3 the financials and it also goes back to the government being
4 predictability, and I know there's actually some case law,
5 Mr. Bello, out there about that, but I don't know if it goes
6 to \$8,000. So, I'll just leave it at that for now and we'll
7 go from there.

8 DR. DICKERSON: And I literally --

9 ZC CHAIR HOOD: Okay. Thank you.

10 DR. DICKERSON: -- spent about eight months at DCRA
11 --

12 ZC CHAIR HOOD: Eight months?

13 DR. DICKERSON: -- going back and forth, taking time
14 off work --

15 ZC CHAIR HOOD: I understand.

16 DR. DICKERSON: -- every single week.

17 ZC CHAIR HOOD: Okay. Thank you.

18 MR. BELLO: If I might, I had -- part of her loss
19 would also be the debt service of her loan and all this, over
20 12 months, that she's been out, not been able to have any
21 income from this property. So, she was not only misled by
22 the brokerage in the way the property was advertised, she
23 also went through the gauntlet with DCRA, expending all this
24 money, thinking that she'd get a C of O.

25 ZC CHAIR HOOD: All right. Thank you. I'm

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1 finished.

2 BZA CHAIR HILL: Okay, great. And Ms. John, just
3 let me, since I've got the microphone on right now. The
4 question that I had, again, right, unfortunately, you guys,
5 it was advertised as commercial. So, you bought it as
6 commercial, it was advertised as commercial. The person that
7 advertises a commercial, they're the one that got you in
8 trouble right away. No, I'm just saying, they did advertise
9 it as commercial, correct? That's what --

10 DR. DICKERSON: Yes, it --

11 BZA CHAIR HILL: -- your testimony is, correct?

12 DR. DICKERSON: It was advertised as commercial and

13 --

14 BZA CHAIR HILL: Okay.

15 DR. DICKERSON: -- I had commercial loan --

16 BZA CHAIR HILL: Right.

17 DR. DICKERSON: -- everything, and had --

18 BZA CHAIR HILL: Right.

19 DR. DICKERSON: -- to put the necessary percentage
20 down, a lot of percentage, because --

21 BZA CHAIR HILL: Sure, yes.

22 DR. DICKERSON: -- you're purchasing commercial --

23 BZA CHAIR HILL: Right.

24 DR. DICKERSON: -- property.

25 BZA CHAIR HILL: And so, Mr. Bello, if this were not

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1 to get approved, right -- and by the way, Ms. Dickerson, I
2 mean, I'm sure Mr. Bello told you, like, an area, I'm sorry,
3 a use variance, we were here for a use variance thing, like,
4 at the very first thing of the day, and a use variance is not
5 an easy one to get, right? Okay.

6 And so, right away, you're at a really tough one,
7 right? You don't have the Office of Planning behind you, you
8 don't even have the ANC behind you. And so, but before I --
9 and my last comment again was that, for Mr. Bello, is that
10 if this were not to get approved, like, how does a person get
11 their taxes changed from commercial to residential, if it's
12 not in fact commercial?

13 MR. BELLO: Well, you certainly can go through the
14 process, but the application goes beyond that point, because
15 what we're saying is then she has a mortgage that she has to
16 service the debt of.

17 I think there's case law that an owner is entitled
18 to a reasonable expectation of return on investment, as a
19 basis for granting use variance. And I cited a case, a BZA
20 case reference, to that order.

21 So, the question, I think, on the table is, if
22 there's consensus that this property meets the uniqueness
23 test, and we have evidence that there's no way that she can
24 rent it for a matter-of-right use and be able to service the
25 debt, does that constitute a hardship upon the owner? It

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1 certain does and case law backs that up.

2 BZA CHAIR HILL: Yes, I mean, and again, by the way,
3 Ms. Dickerson, I'm really sorry for the situation you got
4 yourself in. And what I'm saying, Mr. Bello, is that what
5 the property owner paid for the property isn't -- if they
6 paid too much for the property, they paid too much for the
7 property.

8 Or if they paid too much for the property because
9 the property was misadvertised, right, then that -- I don't
10 know if that's enough justification to put yourself in a
11 hardship, where we can change -- where you can get a
12 variance.

13 And so, that's what I'm just kind of looking to, in
14 terms of the Office of Planning. The Office of Planning says
15 that you can use this for what the zoning believes you can
16 use it for, right?, and I'm just trying to struggle with that
17 one.

18 I don't know where I got, I don't know where the
19 rest of my Board members are, but I was just trying to get
20 a little bit more background as to how you got yourself in
21 this situation and I think I understand now. So, does
22 anybody have -- Mr. White, I'm sorry --

23 MR. BELLO: Just one more thing --

24 BZA CHAIR HILL: Sure.

25 MR. BELLO: -- Mr. Chair. This property has been

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1 held out for lease for over a year. And I think it's
2 reasonable to expect that, if a matter-of-right use was
3 interested in this property and could afford it, that
4 matter-of-right use would have come forth to lease this
5 property. There's been no such interest whatsoever. So, I
6 think that itself is the evidence of testing the market, of
7 what kind of use can be attracted to --

8 BZA CHAIR HILL: Well, how can you then say that, if
9 it was a commercial property, you would have a tenant?

10 MR. BELLO: I'm sorry?

11 BZA CHAIR HILL: How can you say that if it was
12 commercial property, you'd have a tenant?

13 MR. BELLO: Well, because she's had one that dropped
14 off, because they couldn't get the C of O in time. So, now,
15 she's forced to use the property for her own business --

16 BZA CHAIR HILL: I see.

17 MR. BELLO: -- yes, and occupy it, because she's got
18 to have some kind of income to service this debt.

19 BZA CHAIR HILL: I see. And Ms. Dickerson, I'm
20 sorry to throw you back, because this went on the table, but
21 you first mentioned that you bought this originally to house
22 your own services company. So, maybe you just misquoted or
23 I just didn't understand. So, you bought this originally for
24 what purpose?

25 DR. DICKERSON: As I indicated, I'm a clinical

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1 psychologist and I had bought this property, through a lot
2 of research, to be able to provide mental health services in
3 the foreseeable future.

4 And specifically, it was in the underserved area,
5 the specific site, and my business has been designated by the
6 National Health Service Corp as underserved area to provide
7 mental health services. And that has been my goal, to serve
8 the community.

9 BZA CHAIR HILL: No, I'm just trying to understand,
10 so did you -- because now, I'm confused. You -- because what
11 -- and I'm legitimately confused, because you said that there
12 was another commercial tenant that you thought you might have
13 had, which wasn't you. And then, you've now also said that
14 you actually were intending to occupy this when you bought
15 it.

16 DR. DICKERSON: In the --

17 BZA CHAIR HILL: So, it can't be both.

18 DR. DICKERSON: I had indicated, in the future.

19 BZA CHAIR HILL: In the future?

20 DR. DICKERSON: Yes.

21 BZA CHAIR HILL: So, you bought it originally as a
22 commercial rental building --

23 DR. DICKERSON: Yes.

24 BZA CHAIR HILL: -- with the thought that in the
25 future, you would put your psychological services in there?

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1 DR. DICKERSON: Yes.

2 BZA CHAIR HILL: Okay. Okay. All right. And Ms.
3 White, you had a -- Ms. John, sorry, you had a question?

4 MEMBER JOHN: I was wondering if you had planned to
5 live on the property, now, and operate a home-based business?
6 I don't even know what the zoning regulations say about that,
7 but was that part of your thought process?

8 DR. DICKERSON: No, that was not part of my thought
9 process.

10 BZA CHAIR HILL: Anyone else? Okay. All right. Is
11 there anybody here wishing to speak in support? Is there
12 anyone here wishing to speak in opposition? Okay. Gosh, I
13 don't know what to do. Is there anything else anybody wants
14 from the Applicant? Mr. Bello, is there anything you'd like
15 to add at the end?

16 MR. BELLO: Do I get to question the Office of
17 Planning?

18 BZA CHAIR HILL: Oh, yes, I'm sorry. I apologize.
19 Please, do you have any questions for the -- I'm glad you
20 asked me, because I was about to wrap up, Mr. Bello. So,
21 it's been a long day, Mr. Bello. If it goes out of order --

22 MR. BELLO: I understand.

23 BZA CHAIR HILL: Okay. If you have --

24 MR. BELLO: I understand.

25 BZA CHAIR HILL: -- some questions for the Office of

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1 Planning?

2 MR. BELLO: Just a few questions.

3 BZA CHAIR HILL: Please, of course, go ahead.

4 MR. BELLO: Thank you for your report, Ms. Myers.

5 In your recommendation, I noticed that you did not indicate
6 whether you agreed that the property met the uniqueness
7 standards for the variance request.

8 MS. MYERS: We looked at it for an exceptional
9 situation or something, I guess if you want to say unique,
10 but we were focusing on the exceptional situation. And we
11 did not think that there was something exceptional about the
12 property that has resulted in an undue hardship.

13 I know that, in your submittal, you talked about
14 the size of the property being one of the largest, I guess,
15 in this area, but we did not think that the fact that it is
16 large makes it exceptional, because it can be subdivided.
17 It also can be a single-family house.

18 But in order to -- you can -- when you look at this
19 test, you can identify something unique or exceptional about
20 a property, but it has to relate to it being resulting in a
21 hardship, and that's where we were not able to agree with
22 your submittal.

23 MR. BELLO: Okay. So, there were two elements of
24 uniqueness I pointed out, which one was the size and the
25 other was the history of use and the layout of the building

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1 not being conducive for purposes of a private residence.

2 MS. MYERS: But it -- and our response to that is,
3 it was still a residence. And we would actually have no
4 problem with it continuing as a continuing care residential
5 facility, if you wanted to go that route. But, yes, it is
6 a building that was created as a CRF and yes, it is on a
7 large lot.

8 And I believe I even mentioned this in the report
9 too, is that we acknowledge there's been some changes
10 internally related to handicapped accessibility, but not to
11 a significant level that we felt it was no longer appropriate
12 configuration for residential use, or a residential use that
13 could be for non-handicapped or handicapped residents.

14 MR. BELLO: Okay. The -- we submitted to the record
15 a rent schedule for this area. So, going by your argument,
16 is it your understanding that if this property could not
17 command the rent that would allow the owner to service the
18 debt of this property, when you take into consideration the
19 mortgage, the commercial tax on the property, and then,
20 maintenance, according to the testimony of the owner, she
21 would need about \$4600 to be able to service this property
22 and maintain this property, do you see that as a hardship,
23 because she would not have a reasonable return on investment?
24 And are you familiar with the case law about that?

25 MS. MYERS: Our position is that, you could still

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1 subdivide this property and create residential lots, perhaps
2 for lower rents, that would still be a matter-of-right
3 option.

4 So, usually, when we hear the size requirement or
5 consideration for a uniqueness concern, it's because the
6 property is irregularly shaped or a lot smaller, and
7 therefore, doesn't meet the requirements for minimum
8 standards for lots, or it makes it difficult to create a
9 residential structure on it. In this case, the dimensions
10 do not support that. It's actually quite large, but large
11 enough to subdivide. And the owner also has the option to
12 sell the property.

13 As for the rents, I mean, I looked at the market
14 study that you submitted, and I believe in the information
15 you submitted, you said it was approximately, I think, about
16 \$3,000 would be what you were looking for. And some of the
17 houses or the rents in the study were able to have rents on
18 that level.

19 So, if you were going to look at the market study,
20 the market study also seemed to support that perhaps rent
21 could be -- you could get rent to support what the Applicant
22 was requesting, at least as of when this middle information
23 was given.

24 But as I said, outside of the rent concern, there's
25 still the option of selling the property and subdividing the

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1 property, or continuing another matter-of-right use, even the
2 one that's been on the property in the past.

3 MR. BELLO: Okay. So, I think you have the
4 information about the rent schedule actually upside down.
5 So, the rent schedule actually indicates that the maximum
6 possible for this nature of property is 3,000 square feet and
7 she needs \$4600 to be able to keep this property or lose it.

8 Now, with respect to your position about
9 subdividing the property, that would involve demolishing the
10 existing building, as Board Member John indicated earlier,
11 right? But you don't know the pro forma budget about doing
12 that. Demolishing the building, subdividing it, she's not
13 a developer, she didn't buy this property for that purpose.

14 So, there are many things you can do with a
15 property, but when an application comes before the Board,
16 generally it's what's before the Board that you look at,
17 right?

18 MS. MYERS: I would step back and say that, when you
19 mentioned the study that you submitted, I believe even in the
20 burden of proof you provided, you even acknowledged that, you
21 used words something like, most of the rent would be not
22 enough to support what you're doing. But I don't believe you
23 said all of the submitted information or all of the examples
24 show that the rent would not be enough.

25 And perhaps the figure I gave may have been

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1 slightly different, I'd have to check it again. But I do
2 recall that there were some figures, at least from my
3 recollection, and I'm not going to say 100 percent sure,
4 because I don't have it in front of me, but from my
5 recollection, I believe there were some examples that were
6 in the same -- were pretty similar or exactly what was being
7 requested in the written submittal information.

8 MR. BELLO: Okay.

9 MS. MYERS: But even outside of that, the fact that
10 the property does have the option of being subdivided, and
11 the fact that it has other matter-of-right options, we would
12 not be able to support the use being requested.

13 BZA CHAIR HILL: Okay. Mr. Bello, do you have any
14 more questions?

15 MR. BELLO: Just one more.

16 BZA CHAIR HILL: I mean, can I just mention
17 something? I mean, Mr. Bello, you seem to be basically just
18 having like kind of a discussion, trying to figure out
19 whether you can convince the Office of Planning to change
20 their report. And so, and I understand, but that, probably
21 that time already happened.

22 MR. BELLO: Okay.

23 BZA CHAIR HILL: And so, you can still ask your
24 questions, and also, Mr. Webb, thank you, you'll have an --
25 you can speak in a second. But I just want to point out, Mr.

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1 Bello, we don't even have any support here from the ANC.
2 Like, you don't have anything, right? Like, I mean, you have
3 your argument, you have your argument, but like, what
4 happened at the ANC?

5 MR. BELLO: Well, the ANC, unfortunately, we've not
6 been able to get on their calendar, but we actually just got
7 to communicate with them before we came for this hearing.
8 So, we're scheduled to be on their calendar for January. So,
9 what I was hoping that would happen today, that we'll hear
10 the case, and probably just leave the case records open for
11 the resolution of the ANC in January.

12 BZA CHAIR HILL: Okay. I don't know, Mr. Bello.

13 MR. BELLO: And we do have many, many neighbors
14 support --

15 BZA CHAIR HILL: Yes.

16 MR. BELLO: -- in and around the area.

17 BZA CHAIR HILL: I mean, again -- okay. So, Mr.
18 Webb, what did you have to say?

19 MR. WEBB: I was just going to say, the building as
20 it stands right now is completely ADA compliant, it is not
21 set up for regular residential use, it's just not possible
22 for a family to --

23 BZA CHAIR HILL: Okay, unless you --

24 MR. WEBB: -- be able to --

25 BZA CHAIR HILL: -- needed an ADA compliant house,

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1 then that's the perfect house that you need, right?

2 MR. WEBB: Yes, it would be.

3 BZA CHAIR HILL: I mean, I'd fricking pay three
4 times that, then, for the -- found the right place, right?
5 So --

6 MR. WEBB: But what I wanted to say is, to change
7 it, she wants to split it in, talking about splitting it or
8 even going in and changing it for regular residential use,
9 it's going to be cost --

10 BZA CHAIR HILL: Okay.

11 MR. WEBB: -- prohibitive.

12 BZA CHAIR HILL: I just -- and I'm with the Office
13 of Planning on this one a little bit, like, I mean, you know
14 -- I mean, we've had this argument already today, early in
15 the morning, right?, where a use variance is one of the
16 hardest variances to get. And it's because I also think
17 that, I'm looking at it there, it could be a home, right?
18 It could be subdivided into two lots. You can do something
19 with it.

20 And so, then, when you're coming to us here and
21 there's not a whole lot, well, not a whole lot, you do have
22 your argument that you're making, and so, but that would have
23 to overturn then the Office of Planning's argument that
24 they're making, as well as the fact that we don't have an
25 argument from the ANC at this point.

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1 So, is there any questions that the Board has for
2 the Applicant? So, what does the Board think of the
3 Applicant's quandary, which is that they haven't spoken to
4 the ANC yet and they want us to hear from the ANC? Okay,
5 sure, go ahead.

6 MEMBER JOHN: So, a quick question. So, there are
7 online photographs of this property when it was on the
8 market. And you've done these renovations. What is the
9 condition of the property now? Have you changed the floors?
10 You've done some painting? What is the condition now? Do
11 you have pictures of --

12 DR. DICKERSON: No, I don't have pictures of the
13 inside. But it's all --

14 MEMBER JOHN: Okay.

15 DR. DICKERSON: -- new carpet, new painting, and
16 again, all the exit signs lights up when the power shuts
17 down, the big --

18 BZA CHAIR HILL: Yes, you got your commercial --

19 DR. DICKERSON: -- electrical box, everything.

20 BZA CHAIR HILL: You got your commercial C of O --

21 DR. DICKERSON: Yes. And I --

22 BZA CHAIR HILL: -- stuff from --

23 DR. DICKERSON: Yes.

24 BZA CHAIR HILL: -- DCRA, right? The exit signs,
25 all of the --

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1 DR. DICKERSON: Yes.

2 BZA CHAIR HILL: -- commercial, yes. And that --
3 exactly. And I can see how you got in that situation, or how
4 you're stuck there. I'm sorry, Ms. John? Okay.

5 MEMBER JOHN: Yes. So, there are exit signs put up
6 and everything, it looks like a commercial --

7 DR. DICKERSON: Yes.

8 MEMBER JOHN: -- facility?

9 DR. DICKERSON: Yes.

10 MEMBER JOHN: Okay. Thank you.

11 BZA CHAIR HILL: Okay. So, what does -- so, we can
12 leave the record open, and then, set it for a decision and/or
13 a continued hearing, if that's what the Board wants to do.

14 I mean, I completely understand where you are, Ms.
15 Dickerson, as I've said, and I understand how you got in the
16 situation. I don't feel comfortable approving this, because
17 I don't think that you've met the burden for us to go ahead
18 and approve it. But that's just me.

19 And so, even if the ANC came and was like, just --
20 they would have to prove it as well. Like, the ANC just
21 can't sign on to things, and we give them great weight for
22 the things they want, because they just want it, they
23 actually have to also make the argument that you're meeting
24 the standard for the variance.

25 So, in my opinion, I don't necessarily think, even

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1 if the ANC -- I don't think that the ANC would necessarily
2 be able to make a better argument than your attorney has
3 already made for you to get the variance and/or that the
4 Office of Planning has made for you not to get the variance.
5 So, you might be spending more attorney money just to get an
6 ANC report.

7 But what does the Board think of what the Applicant
8 wants to do, which is keep this open for feedback from the
9 ANC? And then, I guess if that were the case, we would have
10 to have a continued hearing, so that we would be able to
11 provide feedback to the Applicant from what we heard from the
12 ANC.

13 VICE CHAIRPERSON HART: I mean, I -- the ANC,
14 presumably, received a referral notice, memo, from the Office
15 of Zoning back in August. So, we've gone three months to be
16 able to get something on the ANC agenda.

17 While I do understand that we typically -- that
18 sometimes we will request to get that, we have a Office of
19 Planning report that is currently recommending denial, just
20 because of, well, the reasons that they've already stated.
21 I'm not sure what we're going to get from the ANC that would
22 necessarily move me in a direction that I would be looking
23 to approve this.

24 I think that the -- it is a pretty high bar, as we
25 have said, I feel like we say this a lot, to be able to get

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1 a use variance. And this building, while I understand that
2 there's ADA accessibility issue, the building is set up like
3 a house.

4 I mean, there are rooms that are there, while
5 they're -- it's a little different, with the large hallway
6 that's there, it just -- and I understand that the Applicant
7 has gone through quite a bit of problems and delays with
8 DCRA. But I'm just, I have a hard time with seeing how we
9 could approve this commercial use in an --

10 BZA CHAIR HILL: Okay.

11 VICE CHAIRPERSON HART: -- area that --

12 BZA CHAIR HILL: So, then --

13 VICE CHAIRPERSON HART: -- has a residential --

14 BZA CHAIR HILL: -- and also, I'm just being as
15 transparent as I can be, also, for you guys down there, okay?
16 So, I mean, you got two noes right now, right? And then, Ms.
17 John, where are you?

18 MEMBER JOHN: I'm very close to a yes, because I
19 think that there is a confluence of factors here. When you
20 look at the photographs, which I've seen online, it looks
21 like a commercial facility.

22 And so, even though there are spaces for rooms and
23 bathrooms, it just looks like a commercial facility. And
24 there are these occupancy permits dating from 1991 that
25 indicate that it was a commercial use. So, along with the

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1 commercial taxes.

2 So, there isn't really a lot to put the Applicant
3 on notice that this was a residential facility, if you just
4 looked at the property. And then, when you add to that DCRA
5 misled the Applicant into continuing to spend more money to
6 reconfigure and renovate the property to make it meet the
7 commercial standards. So, I think that's enough.

8 The other thing is, looking at the Exhibit 2, the
9 surveyors plat, I mean, we would have to have more evidence
10 of how the property could be subdivided. But in any event,
11 the Applicant would have to spend more money to partially
12 raze the building or to try to subdivide it and, I guess,
13 sell that extra.

14 I don't know, this is a very difficult case, it's
15 not easily resolved. But on balance, I think there's enough
16 here to grant the variance.

17 BZA CHAIR HILL: So --

18 MEMBER JOHN: Just enough.

19 BZA CHAIR HILL: So, just -- and I'm -- that's fine.
20 So, yours is the second prong, you're talking about the
21 exceptional and undue hardship, right? And so, the first
22 prong, in terms of -- I guess I'm trying -- extraordinary or
23 exceptional situations or conditions, that's your --

24 MEMBER JOHN: It --

25 BZA CHAIR HILL: So -- okay. All right. Well, I

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1 mean, that's, if that's kind of where somebody is, that's
2 enough then for me to say, if you want to go ahead and go
3 talk to the ANC, we can see what happens. But, Mr. Hood,
4 where are you?

5 ZC CHAIR HOOD: So I do have a vote, Mr. Chairman,
6 even though I don't sit on the BZA consistently. But I will
7 tell you that I'm kind of -- the problem is, we have
8 regulations and we're eroding the zone plan. And I
9 understand the wrong information, we've had this before.

10 But this is a heavy lift, I'm kind of where the
11 Chairman and the Vice Chairman are, this is a heavy lift, I
12 believe, Mr. Bello. But if you can come back, and I don't
13 want to put any more burden on what the Applicant has already
14 spent, but if you can come back with something, another
15 argument, not the ANC letter, that's fine, but as the
16 Chairman already mentioned what the ANC will have to argue,
17 but I think you're at a point for me, it is a heavy lift.

18 So, if you feel like you can come back and help
19 convince me, to get me to that threshold, or even get me to
20 the point where Ms. John is, then I'm fine with allowing that
21 time. But if not, we don't need to waste time and I don't
22 want to put anybody on promised land, because right now, I'm
23 not there.

24 BZA CHAIR HILL: Okay. I was going to ask Mr. Bello
25 if you wanted to talk to your client. But -- so, just to be

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1 clear here, also, it seems like, I'm also going to have a
2 hard time, like, you're going to have to -- it's not just,
3 again, the ANC. The ANC would have to make an argument.
4 And/or if you wanted to try again at your argument with, as
5 Chairman Hood had just mentioned.

6 But I'm just having a hard time figuring out how
7 you get over the first prong even, right? I can maybe get
8 you to the second prong. And I guess, though, the third
9 prong, I still don't know whether I can get past the third
10 prong, right?, in terms of the zoning regulations, because
11 I think it is residential and it should be residential and
12 you're going to have two more residential units, right?, if
13 you were able to keep it as residential.

14 So, that's where I am as well now. So, then,
15 you're going to have to go back to the ANC, you're going to
16 have to rewrite your argument, you're going to have to come
17 back here again, you're going to have to do a continued
18 hearing.

19 And so, you can talk with your client, we can go
20 ahead and do the next hearing and see where -- by the way,
21 that's going to take a while. We can do the next hearing,
22 which is going to be, probably be an hour. And so, you can
23 come back and let us know what you think, if you want us to
24 keep this open and you want to keep going, or if you want us
25 to just go ahead and deliberate today.

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1 MR. BELLO: I'd like to keep it open and get another
2 shot at it, and also go to the ANC.

3 BZA CHAIR HILL: Okay. All right.

4 ZC CHAIR HOOD: So, Mr. Chairman --

5 BZA CHAIR HILL: Sure.

6 ZC CHAIR HOOD: -- can I just add? Also, look at
7 the case law, I heard you mention case law a few times. I'm
8 not too -- I mean, it would be great for the ANC, but as the
9 Chairman has already mentioned, you need to come back with
10 something a little more stronger than what I see here,
11 because this is a heavy lift. And I don't want to waste the
12 Applicant's time, I can tell you, I'm not there, I'm nowhere
13 near there.

14 MR. BELLO: Understood.

15 BZA CHAIR HILL: Right. So, again, to be clear, I'm
16 nowhere near there either, okay? And so, I don't know how
17 strongly Mr. Hart feels, but you're going to have to sway
18 people pretty hard to get to the three votes. So, if that's
19 the case, then when does the ANC meet again?

20 MR. BELLO: First week of January.

21 BZA CHAIR HILL: First week of January. So, then,
22 we did something like this -- when do we have stuff
23 scheduled, Mr. Moy? I guess, I don't want to do it on the
24 15th, if we don't -- when, because the 15th is now very full,
25 correct?

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1 SECRETARY MOY: Yes, at present, Mr. Chair, we have
2 15 cases, which may go down to 14 --

3 BZA CHAIR HILL: Oh my gosh.

4 SECRETARY MOY: -- for January 15.

5 BZA CHAIR HILL: Okay. So, we can't do it on the
6 15th, right.

7 SECRETARY MOY: And then, the hearing after that
8 would be January 29th, where we have six cases and one
9 appeal.

10 ZC CHAIR HOOD: So, let me ask this, Mr. Chairman,
11 when is Anthony Hood back? If not, I can give it to one of
12 my colleagues.

13 SECRETARY MOY: Chairman Hood is back, I would say
14 the latter part of February.

15 ZC CHAIR HOOD: So, the rationale, Mr. Chairman, all
16 four of us were here today, so if we could work around that
17 schedule, that would be good.

18 BZA CHAIR HILL: Right. Now, so that -- well, we
19 need you back here now, again, okay? Because this was a lot,
20 we talked a lot. And so, I don't want to find another
21 Commissioner and figure out what that person is now going to
22 think. So, you're here again at the end of March? February?

23 SECRETARY MOY: Well, I don't have any designation
24 of Zoning Commissioners --

25 BZA CHAIR HILL: Oh, what --

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1 SECRETARY MOY: -- after February.

2 BZA CHAIR HILL: -- about the 29th? Wasn't -- I
3 thought --

4 SECRETARY MOY: The 29th? January 29?

5 ZC CHAIR HOOD: January 29, I think we have a
6 Commissioner already assigned.

7 SECRETARY MOY: January 29, we have another
8 Commissioner, but it's not --

9 ZC CHAIR HOOD: Not me.

10 BZA CHAIR HILL: Got it. So, then --

11 SECRETARY MOY: -- Commissioner Hood, unless he
12 wants to switch?

13 ZC CHAIR HOOD: No.

14 BZA CHAIR HILL: What's the next one? What's the
15 next week?

16 SECRETARY MOY: The following week after January 29
17 is February 5 --

18 BZA CHAIR HILL: And so, can the --

19 SECRETARY MOY: -- which is --

20 BZA CHAIR HILL: -- Chairman come back?

21 SECRETARY MOY: -- someone else.

22 ZC CHAIR HOOD: You have somebody else?

23 SECRETARY MOY: Unless you want to switch.

24 ZC CHAIR HOOD: When do you have -- no. When do you
25 have somebody -- when is it open again?

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1 SECRETARY MOY: Next open day would be February --
2 I have a ZC for the 12th of February, a ZC for the 26th of
3 February, and it's open after that, which would be --

4 ZC CHAIR HOOD: So, I'll tell you what, if you
5 schedule the case and you make this case first, then I'll
6 come in on any day.

7 SECRETARY MOY: It could be the only way.

8 ZC CHAIR HOOD: Yes.

9 BZA CHAIR HILL: Okay, fine.

10 ZC CHAIR HOOD: Yes, make this case first.

11 BZA CHAIR HILL: So, then, we'll -- so, what is it
12 looking like for the 29th of January?

13 SECRETARY MOY: That's doable. I mean, right now,
14 we have six applications --

15 BZA CHAIR HILL: Okay.

16 SECRETARY MOY: -- and one appeal.

17 BZA CHAIR HILL: All right. So, we'll come back on
18 the 29th of January, okay? And we'll put you guys first.

19 MR. BELLO: Thank you.

20 BZA CHAIR HILL: Okay?

21 VICE CHAIRPERSON HART: When is the submission date?

22 BZA CHAIR HILL: Oh, right. Mr. Moy?

23 SECRETARY MOY: To allow time for all the staff
24 reviews, if Applicant can submit their materials, their
25 filing by I would say by January 15, which is a Wednesday,

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1 but I think Monday the 13th of January would be better.

2 BZA CHAIR HILL: That's when the Applicant would
3 submit whatever they're going to submit?

4 SECRETARY MOY: That's correct.

5 BZA CHAIR HILL: And can I get a supplemental from
6 the Office of Planning?

7 SECRETARY MOY: Then, if OP can make their filing
8 by, let's say end of that week, which would be Friday the
9 17th, is that doable?

10 BZA CHAIR HILL: Okay. Does everybody have their
11 dates correctly? Okay. Mr. Bello, are you with us next
12 week?

13 MR. BELLO: I believe I am. And just one point of
14 correction, I don't know whether you were referring to me as
15 her lawyer, I'm not an attorney, so I just wanted to --

16 BZA CHAIR HILL: Oh.

17 MR. BELLO: -- correct that.

18 BZA CHAIR HILL: That's okay, I always thought you
19 were an attorney, Mr. Bello.

20 MR. BELLO: No, sir.

21 BZA CHAIR HILL: Right. Okay, well --

22 MR. BELLO: Thank you.

23 BZA CHAIR HILL: -- there you go. You're not with
24 us next week or you are?

25 MR. BELLO: I believe I have a case hearing.

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1 BZA CHAIR HILL: Oh, all right, then I'll wait to
2 wish you a Happy New Year next week.

3 (Laughter.)

4 MR. BELLO: Thank you very much.

5 BZA CHAIR HILL: Okay. All right.

6 MR. BELLO: Happy New Year.

7 BZA CHAIR HILL: Okay. We're going to take a --
8 we'll see you all --

9 MR. RITTING: Mr. Hill?

10 BZA CHAIR HILL: -- on that date. Yes, please.

11 MR. RITTING: Can I --

12 BZA CHAIR HILL: Sure.

13 MR. RITTING: -- just add one thing --

14 BZA CHAIR HILL: One second.

15 MR. RITTING: -- while the Applicant is still here?

16 Mr. Bello spoke about citing the relevant case law for this,
17 I think that he really needs to pay attention to the Palmer
18 versus District of Columbia Board of Zoning Adjustment case,
19 which is 287 A.2d 535. It says, quote, a use variance cannot
20 be granted unless a situation arises where a reasonable use
21 cannot be made of the property in a manner consistent with
22 the zoning regulations.

23 And the other case that you should address is the
24 Gilmartin case, which is 579 A.2d 1164, which states that
25 where at some point economic harm becomes sufficient, at

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1 least when coupled with a significant limitation on the
2 utility of the structure.

3 So, I think his submission should address those two
4 cases.

5 BZA CHAIR HILL: Mr. Bello, do we need to repeat
6 those?

7 MR. BELLO: Got it, thank you.

8 BZA CHAIR HILL: Okay. All right.

9 MR. BELLO: Thank you very much.

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

12 SECRETARY MOY: Mr. Chair, just --

13 BZA CHAIR HILL: Yes?

14 SECRETARY MOY: -- 30 seconds, are we clear on what
15 the Applicant is going to be filing? Are we good?

16 BZA CHAIR HILL: So, Mr. Bello, what I understand
17 you're trying to file, you're going to go to the ANC meeting,
18 you're going to take another crack at this, apparently, OP
19 is going to go ahead and give us their analysis of your
20 further attempt, right?

21 And you have heard, and again, you're not an
22 attorney then, now, so you did hear all the case law that is
23 up against you, right?, in terms of those two items that they
24 did point out, okay? And so, you're going to submit
25 something to that effort.

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1 And you're going to submit it by -- and what was
2 the date that he gave you?

3 MR. BELLO: January 13.

4 BZA CHAIR HILL: Thank you. January 13, and that
5 will be after the ANC meeting. So, then, we get something
6 from the ANC as well. And then -- or hopefully get something
7 from the ANC. And then, that's it, correct, Mr. Moy?

8 SECRETARY MOY: That's correct, sir.

9 BZA CHAIR HILL: Okay.

10 MR. BELLO: Thank you.

11 BZA CHAIR HILL: Okay. Thank you.

12 (Whereupon, the above-entitled matter went off the
13 record at 5:31 p.m. and resumed at 5:50 p.m.)

14 BZA CHAIR HILL: All right, Mr. Moy, whenever you
15 like.

16 SECRETARY MOY: Thank you, Mr. Chairman.

17 The Board is back in session after a quick recess.
18 The time is at or about 5:50 p.m.

19 I believe we are returning to the Trinity Episcopal
20 Church case, is that correct, Mr. Chairman?

21 BZA CHAIR HILL: Yes.

22 SECRETARY MOY: Okay. That's Case Number 20111.

23 BZA CHAIR HILL: Okay. All right, would the party
24 status people like to also come forward, please?

25 Why don't you all just scoot one down that way so

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1 that you have -- yes, just scoot one, just so there's just
2 a little room there.

3 But if you need the computer, you can always come
4 over there.

5 Okay. So, before we get started again, we need to
6 re-introduce ourselves for the record. So, if you could
7 please, from my right to left, again, please re-introduce
8 yourself for the record.

9 MR. GOHL: Earl Gohl.

10 BZA CHAIR HILL: And, Mr. Gohl, again, you're here
11 representing --

12 MR. GOHL: Anna Burger.

13 BZA CHAIR HILL: Okay.

14 MS. GREEN: Sara Green.

15 BZA CHAIR HILL: You need to push the --

16 MS. GREEN: Sara Green.

17 BZA CHAIR HILL: Thank you.

18 MS. MODI: Manisha Modi.

19 MR. SULLIVAN: Marty Sullivan.

20 MS. ESPINOSA: Marisol Espinosa.

21 MS. LEE: Mary Lee.

22 MR. HARMON: John Harmon.

23 BZA CHAIR HILL: Okay. So, the party staff people,
24 who did you guys decide's going to speak on your behalf?

25 Okay, Ms. Green? Okay, great.

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1 So, let's see, you guys didn't happen to be able to
2 talk at all while you were out in the hall, did you? Oh,
3 God, thank God. Okay, no, I mean, thank you.

4 Okay. So, okay, so, Mr. Sullivan, I'm going to go
5 ahead and let you start to walk us through your presentation.
6 If you could, please, explain what your client is trying to
7 do and how they're meeting the standard with which we can
8 grant this application.

9 I'm going to put 15 minutes on the clock so I know
10 where we are and you can begin whenever you like.

11 MR. SULLIVAN: Thank you, Mr. Chair and members of
12 the Board.

13 I have a short PowerPoint presentation and then,
14 I'd like to have a statement from Ms. Espinosa and from
15 Father Harmon.

16 So, I'll go through what we're asking for first, an
17 overview. The Applicant's requesting special exception
18 relief under the use provisions of U203.1(g) to permit the
19 expansion of an existing child development center from 25
20 children to 60 children.

21 The existing facility is currently neighborhood
22 oriented. It's a large number of the children do walk to the
23 center on most days and most of the children live within a
24 mile or two of the location.

25 Drop off is proposed 7:00 to 9:00 a.m., pick-up

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1 4:00 to 6:00 p.m.

2 DDOT is in support of the drop off, pick-up plan
3 which involves having three spaces or 60 feet of dedicated
4 pick-up, drop off space which we think should be plenty for
5 that number of potential drivers over the course of a
6 two-hour drop off and pick-up.

7 Mi Palacio provides a program of linguistic and
8 cultural emersion through a team of native Spanish speakers
9 who are dedicated to the development of the whole child. Mi
10 Palacio strives to utilize knowledge of early childhood
11 education to provide appropriate services for all children
12 and to meet each child at his or her development level.

13 Mi Palacio wishes to better serve children and
14 families, support and build a trusting relationship with
15 parents, children, and other professionals in the community,
16 and provide support and help for families as they seek out
17 resources to meet their child's needs.

18 This is a map showing where the dedicated drop off,
19 pick-up spaces would be. The entrance to the center, if this
20 works, it's here, it's on the side door on Dahlia Street
21 right near the right side of these pick-up, drop off spaces.
22 So, they're right in front of where the children would enter
23 the center.

24 There's an aerial view of it. You see the church
25 on the right.

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1 Regarding special exception requirements, the
2 general requirements of 901.2 --

3 BZA CHAIR HILL: Mr. Sullivan --

4 MR. SULLIVAN: Yes?

5 BZA CHAIR HILL: -- would you be kind of reserving
6 those parking spaces or something? I mean, to make kind of
7 aware that people would be pulling in and dropping off, is
8 that what you're trying to say?

9 MR. SULLIVAN: Yes. DDOT has approved a plan where
10 they would reserve those spaces and they would put up signage
11 to that effect.

12 BZA CHAIR HILL: Meaning the pick-up and drop off
13 times or --

14 MR. SULLIVAN: During the pick-up, well, right now,
15 it's going to be between from the beginning of the pick-up
16 time all the way to the end of the drop off time.

17 BZA CHAIR HILL: Got it.

18 MR. SULLIVAN: Just because they didn't have a --
19 they don't currently have a program in place that would only
20 --

21 BZA CHAIR HILL: Right. Somebody could park there
22 and they'd have to get towed or what have you.

23 MR. SULLIVAN: Yes.

24 BZA CHAIR HILL: Okay, okay, thank you.

25 MR. SULLIVAN: So, we think we meet the general

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1 special exception requirements of Subtitle 901.2. Requested
2 to serve, that's a typo. It's we're down to 60 children with
3 16 staff in a residential neighborhood. And, we think it is
4 compatible with other similarly situated centers that the
5 Board had approved.

6 It's located within a church, which is on a large
7 lot and has some amount of separation from the surrounding
8 homes.

9 The home -- the immediate home to the -- on this,
10 the home that you see at the top of the picture, is a house
11 that is owned by the church as well. And so, the closest
12 home --

13 BZA CHAIR HILL: Is it that home that I just
14 circled?

15 MR. SULLIVAN: -- of Mr. Gohl is -- I'm sorry?

16 BZA CHAIR HILL: Is it that house that I just
17 circled?

18 MR. SULLIVAN: It is.

19 BZA CHAIR HILL: Okay.

20 MR. SULLIVAN: Yes, that's owned by the church and
21 that's the parking lot of the church behind -- to the right
22 of that house.

23 MEMBER JOHN: Mr. Sullivan?

24 MR. SULLIVAN: Yes?

25 MEMBER JOHN: Can you show me where the driveway is

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1 that's shared with one of the party status persons?

2 MR. SULLIVAN: So, I can show you where it is. I
3 don't think you can -- well, you -- maybe you can see it on
4 this. There's a house beyond the house that the church owns.
5 And, you can see the light blue, you can see the wall of that
6 house, it's between those two.

7 And so, the shared driveway connects to the church
8 parking lot on the back right. So, you could, we're not
9 proposing to do this and DDOT has, I believe, has made it a
10 condition and the ANC has made it a condition that we're okay
11 with -- we're not using that parking lot. But if you did,
12 you could drive into the driveway on the church's property
13 and go around and drive out the shared driveway, which we
14 don't intend to do.

15 The specific requirements of the special exception,
16 the facility shall be located and designed to create no
17 objectionable traffic conditions and no unsafe condition for
18 picking up and dropping off persons.

19 We think the reserved spaces really hit head on the
20 concerns about traffic and parking. We think that was a very
21 significant approval from DDOT to have that done that solves
22 a lot of concerns, we think, about that pick-up and drop off
23 because we think it's a significant amount of space.

24 And, also, there is some information on the record
25 from families, a significant majority of the families walk

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1 on most days to the center, weather permitting, I'm sure.
2 And, we expect that as well.

3 Ms. Espinosa has a waiting list of about 70
4 persons. So, and most of them, too, are from the surrounding
5 area.

6 And, again, we're not proposing to use the church
7 or the residential driveways. So, there should be an impact
8 on the -- on Ms. Burger's property.

9 We're not proposing an offsite playground. And
10 then, the third requirement, the BZA may require special
11 treatment in the way of design, screening, and the Applicant
12 will comply with those, any requirements that the Board
13 proposes.

14 There is a small play area on site and it's
15 sheltered from -- it's very small and you can't really see
16 it from any other property. It's kind of set back in the
17 property.

18 There is not another daycare center within a 1,000
19 feet of the subject property.

20 And, finally, we do have letters of support in the
21 file. The Office of Planning is recommending approval at the
22 full number. And, ANC 4B has submitted a resolution in
23 support but with some conditions including addition for 50
24 children. So, I'd like to address that.

25 The thing that Ms. Espinosa is most passionate

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1 about is serving as many children as possible. And, the
2 building code would permit somewhere around 62 or 63
3 children. And so, we continue to ask for 60.

4 We do appreciate the engagement that we've had with
5 the neighbors and we did have a lot of discussions with them.
6 And, we think we have come to agreement on certain areas of
7 this. But the reason we have opted to continue to ask for
8 60 is that we don't think -- we believe that the benefit to
9 the community of serving an additional ten children far
10 outweighs the potential impact from that additional ten
11 children, specifically when you consider some of the other
12 conditions that the ANC has suggested or recommended.

13 One, the parking. Like I said, I think the parking
14 aggressively addresses pick-up and drop off.

15 The other is the prohibition of the use of the
16 church parking lot which I think addresses Ms. Burger's
17 concerns. So, I think an additional ten children won't have
18 an impact on that particular issue.

19 And, finally, the five-year term limit that they've
20 recommended, we think that's a rather aggressive condition
21 for daycare use. It is concerning because the daycare center
22 has concern about, one, continuance of employment and people
23 who are employed by the center want to know they can
24 continue in that employment.

25 And then, also for parents. May not matter that

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1 much in year one, but year two, three, and four, they have
2 to be concerned that the daycare center is still going to be
3 there.

4 So, but if that condition is there, we think that
5 also aggressively addresses any concern about an additional
6 ten children.

7 So, I'll turn it over to Ms. Espinosa. Ms. Lee is
8 the interpreter for her.

9 BZA CHAIR HILL: Okay. Have you guys thought of
10 anything, I mean, in terms of, and I don't know whether --
11 how we're getting to the conditions and all that. I mean,
12 the Office of Planning, they had 62 children.

13 And then, also the determined by OSSE, at the time,
14 permitting and licensing would, I guess, you know, that could
15 be something that would also limit whatever the amount is.

16 And then, there was a maximum number of staff
17 persons would be at 16. However, then, as you jump over to
18 the ANC thoughts, they don't seem to be speaking to the staff
19 people at all. So, I guess I wonder whether, Mr. Sullivan,
20 the ANC had thought about staff people.

21 And then, in terms about the sunset provision,
22 whether your client had any thoughts about what might be an
23 acceptable sunset provision, if any. You know, is it ten
24 years? Is it, you know, what is it, if any, that you think
25 might be something that would be more workable?

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1 So, the 16 staff, whether the ANC, and then, any
2 kind of time limit at all in terms of whether your client
3 thinks one way or the other in terms of the time limit.

4 MR. SULLIVAN: I don't know if the 16 staff was
5 specifically addressed at the ANC meeting. I have to check
6 the resolution. But it's been understood from the beginning
7 that there is a certain number of staff ratio required. And
8 so, and we did have that in our application.

9 As far as the time limit, I will let Marisol speak
10 to that. But I think our discussions have been, we thought
11 ten years would be reasonable for something that has other
12 conditions on it that we think can sufficiently --

13 BZA CHAIR HILL: That's your time could possibly
14 live with ten years. I mean, that might be something that
15 would work out is what I'm saying.

16 MR. SULLIVAN: Yes.

17 BZA CHAIR HILL: So, who wants to answer that? I'm
18 sorry.

19 MS. ESPINOSA: Ten years.

20 BZA CHAIR HILL: Okay. Ms. Lee, you're the
21 translator?

22 MS. LEE: Yes.

23 BZA CHAIR HILL: Okay. All right. Okay, do you
24 have anything else, Mr. Sullivan?

25 MR. SULLIVAN: No, thank you. Just like to turn it

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1 over to Ms. Lee.

2 BZA CHAIR HILL: I'm sorry.

3 MR. SULLIVAN: She would like to give a short
4 statement --

5 BZA CHAIR HILL: Of course.

6 MR. SULLIVAN: -- on behalf of Ms. Espinosa.

7 BZA CHAIR HILL: Of course.

8 MR. SULLIVAN: And then, Father Harmon has a couple
9 things to say.

10 BZA CHAIR HILL: Of course.

11 MR. SULLIVAN: Thank you.

12 MS. ESPINOSA: Okay, I will speak first.

13 MR. SULLIVAN: Okay, okay.

14 MS. ESPINOSA: Yes, yes.

15 Based on community needs, I insist on 60 children.
16 It is not my intention to inconvenience or create conflicts
17 with my neighbors because they -- I live in the same block.
18 It is my community also.

19 Ten more children will have a negligible or no
20 impact of traffic. Most parents will pick-up and drop off
21 the children walking because they are in the community,
22 people from the same area.

23 I want to produce Mary who is reading for you
24 something that I wrote. Thank you.

25 MS. LEE: Good evening, I am here in support of Ms.

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1 Espinosa. And, I'm reading the prepared statement, the
2 statement that she prepared.

3 If the opinions of the neighbors that live less
4 than a hundred feet from Mi Palacio daycare are important.
5 The opinions and necessities of the neighbors that live a
6 little further away are also important.

7 Our community is diverse in every sense. I feel a
8 commitment and moral obligation to attend to low income
9 families.

10 Mi Palacio, in its eight years, has been limited to
11 25 children, knowing that the capacity is for more. This is
12 the first time that Mi Palacio has requested an expansion.

13 Mi Palacio is strong; it's strong enough to accept
14 more families from our long waiting list. Making families
15 wait yet another year to obtain spaces for their children is
16 not justified and we have -- and we currently have 70
17 families on the waiting list.

18 Twenty percent of the occupancy for children in Mi
19 Palacio will be for families with D.C. vouchers. We cannot
20 continue turning our backs on these families. Besides, we
21 are in a church. A building that symbolizes equality.

22 Based on community needs, we insist on 60 children
23 because we -- our mission is to help vulnerable families.

24 One only needs to raise their view and see that a
25 public school with 500 children is in front of the church and

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1 it is quite possible that a number of families are not able
2 to attend it.

3 Vehicular traffic problems are a normal part of
4 urban life. We live within two cities, Washington, D.C. and
5 Silver Spring.

6 Mi Palacio is not responsible for the increase in
7 traffic and should not have to pay the consequences because
8 of it.

9 Ten years of sunset provision is reasonable for Mi
10 Palacio because it implies job security for everyone. All
11 the teachers at Mi Palacio are mothers with small children
12 who need to work. And, of course, job security affects the
13 community in general.

14 I am calm in feeling that what I want is fair. It
15 is not my intention to inconvenience or create conflict with
16 neighbors. To the contrary, I have always had good relations
17 and have been very cooperative within the community.

18 As always, I humbly welcome comments, suggestions,
19 and advice alike. Thank you.

20 BZA CHAIR HILL: Thank you.

21 MR. HARMON: Good evening. I want to thank you for
22 the opportunity to offer a word of support for the
23 application in question.

24 For over 25 years, Trinity Episcopal Church has
25 served the needs of the community from its location on the

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1 corner of Piney Branch Road and Dahlia Street.

2 Our mission focus include feeding the homeless in
3 the City of Washington, D.C., we provide residents with
4 sleeping bags, over 800. We provide survival kits for
5 homeless folks on the street.

6 We are in partnership with our councilman right now
7 as supposed to provide 800 winter coats for children and
8 youth. We've been doing this annually.

9 Our support of the application is consistent with
10 the church's mission to serve the needs of the underserved
11 in the community and especially as it relates to children
12 that are providing a growing need for our community.

13 Our ministry includes ministry to seniors. We
14 provide opportunity for AA and NA over four days a week at
15 the church. We provide three days of service to seniors,
16 tai-chi, scrap booking, senior-cise, so that our residents
17 can be healthy.

18 We even have a run in the miracle program where
19 young folks from other countries come here to serve D.C. poor
20 and underserved. We do that at the church's expense. We pay
21 their health insurance. We pay their salaries. We give
22 transportation income to them. And, we provide opportunity
23 for them to go to college.

24 The church is consistently trying to serve the
25 community. We are partnered with Mi Palacio because we know

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1 that the growing need of community, or at least the research
2 show that the trend and the growing population has to do with
3 people of childbearing age. And, given our current
4 ministries, she -- the work she provides is consistent with
5 what we believe is the Gospel mandate.

6 And, for over a century, I have served the church
7 for over 20 years, so I've been there longer than all my
8 predecessors. And, I have seen the community change. And,
9 we hope that we can continue to provide the support to the
10 underserved. Thank you.

11 BZA CHAIR HILL: Okay, thank you, Father. Is it
12 Father?

13 MR. HARMON: Yes.

14 BZA CHAIR HILL: Okay.

15 Mr. Sullivan?

16 MR. SULLIVAN: Thank you.

17 That's it. If the Board has any questions --

18 BZA CHAIR HILL: All right. Does the -- Father, if
19 you can just turn off your microphone? Thanks.

20 Does anybody have any questions of the testimony
21 that was provided currently from the Applicant?

22 MEMBER JOHN: I don't know if this is in the
23 record, but how long have you lived in the community?

24 MS. ESPINOSA: Dahlia Street, 15 January and I was
25 living 10 minutes about from the same area, in the same area,

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1 20 years.

2 MEMBER JOHN: Thank you.

3 BZA CHAIR HILL: All right, Ms. Green. So, do you
4 have any questions of the -- so, you'll now have an
5 opportunity to give your presentation. However, do you have
6 any questions of the presentation that the Applicant just
7 gave?

8 MS. GREEN: I do.

9 BZA CHAIR HILL: Okay.

10 MS. GREEN: Okay. I think the question is for Ms.
11 Espinosa. Do you have -- we keep seeing different numbers
12 for walking. The DDOT transportation report 80 percent. The
13 Office of Planning report repeated that. I've seen on this
14 presentation a majority. Do you have numbers? Do you have
15 lists? Can we confirm an exact number of people who walk?

16 MS. ESPINOSA: We have, yes, we have support from
17 them in writing. And, it's the majority. I think we have
18 two or three families that live about in one mile from the
19 daycare. That's it.

20 MS. GREEN: But you're not providing a list. I
21 mean, wouldn't it be, in order to say that, wouldn't it be
22 just as simple to actually have a list of parents and
23 addresses, but you have not provided that?

24 MS. ESPINOSA: No, no, but I have it.

25 MS. GREEN: Okay.

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1 MS. ESPINOSA: I haven't provided it.

2 BZA CHAIR HILL: Okay, give me a second. Just give
3 me a second. So, what -- and Ms. Espinosa, I mean, how many
4 children do you guys have there now?

5 MS. ESPINOSA: Twenty-five.

6 BZA CHAIR HILL: Twenty-five? So, you're saying,
7 of the 25, currently two are driving?

8 MS. ESPINOSA: About two, three families.

9 BZA CHAIR HILL: Two, three families? So, that's,
10 I mean, I'm just giving you a rough estimate. I mean, if you
11 want more specifics of that I guess maybe they'd provide it
12 to you, but they're saying, of the 25, two or three families
13 are driving.

14 MS. GREEN: I guess my concern is, it's I guess the
15 term is self-certification. And, it is, I think, you know,
16 in the interest of the Applicant to maximize that number.
17 And, you know, that's all. I just --

18 BZA CHAIR HILL: You're just trying to get an --
19 you're just trying to understand how many people are actually
20 driving.

21 MS. GREEN: Right. And, I think proof should be
22 provided in some way. And, I'm not seeing --

23 BZA CHAIR HILL: Okay.

24 MS. GREEN: -- and I'm not seeing that.

25 BZA CHAIR HILL: Okay. But you're -- so your

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1 question is, do you have a list?

2 MS. GREEN: Have a list and --

3 BZA CHAIR HILL: And/or if so, is there a way to
4 provide proof? I mean, I don't know how you give out
5 necessarily addresses or names of people that are driving or
6 not. But so, anyway, I'm sorry, I'm interrupting your
7 questioning.

8 MS. GREEN: But that was just my point. But to the
9 point, we have two people who live close by, who live
10 adjacent, within eyesight. May I ask them for a statement?

11 BZA CHAIR HILL: Are you talking about the people
12 that are sitting with us?

13 MS. GREEN: Yes, yes.

14 BZA CHAIR HILL: Yes, sure you can, during --

15 MS. GREEN: Yes.

16 BZA CHAIR HILL: -- no, no, no, during your
17 testimony.

18 MS. GREEN: Okay.

19 BZA CHAIR HILL: So, you can.

20 MS. GREEN: All right, all right.

21 BZA CHAIR HILL: So, I'm just trying --

22 MS. GREEN: All right.

23 BZA CHAIR HILL: -- to ask if you have any
24 questions.

25 MS. GREEN: Okay, yes, yes, I do.

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1 BZA CHAIR HILL: Sure, sure.

2 MS. GREEN: You have, I guess it was 26 or
3 something letters of support in the file?

4 MS. ESPINOSA: Some of them.

5 MS. GREEN: Okay, yes.

6 MS. ESPINOSA: Some of them left.

7 MS. GREEN: Okay. No, but I'm talking about
8 letters in the files, you have letters of support?

9 MS. ESPINOSA: Yes, I have letters of support.

10 MS. GREEN: Okay, okay. Did you ask the people who
11 wrote the letters if they supported the ANC 4B resolution?
12 Did you ask them, oh, do you want make sure that I can't put
13 any children in 505, take -- did you ask them about the use
14 of the driveway? Do you know how they feel about any
15 conditions other than just they want childcare?

16 MS. ESPINOSA: No.

17 MS. GREEN: No? So, it's as far as you know, the
18 people who -- your parents may be happy to have conditions
19 that would limit the use of 505 Dahlia or would ask to put
20 conditions on U-turns and the way parents use Dahlia. They
21 could well support that, am I right?

22 MS. ESPINOSA: I'm sorry, I don't know what are you
23 talking about.

24 BZA CHAIR HILL: So, even I'm trying to understand
25 the question.

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1 MS. GREEN: Okay.

2 BZA CHAIR HILL: So --

3 MS. GREEN: My position -- my point is, that there
4 are letters of support and the letters of support say we want
5 more daycare. We want more childcare.

6 BZA CHAIR HILL: Yes?

7 MS. GREEN: But they're not saying, well, we want
8 it at expense, we want it no matter what happens. We want
9 it even if, you know, we turn, we change the uses. That's
10 all. I mean, they --

11 BZA CHAIR HILL: So, that's great. I'm sorry, I'm
12 just trying to understand your question.

13 MS. GREEN: They could support the ANC resolution.
14 We don't have letters --

15 BZA CHAIR HILL: You're asking -- the question
16 you're asking, and again, I'm just trying to get through your
17 question.

18 MS. GREEN: Okay, okay, I apologize.

19 BZA CHAIR HILL: Because it's really -- you don't
20 have to apologize -- it's through your testimony that you're
21 actually we're going to hear what all your issues are and
22 everything.

23 MS. GREEN: Right.

24 BZA CHAIR HILL: So, this was just merely kind of
25 questions to their testimony. And, even in their testimony,

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1 I suppose even questions that are things that are in the
2 record. So, the question that you're asking, which I don't
3 think anybody would know the answer to, is that, those people
4 that have supported -- that have provided the letters of
5 support, you're asking whether or not they, the Applicant,
6 thinks that they would not be in support if there were other
7 conditions?

8 MS. GREEN: Correct, correct.

9 BZA CHAIR HILL: And, I would imagine they don't
10 know the answer to that. So, but --

11 MS. GREEN: Right.

12 BZA CHAIR HILL: -- they can answer that. Do you
13 know the answer?

14 MS. GREEN: But did they ask?

15 BZA CHAIR HILL: You said, did they ask -- sorry.

16 MS. ESPINOSA: No.

17 BZA CHAIR HILL: Okay.

18 MS. GREEN: Okay. The other question would be
19 about ownership. When you purchased the property, did you
20 purchase it yourself or did you purchase it in the name of
21 Mi Palacio?

22 BZA CHAIR HILL: Why is that relevant?

23 MS. ESPINOSA: You are talking about my house?
24 Yes.

25 BZA CHAIR HILL: Wait, wait.

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1 MS. ESPINOSA: At 505?

2 MS. GREEN: Yes.

3 BZA CHAIR HILL: Wait a second, wait a second. Why
4 is that relevant?

5 MS. GREEN: Well, because she said she has lived
6 there since January. And, my question is, has she always --
7 the intent, what was her intent in purchasing the property?

8 BZA CHAIR HILL: I don't that's necessarily at
9 issue before us in terms of whether or not they're here for
10 the application.

11 I mean, so, I don't think -- I mean, and it's not
12 -- I don't think it's relevant. I don't think it's something
13 that's necessarily before us as to whether or not she owns
14 the property.

15 MS. GREEN: I mean, I'm sorry, 505 Dahlia is what
16 I mean. Ms. Espinosa said that she has lived at -- she has
17 lived in the community --

18 BZA CHAIR HILL: I may be getting confused. Where
19 is the daycare center? It's not a 505 Dahlia?

20 MS. GREEN: No, the daycare center --

21 MS. ESPINOSA: 7005.

22 BZA CHAIR HILL: Wait a second, wait a second, wait
23 a second.

24 So, okay, I don't think your question is pertinent
25 in terms of that one. So, go on to your next question.

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1 MS. GREEN: Do you live at -- in the community at
2 505?

3 BZA CHAIR HILL: Why is that pertinent?

4 MS. GREEN: Well, this statement, the testimony was
5 that she has lived at that house and that was her statement.

6 BZA CHAIR HILL: Okay. So, that's where she's
7 saying she lives at that house.

8 MS. GREEN: Okay. Do you have a homestead
9 deduction for that property?

10 BZA CHAIR HILL: Why are you asking all these -- I
11 don't understand what -- and it sounds very personal
12 suddenly.

13 MS. GREEN: Okay, it's not --

14 BZA CHAIR HILL: I mean, I don't know what --

15 MS. GREEN: -- meant to be personal.

16 BZA CHAIR HILL: Okay, but it sounds personal.

17 MS. GREEN: Well, okay. What it is meant to be is
18 to demonstrate that there is a concern on the community about
19 the use of 505 Dahlia.

20 BZA CHAIR HILL: Okay. So, why don't --

21 MS. GREEN: That's part of the ANC resolution.

22 BZA CHAIR HILL: That's fine, that's fine.

23 MS. GREEN: That's part of the --

24 BZA CHAIR HILL: So, and the only thing I'm trying
25 to get is, Ms. Green, I haven't figured out what you guys

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1 presentation is yet. And, you seem to be kind of getting
2 your presentation out while asking your questions.

3 MS. GREEN: Okay.

4 BZA CHAIR HILL: So, I think maybe you should just
5 go ahead and make your presentation.

6 MS. GREEN: Okay, all right.

7 BZA CHAIR HILL: Right? And then, we kind of also
8 ask more questions. And, I suppose, in all fairness, if
9 there's another question, I just don't understand where your
10 position is yet.

11 MS. GREEN: Okay.

12 BZA CHAIR HILL: So, why don't you go ahead and
13 make your presentation first and then we'll hear more about
14 505 Dahlia I suppose.

15 MS. GREEN: Okay.

16 BZA CHAIR HILL: Because, currently, that's not in
17 the application. So --

18 MS. GREEN: It was in the ANC -- can I just have
19 one more question?

20 BZA CHAIR HILL: Sure.

21 MS. GREEN: You stated that this was the first time
22 you asked for an expansion? I have been informed that this
23 is not -- that it was 10 children at first and then there was
24 a request for 25. Is -- pardon me?

25 (Off mic comments.)

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1 MS. GREEN: It was 16 at first, okay, 16 at first
2 and then to 25?

3 MS. ESPINOSA: No, ma'am, that is not correct. This
4 is my first time asking for an expansion.

5 MS. GREEN: So your first --

6 MS. ESPINOSA: Time here.

7 MS. GREEN: -- was 25?

8 MS. ESPINOSA: With BZA.

9 MS. GREEN: Okay. So, your first request was for
10 25, that was approved?

11 MS. ESPINOSA: Yes, I didn't request the 25, DCRA
12 decided.

13 MS. GREEN: Okay, okay. All right, thank you.

14 Okay, we will -- I will do the presentation.

15 BZA CHAIR HILL: Okay.

16 MS. GREEN: And, when people know more than I do,
17 I can refer to them?

18 BZA CHAIR HILL: Sure, yes, of course.

19 MS. GREEN: Okay.

20 BZA CHAIR HILL: Yes.

21 MS. GREEN: Okay. Thank you.

22 Thank you for hearing this late, thank you for
23 staying with us. We want to support this. And, the reason
24 we say we were in opposition is because we very much feel
25 that we can have the childcare. We acknowledge the need for

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1 childcare in our community. We know we need it.

2 And, the church is a good place to have it. It's
3 already there. It's an institutional use. We accept that.

4 There are concerns about traffic and safety right
5 now with 25 students. And, there is a doubling that is being
6 proposed. So, there are concerns right now about traffic.
7 There are concerns right now about the institutionalization
8 of that very small block and the issues of impact and the
9 change of character of the street because it is such a short
10 street.

11 There is a map that you would have, I mean, let's
12 just -- can we -- it's in the record.

13 (Off mic comments.)

14 MS. GREEN: There's a street map.

15 BZA CHAIR HILL: Mr. Sullivan, can you just pull up
16 that street map that you had in your slide presentation?

17 MS. GREEN: No, no, it was --

18 (Off mic comments.)

19 BZA CHAIR HILL: Is that one good enough to
20 explain?

21 MS. GREEN: No, because I had the uses down. I had
22 each -- what each -- it's my exhibit. It's my submission --

23 ZC CHAIR HOOD: It was Exhibit 81, I believe.

24 MS. GREEN: Okay, and it's page --

25 (Off mic comments.)

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1 MS. GREEN: Yes.

2 VICE CHAIRPERSON HART: It's page six.

3 MS. GREEN: Page six of my submission. And, it's
4 titled land use near Trinity Church.

5 BZA CHAIR HILL: Okay, got it.

6 MS. GREEN: Okay. So, if you look, just hold it
7 towards you, Dahlia is the street directly across the middle
8 of the page. And, you see the entrance, it's marked daycare
9 entrance at Trinity Church that faces Dahlia.

10 And, we're essentially talking about five buildings
11 on this very, very short block between Piney Branch and
12 Blair. There are really only five buildings.

13 One of them is Trinity Church. Directly next to
14 Trinity Church is 502 Dahlia which is owned by the church,
15 vacant now. It has been used on and off as offices. It's
16 often vacant. Sometimes it's short-term housing. So, that
17 is a single family home that's really not in what we think
18 of as an active residential use, an active family use.

19 Then, we have 500 Dahlia, which is Mr. Gohl's home.
20 And, he can talk about some of his experiences with that.
21 And, I will ask him to do that in one moment.

22 We have across the street, we have 7100 Blair which
23 is Ms. Modi's home.

24 And then, we have 505 Dahlia which has been a
25 single family home. It's been vacant because it was in poor

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1 condition. Subject to law suits, whatever. But 505 Dahlia
2 is a home that Ms. Espinosa purchased in I believe 2016 or
3 '17. I have the -- the documents are in the file.

4 And, it was purchased. She came to my home right
5 after she purchased it, sat down in the home, and said, she
6 wanted to purchase the vacant lot next to 505 which is an
7 unbuildable size lot; I own it. And, she said, she bought
8 the home at 505. It was zoned commercial and she wanted to
9 buy the lot and enclose it as a playground for the daycare
10 center.

11 And, when I said, no, this is a single family home,
12 it's not for commercial use, she said, oh no, no, no, that's
13 what my realtor told me. I said, well, you are wrong and we
14 pointed the zoning map to her and she was extremely upset at
15 that point.

16 And, I said, well, you might have a cause against,
17 you know, somebody else. But it is a single family home and
18 my husband and I take care of that lot. We had a lot of
19 trees we had to cut down. It cost us a lot of money. We pay
20 the taxes because we very much wanted to retain the
21 residential character of that street and we know it's under
22 pressure.

23 Again, only the five homes and only the five
24 buildings. And, at the edge of that on Blair Road, there's
25 an office building. This is the edge of the zone. It's

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1 under threat. There is a lot of pressure to convert these
2 buildings into commercial use. And, that is the problem.

3 I'd like to ask Ms. Modi, actually, first, I guess
4 Mr. Gohl to talk about some of the pressures he's seen on the
5 street. And, the use of 505 that he might have witnessed and
6 just his concerns about that street and the traffic. And
7 then, I will ask Ms. Modi to share her views also.

8 MR. GOHL: Okay, thank you.

9 I certainly agree with Ms. Espinosa that she
10 shouldn't be punished for the traffic in Washington --

11 BZA CHAIR HILL: Ms. Green, if you could just turn
12 off your microphone? I'm sorry.

13 MR. GOHL: She shouldn't be punished for the
14 traffic in our neighborhood. But the fact is that we all
15 have to live with it and the actions that we're taking, the
16 way we use our property and the way we increase in develop
17 the property all have impacts on the rest of us. And, we
18 need to be aware and be sensitive to those impacts.

19 As we look at our neighborhood and we look at our
20 street, you know, we're in the edge of one of those the
21 residential neighborhood. And, every year, or every couple
22 years, somebody has some bright idea about how they can
23 benefit themselves and how they can take advantage of our
24 edge and convert the building or expand the building into
25 more commercial purposes to their advantage, to our

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1 detriment.

2 A couple years ago, the Board, with its leadership,
3 stood up to a developer who thought they had a great idea to
4 increase, actually, Ms. Modi's house into a five-unit
5 apartment building.

6 Our neighborhood, the ANC, and the Board all
7 rejected the idea. And, a year and a half later, we have
8 somebody who moved from U Street, of all places, up to our
9 neighborhood and now lives with their family in that same
10 property. So, it's important for our neighborhood for your
11 action, your leadership, to make sure that you help us
12 support the strength and development of single family
13 properties in our communities.

14 In terms of the traffic and the challenge that we
15 face, it's really interesting little place. We're connected
16 to Piney Branch, Blair Road, Fifth Street, and Cedar Street.
17 And, they're all have different demands and different
18 interests.

19 And, when you watch this traffic go back and forth
20 and increase and decrease as rush hours come and go, you now
21 have this -- you now have students, 25 students coming into
22 this facility.

23 And now, you're talking about 25 is not a whole
24 lot, but now, you want to expand it to 60. So, you're really
25 want more than double the expansion.

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1 And, in addition to the recent apartments that have
2 been built in the area have also increased traffic and
3 challenges on adjacent streets, then you end up with a really
4 a circus of events.

5 Our street is pretty much a quiet street except for
6 during rush hour when all of a sudden people do all kinds of
7 things. And, you know, all of us here have raised kids in
8 Washington, D.C. We've usually raised them in times when
9 they didn't -- we didn't have as many resources and many
10 activities and developments that are going on that are today.
11 But we all have done that and we all understand the
12 challenges of how do you get your kid to daycare? How do you
13 get to work? How do you deal with these things?

14 And, you know, rules, you know, for those folks,
15 sometimes are just not all that convenient. And, as a
16 result, you end up with these situations where they do what
17 they need to do.

18 And, we have a great picture of some father who was
19 in a hurry. And so, what he did was, he parked the wrong way
20 on our little street. It doesn't happen every day. But
21 happens more frequently than what it needs to.

22 While I know that Mr. Sullivan is convinced that
23 his two or three parking spaces are really going to solve
24 this problem, this guy, it wasn't going to help this guy at
25 all.

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1 So, we continually go through these experiences
2 where, you know, we sound like whiners maybe. But what we
3 see are dangerous situations and dangerous traffic patterns.

4 The Department of Transportation didn't do a study
5 about our neighborhood, about the traffic demands. They took
6 the information submitted by the Applicant and they agreed
7 with it and they manipulated it. That's the challenge that
8 we have. And, that's the challenge as to make sure that
9 we're really dealing with the reality and not with just facts
10 hidden by an Applicant who's trying to get approved here.

11 But I really appreciate your effort and your work
12 and your ability to last through this day and to deal with
13 these issues. So, thank you very much.

14 BZA CHAIR HILL: Thank you.

15 Ms. Green?

16 MS. GREEN: Yes, I'd like Ms. Modi to speak to some
17 of her experiences.

18 BZA CHAIR HILL: Ms. Green, you need to cut your
19 microphone on, sorry. And then, also, Mr. Moy, did you start
20 the clock on them or, I mean, I'm going to go ahead and we're
21 going to --

22 MS. GREEN: Right.

23 BZA CHAIR HILL: I'm just being a little bit aware
24 of time.

25 MS. GREEN: Okay, I understand.

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1 BZA CHAIR HILL: And so, but Mr. Moy, did you start
2 at 15 minutes? You don't know.

3 MS. GREEN: Okay.

4 BZA CHAIR HILL: You did not, okay. So, I don't
5 know where we are, that's all I'm just trying to get at. So,
6 Ms. Modi, go ahead.

7 MS. MODI: Hi, so, I'm that neighbor that moved
8 from U Street. And, it was my home that was contested by the
9 neighbors. And, Mr. Gohl is correct that, you know, every
10 few years, you find somebody who loves the residential aspect
11 of the neighborhood and it's just perfect for their business.

12 While we live there, it's our home. It's zoned
13 R-1B which I checked before we moved because we were looking
14 for a different experience than where we lived in the U
15 Street community.

16 I think you've asked why we keep bringing up 504
17 Dahlia Street -- sorry, 505 Dahlia Street. When I -- when
18 my family first moved in, we noticed that right outside our
19 window, there was an above-ground small swimming pool and
20 children playing daily in the yard.

21 They would water the garden. They would sing
22 songs. And, we wondered, you know, what, did we move in next
23 to a school?

24 What we've learned since then is that 505 Dahlia
25 was originally purchased by Mi Palacio, not by -- well, which

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1 was owned by Ms. Espinosa.

2 She has been using -- she had been using the
3 property as educational and play space as recently as this
4 past summer. We have tried to come to the table many times
5 and come to an agreement that will serve the wider community,
6 the daycare, and the neighbors on the street.

7 And, some of the things she's requested is to be
8 able to use the parking, the driveway at 505 for staff
9 parking. And, she also asked in one of the recent iterations
10 of our draft agreement, to be able to bring eight kids over
11 at a time to play in her yard.

12 The reason Ms. Green was asking possibly intrusive
13 questions about the homestead deduction and things like that
14 is because Ms. Espinosa had said, stated, that she lives at
15 the property. We -- the neighbors have not observed this.
16 We don't see her in the neighborhood on evenings, weekends.
17 And, she is, in fact, receiving the homestead deduction at
18 another local address.

19 So, our feeling is that all of this taken together
20 leads to a picture of someone who is hoping to use 505 Dahlia
21 as an adjunct childcare facility. And, you know, this speaks
22 to the commercial creep that we're concerned about.

23 I mean, there's four houses on this tiny little
24 block. One is owned by the church. One is owned Ms.
25 Espinosa and has been used for childcare purposes as recently

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1 as this summer. One is owned by Mr. Gohl and Anna Burger.
2 And, one is owned by myself and my husband.

3 So, we are desperate to keep it --

4 BZA CHAIR HILL: Where's Ms. Burger? Mr. Gohl,
5 you're at 7106 Blair?

6 MR. GOHL: No, 500 Dahlia.

7 BZA CHAIR HILL: Oh, you're 500 Dahlia.

8 And then, Ms. Modi, where are you?

9 MS. MODI: 7100 Blair. So, the photos I have
10 shared with --

11 BZA CHAIR HILL: Oh, you're right next door to 505?

12 MS. MODI: Correct. So, the photos I showed you
13 earlier, the --

14 BZA CHAIR HILL: 500 is Mr. Gohl; 7106 is it 600?

15 MS. GREEN: 7106 is me.

16 BZA CHAIR HILL: Oh.

17 MS. GREEN: And but then I also own that --

18 BZA CHAIR HILL: Oh, you need the mic on. I'm
19 sorry. I'm just trying to --

20 MS. GREEN: Okay.

21 BZA CHAIR HILL: -- orient myself.

22 MS. GREEN: Yeah, no, no, I understand.

23 BZA CHAIR HILL: 7106 is you --

24 MS. MODI: 7106 is me.

25 BZA CHAIR HILL: -- Ms. Green?

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1 MS. GREEN: Yes.

2 BZA CHAIR HILL: So, you're right next door to 505?

3 MS. GREEN: No, 7106 is across the street from
4 Piney Branch Road. 7106 Piney Branch Road. So, I am --

5 BZA CHAIR HILL: Who's at 7106 Blair?

6 MS. GREEN: There is no -- that's 7100.

7 BZA CHAIR HILL: Okay. Who's at 7100 Blair?

8 MS. GREEN: Ms. Modi.

9 BZA CHAIR HILL: Now, I understand, Ms. Green is.
10 I'm saying that this is -- so, Ms. Modi is at 7100 Blair.
11 Mr. Gohl is at 500 Dahlia, correct?

12 MS. GREEN: Correct.

13 BZA CHAIR HILL: Ms. Espinosa is at 505 Dahlia.
14 And, you're at 7106 --

15 MS. GREEN Piney Branch --

16 BZA CHAIR HILL: -- Piney Branch. Where is Ms.
17 Burger?

18 MR. GOHL: 500 Dahlia.

19 MS. GREEN: She -- yes.

20 BZA CHAIR HILL: 500 Dahlia. So, you're both in
21 the same place? Oh, I'm sorry, I was just confused. It's
22 like you're speaking on behalf of Ms. Burger. Right. So,
23 you're -- okay, got it, all right. Okay. Okay, all right,
24 so back to who was speaking last? Oh, Ms. Modi.

25 So you had finished understanding or explaining

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1 505. Okay, Ms. Green, do you have anything else you'd like
2 to add?

3 MS. MODI: Could I speak to the traffic and parking
4 as well?

5 BZA CHAIR HILL: Sure.

6 MS. MODI: So, can I see that picture with the --
7 that -- the picture that Mr. Gohl showed of the guy parked
8 --

9 BZA CHAIR HILL: Uh-huh?

10 MS. MODI: -- the opposite way --

11 BZA CHAIR HILL: Sure.

12 MS. MODI: -- this is somebody -- this is a parent
13 who parked across their shared driveway.

14 BZA CHAIR HILL: Sure.

15 MS. MODI: Over the summer, not long after we moved
16 in, I heard a huge crash. Somebody in the -- and then,
17 followed by a baby crying, a woman wailing, a man yelling.
18 They had turned the corner from Blair to Dahlia and smashed
19 into a row of cars.

20 BZA CHAIR HILL: Okay, I understand. There's a lot
21 of things --

22 MS. MODI: So, it is a very congested.

23 BZA CHAIR HILL: -- you know. Right. I actually
24 know the intersection. I actually know where you guys are.
25 I've been to the church. Unfortunately, I've been there for

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1 a funeral.

2 And so, but, and finding parking for the funeral
3 isn't easy, either. Right? So, but, anyway, I understand
4 your comments and traffic and dropping -- and people dropping
5 off their kids and in a hurry, and they're going to do
6 whatever they're going to up doing.

7 So, we can get to all that. Was there anything
8 else?

9 MS. MODI: Only that I -- we recently moved from
10 living next door to a school and there were protections in
11 place. And, yet, you saw families -- and it only happens
12 twice a day, okay? But that's enough time to really
13 inconvenience neighbors to create hazards.

14 People double park; they triple park. They do
15 U-turns.

16 BZA CHAIR HILL: Sure, I know, right.

17 MS. MODI: And, I've seen -- I observed this for
18 the past ten years.

19 BZA CHAIR HILL: I guess I'm just trying also, this
20 is the part that also I find very interesting about this job
21 thus are. And, unfortunately, Mr. Sullivan's heard me say
22 this a bunch of times. I live in a very dense area of the
23 city. Right? And, things are going on all over my
24 neighborhood. You know, people are doing all kinds of things
25 on the sidewalks with double parking and all these things.

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1 So, that's what you also kind of get from living in
2 a city. And, also, to just kind of, as I'm learning more
3 about affordable housing and density, you know, there is
4 arguments to be made to like increasing the density so that
5 there's more affordable housing.

6 And then, I'm just saying there's arguments for
7 everything. Right? Okay. And so, that's, now you guys are
8 having your argument. Right?

9 And so, but so, in terms of the traffic, is there
10 anything else you'd like to add?

11 MS. MODI: No.

12 BZA CHAIR HILL: Okay, Ms. Green, is there anything
13 else you want --

14 MS. MODI: Thank you.

15 BZA CHAIR HILL: -- to add?

16 MS. GREEN: Well, just to point out that I think
17 our concerns, I think are valid and --

18 BZA CHAIR HILL: I think they're valid.

19 MS. GREEN: -- we're looking for fairness and we're
20 looking -- we're not saying that the children should not have
21 daycare at that church. What we're asking for are the
22 conditions that the ANC detailed in its recommendations with
23 one, you know, with just one or two little tweaks here.

24 The ANC said that the BZA should include in their
25 order the prohibition of the use of 505 Dahlia, Northwest as

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1 an adjunct facility for child development, including parking
2 off site, a play area or additional care facility under the
3 same ownership.

4 And, what we're asking is you exclude that phrase,
5 under the same ownership. So, we're asking basically to have
6 505 in your order to have 505 not used for daycare, for
7 childcare at all because the concern is that you just turn
8 over the property to somebody else and that we have the same
9 results. We have an auxiliary daycare facility there which
10 will change the character of that street.

11 The other thing we just ask for is, we ask for some
12 direction that the childcare facility should have in its
13 guide book something very simple to say to parents, hey, you
14 should not be doing three U-turns, 3-point turns. You
15 should, you know, be careful about how you drive that, if you
16 don't, that you might be asked to leave the program. We
17 think that's really, really simple and this is something that
18 is not in there. And, we've discussed it, they had not
19 agreed to it.

20 What we -- what I have here and we can pass this
21 out --

22 BZA CHAIR HILL: Wait, just tell me what you've got
23 first.

24 MS. GREEN: Well, okay, this is a -- one of your
25 cases, 18335. It is the Ethical Culture Society, it's the

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1 daycare program in there.

2 BZA CHAIR HILL: Okay.

3 MS. GREEN: And, they had this extraordinary, I
4 mean, this was not even an adversarial. Everybody agree to
5 this, and it goes on for five or six points about how they
6 have to do the drop offs, and they had staff standing there
7 and directing traffic in the -- and parking in the morning
8 drop off, in the evening drop off --

9 BZA CHAIR HILL: Okay, you have that there? You
10 have enough copies?

11 MS. GREEN: Yes, I do.

12 BZA CHAIR HILL: You can give it to -- if you can
13 ask Ms. Modi to bring it over so you can keep talking.

14 MS. GREEN: Right.

15 BZA CHAIR HILL: If you give it to the Secretary,
16 please, Ms. Modi?

17 MS. MODI: It's attached to my statement.

18 MS. GREEN: The idea, not to belabor the time here,
19 the idea being that a lot of other agreements are much more
20 detailed.

21 BZA CHAIR HILL: I understand. Ms. Green, what
22 else do you got?

23 MS. GREEN: I conclude.

24 BZA CHAIR HILL: Okay, okay. And, by the way,
25 Chairman Hood over here recognizes that you had at one time

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1 served at your ANC, is that correct, Chairman Hood?

2 MS. GREEN: Right.

3 BZA CHAIR HILL: And so --

4 ZC CHAIR HOOD: That's correct. I do, let me --
5 can I -- since you gave me the --

6 BZA CHAIR HILL: Sure, go.

7 ZC CHAIR HOOD: I do know Ms. Green's work. I've
8 known Ms. Green for years. But let me just ask this, Ms.
9 Green. I haven't heard anything yet that I don't think is
10 not a proper ask. I'm just trying to figure out where's the
11 -- what's the -- I'm sitting here thinking, okay, they kept
12 me in the backroom all day. Now, I'm at this case and I'm
13 trying to figure out why we here this long for what I've
14 heard you all ask?

15 I don't know, maybe I'm missing something. I
16 understand why they were going down the line about the
17 homestead. I know why you were going down those lines. So,
18 I appreciate the Chairman letting you give your presentation.

19 But what is the problem with the ask? Especially
20 about what you all are asking for about the three U-turns
21 and, what is the problem?

22 MS. GREEN: Nothing. There isn't a problem us. We
23 were working to try to get an agreement.

24 ZC CHAIR HOOD: So, that wasn't necessarily
25 directed to you all. I want to know, I'm actually

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1 redirecting it. So, I want to know what's the problem. You
2 haven't asked anything, I don't think, that's unreasonable.

3 But, you know, it's your time now and I just want
4 the Applicant to know that I want to know what those
5 questions when -- at the appropriate time.

6 MS. GREEN: Yes, and the sunset, the five-year
7 sunset also.

8 COMMISSION HOOD: Yes, what's the issue?

9 MS. GREEN: We're -- pardon me?

10 ZC CHAIR HOOD: No, no, you --

11 BZA CHAIR HILL: Okay, all right.

12 MS. GREEN: And, the 50, and the 50 students we
13 think is a fair compromise. We just have been unable, we
14 wanted to reach an agreement and we have been unable to do
15 that.

16 It's my understanding that the Applicant really
17 didn't want to have limitations on 505 Dahlia and that that
18 was a big sticking point. They can speak to it.

19 But we, no, we're happy to go along and to support
20 the ANC resolution with that one little tweak, two little
21 tweaks, we talked --

22 ZC CHAIR HOOD: So, I don't think it's much of an
23 ask. But I will, when the Applicant speaks again, I haven't
24 heard anything that would cause me to have a whole lot of
25 questions for you all. I have more on them, for the

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1 Applicant.

2 MS. GREEN: Thank you.

3 ZC CHAIR HOOD: Thank you.

4 BZA CHAIR HILL: Okay, all right. So, let's see,
5 okay, first, let's see, what was I going to say? Oh, yes.

6 So, does the Board have any questions for the party
7 status people?

8 ZC CHAIR HOOD: I've already asked mine.

9 BZA CHAIR HILL: Okay, all right.

10 So, all right, so, sure please, go on.

11 MEMBER JOHN: One question. Do you all have
12 parking at the rear of your property or do you have a curb
13 cut where you drive into -- do each of you have parking?

14 MR. GOHL: We do. Actually, I'm the only resident
15 of Dahlia Street and we have not been able to get residential
16 parking because you can't do a petition with just one
17 resident.

18 BZA CHAIR HILL: Do you have off street parking?

19 MR. GOHL: We have off street parking.

20 BZA CHAIR HILL: You have your own off street
21 parking? That's what --

22 MR. GOHL: And, we share the driveway with 502
23 Dahlia.

24 MEMBER JOHN: Okay, thank you.

25 BZA CHAIR HILL: Okay.

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1 MEMBER JOHN: And, another question. How many
2 children normally play at, well, occasionally play at 505?

3 MS. GREEN: Currently, the enrollment at the center
4 is 25. And, I would say she was bringing, they were bringing
5 approximately half of the kids over at a time.

6 MEMBER JOHN: So, spell kids.

7 MS. GREEN: You can see from the pictures, I --

8 MEMBER JOHN: Yes.

9 MS. GREEN: -- I know it was maybe a little bit
10 inappropriate to upload photos of children, but --

11 MEMBER JOHN: That's the equivalent -- yes, that's
12 equivalent of a birthday party, right?

13 MS. GREEN: Yes.

14 MEMBER JOHN: Okay.

15 MS. GREEN: But with 60 kids, now we're talking
16 about that all day long.

17 MEMBER JOHN: But she didn't say she as going to
18 bring 60 kids over there all day long.

19 MS. GREEN: No, no, in our attempts to reach an
20 agreement, she had asked that she be allowed to bring, I
21 think it was eight kids at a time. So, if you do the math,
22 that is all day long.

23 MEMBER JOHN: Well, yes --

24 MS. GREEN: Eight kids at a time.

25 MEMBER JOHN: -- okay. All right, thank you.

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1 BZA CHAIR HILL: Okay. All right, so, let me get
2 back to over here, Mr. Sullivan. So, if you want to ask any
3 questions, you can.

4 Before -- okay, do you want ask any questions, Mr.
5 Sullivan?

6 MR. SULLIVAN: No thanks.

7 BZA CHAIR HILL: Okay. So, back to where you guys
8 actually started -- well, I have a couple questions.

9 So, back to where you guys actually started
10 discussing whatever you were discussing, like these sticking
11 points on -- so, not sticking points -- you have ANC approval
12 and you have a bunch of conditions from the ANC.

13 One of the prohibitions that the ANC was trying to
14 get at was the whole 505 Dahlia. I suppose, you know, I
15 have, what is it, a mixed feeling about some of these things
16 in that, you know, I am kind of curious as to what your
17 Applicant is doing with 505 Dahlia now?

18 And then, I also feel bad that the kids don't have
19 any place to play. But, at the same time, I don't know what
20 to do about that either. Right? I mean, there is a small
21 area right now, I'll the Father speak, there is a small area
22 right now that I guess the children are allowed out to play
23 at some point, correct, Father?

24 MR. HARMON: Yes, we can provide all this -- so, we
25 have four areas where the kids could play.

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1 BZA CHAIR HILL: Got it, on the church grounds?

2 MR. HARMON: Yes, we could do that.

3 BZA CHAIR HILL: So then, you wouldn't be having
4 people playing at 505 Dahlia.

5 MR. HARMON: We can't control who goes there, but
6 we can make -- the church is available to Ma Palacio in terms
7 of the grounds.

8 BZA CHAIR HILL: Okay. So now, I am going to turn
9 to Mr. Sullivan, like what is going on with 505 Dahlia?

10 MR. SULLIVAN: So, Ms. Espinosa may have hoped to
11 use 50 Dahlia when she purchased it. I don't know that was
12 before she hired zoning counsel. And, as you've heard them
13 say, she hasn't been using it lately because when we started
14 this, I informed her that it's not part of her Certificate
15 of Occupancy. And, it's actually not part of our request.

16 So --

17 BZA CHAIR HILL: Got it. So, 505 Dahlia is
18 supposedly off the table, right?

19 MR. SULLIVAN: Yes.

20 BZA CHAIR HILL: Meaning that, you are not supposed
21 to be doing anything with it. It's not part of the
22 application. And, if it started to get used that way, then
23 it would be an enforcement issue. Right?

24 Like they would -- you would -- you guys would call
25 up DCRA and say that it's being used as an illegal childcare

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1 center and then DCRA would have to come by and enforce it.

2 I'm just trying to clarify, it's not really
3 anything that's necessarily within our purview during this
4 application according to you, Mr. Sullivan, is that correct?

5 MR. SULLIVAN: Yes, that's correct. And, think k
6 I mean, we don't have an issue with you affirmatively stating
7 that we won't use if for that. But I --

8 BZA CHAIR HILL: That's fine.

9 MR. SULLIVAN: -- think, you know, we're --

10 BZA CHAIR HILL: I'm just trying to understand --

11 MR. SULLIVAN: We don't intend to use it and we're
12 not asking.

13 BZA CHAIR HILL: This is the first time also, even
14 if it were actually a condition that I'm going asked to put
15 a condition on a property that's not connected with the
16 application. So, that's what I'm just trying to work through
17 mentally.

18 So, Ms. Green, you said you had your comment there
19 for a second?

20 MS. GREEN: Yes, here's the problem. It may not be
21 connected. And, there may be a proffer of some kind. No,
22 no, we're not going to take kids from Mi Palacio and bring
23 them across the street. They are separate things.

24 However, as a matter of right, it can be a home use
25 that 505 can become a home daycare. You know, it's six,

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1 eight kids, whatever. She has that right as a, you know, as
2 a matter of right to use her house that way.

3 And, if that happens, you've basically got like a
4 daycare annex complex going over there and it's going to be
5 very hard to determine which people are what. You're going
6 to have people going around.

7 It's -- we -- the community, we can't say, oh, this
8 is from the home license and this is from the Trinity Church
9 license. It becomes just one large use.

10 BZA CHAIR HILL: I understand, I understand.

11 MS. GREEN: That's why we're hitting on this so
12 much.

13 BZA CHAIR HILL: I understand. Right, your
14 concern, and I'm just kind of walking through this again, is
15 that it would be a home daycare with six to eight people or
16 whatever else they would be doing.

17 And then, they just -- and then, they would just
18 interchange the six to eight children all day long. Right?

19 MS. GREEN: Well, I don't know if they would
20 interchange it, it's just in the course -- it's very hard for
21 people. You have a daycare use on two sides of the street,
22 on a very, very small street.

23 And so, you'd have this business use --

24 BZA CHAIR HILL: I understand. I'm just trying to
25 figure out whether or not this is some -- and I don't -- I

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1 mean, you heard the Applicant. They're already kind of
2 agreeing to this and I'm trying to get to it and this is
3 going to take longer than I had thought.

4 But the -- I understand what you're saying and I
5 think the Board understands what you're saying. I'm just
6 trying to figure out how we say it and do it in a condition
7 that applies.

8 MS. GREEN: Correct, correct.

9 BZA CHAIR HILL: And so, you know --

10 MEMBER JOHN: Mr. Chairman, can I add something?

11 BZA CHAIR HILL: Sure, sure, sure.

12 MEMBER JOHN: As I understand it, they're asking to
13 prohibit the Applicant from ever using her property as a home
14 daycare center.

15 MS. GREEN: Correct.

16 MEMBER JOHN: In this application?

17 MS. GREEN: Correct.

18 MEMBER JOHN: But that's not before the Board.
19 It's not before the Board.

20 MS. GREEN: The law --

21 MEMBER JOHN: So, we can only address what is
22 currently before the Board. So, if, at some point in the
23 future, the Applicant proposed to do a home daycare center,
24 at that point, you might have some sort of cause of action.

25 But I can tell you, where I am now, I'm not

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1 prepared to ask for such a condition in this application
2 because 505 is not before the Board.

3 MS. GREEN: May I point to, again, not an attorney,
4 I'm looking at 904.4 and 901.4 and 901.5 of the DCMR. And,
5 it said that the BZA may impose a wide range of requirements,
6 quote, to protect adjacent or nearby property. And --

7 MEMBER JOHN: Yes, but can I stop you?

8 MS. GREEN: Okay.

9 MEMBER JOHN: With respect to the property which is
10 the subject of the application, 505 is not before the Board.
11 So, if there's some other issue that you'd like to move on
12 to whether, for example, is the parking drop off and pick-up,
13 is that satisfactory? Do you think that will help to some
14 of the problems?

15 But I can tell you where I am. It's getting late
16 and I'm getting a little punchy.

17 MS. GREEN: I understand.

18 MEMBER JOHN: I am not prepared to approve anything
19 with respect to 505 Dahlia. It's beyond our jurisdiction.
20 It's not before the Board, notwithstanding that language.

21 MS. GREEN: Okay.

22 BZA CHAIR HILL: Okay, give me one second. We're
23 not going to go back and forth.

24 MS. GREEN: Okay.

25 BZA CHAIR HILL: So, the Board member's just giving

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1 impression on something. We're all going to have our
2 impressions on something. And, now, Mr. Hood wants to say
3 something.

4 ZC CHAIR HOOD: So, with all that, and keeping in
5 line with what Ms. John is saying, for me, when I heard that,
6 what's in front of the Board, I look to the Applicant and I
7 look to the community what I call the good neighbor policy.

8 Everything always can't be written. It can't
9 always be written. The regulations and, you know, that's why
10 we have waivers.

11 But I'm looking forward, and I hear -- you hear the
12 concern Ms. Espinosa, y'all hear the concern. So, that's the
13 good neighbor policy. So, that goes right in line with what
14 Board Member John is saying. That's not before us, so now
15 we're looking for you all to work out what is called the good
16 neighbor policy.

17 You all are neighbors. And, we have the Father
18 right here, so we know about the good neighbor policy.
19 Father, you want to add on to that?

20 MR. HARMON: Indeed, thank you.

21 For the record, I wanted to say that 504 owned by
22 the church had never been used as an office. Always as a
23 resident program for young people.

24 The other is that we, as a good neighbor, before
25 Ms. Green purchased the lot for over 40 years, the church

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1 garden and plant flowers on that property. So, we do want
2 to preserve the character of the neighborhood.

3 ZC CHAIR HOOD: So, let's do 0.000, the good
4 neighbor policy. Now, let's go back to the case.

5 Thank you, Mr. Chairman.

6 BZA CHAIR HILL: Okay. I do want to talk this
7 through just a little bit, in that, and I'm not really sure
8 how this works, so, I'm going to turn it out. We haven't
9 gotten to the Office of Planning yet. So, I just realized
10 I'm trying to explain, we haven't had the Office of Planning
11 yet.

12 The -- do you know, so, in terms of if somebody
13 wanted to have a home daycare use, right, it's a matter of
14 right or they have to come here for a special exception? You
15 don't know?

16 MS. BROWN-ROBERTS: Up to I think eight kids, they
17 can do as a matter of right.

18 BZA CHAIR HILL: As a matter of right?

19 MS. BROWN-ROBERTS: Yes.

20 BZA CHAIR HILL: Okay, all right.

21 So, that's that. Okay. So, Father, oh, no, no,
22 no, Ms. Espinosa, you own 505 Dahlia and I'm not asking you
23 a question yet, and that you had hoped to maybe buy that lot,
24 the triangle lot and you were going to maybe do a home
25 daycare or something.

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1 And now, you've gotten legal counsel and that that,
2 I guess, you still could do that, but you -- since you have
3 this other activity at Trinity Church, it's kind of conflated
4 some things.

5 And so, you are -- you understand that what Mr.
6 Hood is kind of saying is the good neighbor policy, and I
7 don't even know if I'm comfortable making this statement, I'm
8 just trying to understand that you understand the kind of
9 what is being asked is that you wouldn't use this as a
10 daycare facility, 505 Dahlia, you understand that and you're
11 comfortable with that?

12 MS. ESPINOSA: May I explain something else before,
13 say something? At the beginning, that was my idea, my
14 project. I don't plan to do business in my house.

15 Also, I live in Dahlia Street, 505, every day, 24
16 hours, day and night.

17 BZA CHAIR HILL: Okay.

18 MS. ESPINOSA: I don't plan to do business in my
19 house.

20 BZA CHAIR HILL: Okay. I understand. And so, my
21 question was, you understand that, and I'm just asking the
22 question, I'm not saying whether I believe it one way or the
23 other, you understand that the party status people here are
24 hoping that you do not use that home as a child daycare
25 center and you understand that?

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1 MS. ESPINOSA: Yes, sir.

2 BZA CHAIR HILL: And, you're comfortable with that?

3 MS. ESPINOSA: Not -- well, I understand, but I am
4 not comfortable that people put rules on my property.

5 BZA CHAIR HILL: Okay, all right. And, that's --

6 MS. ESPINOSA: That is --

7 BZA CHAIR HILL: -- well that's fine. And, that's
8 where we are up here with the Board. And, that's why we're
9 also having a bit of a struggle. Right?

10 So, okay. So, Mr. Sullivan, I don't know where
11 we're going to get to with that particular condition. And,
12 just to now give -- I'm sure you can understand this also as
13 a Commissioner, right? Like we are being asked, you're
14 asking us to tell somebody that they can't do something
15 matter of right because they have something else going on
16 across the street.

17 So, it puts us in a weird spot. Right? And, I --
18 I'm just making a statement. I'm just making a statement.
19 I apologize that I asked the question that you understand.
20 I'm just making a statement.

21 It's just weird for us. Okay? Because it doesn't
22 seem correct. So, Mr. Sullivan, you guys actually talked --

23 So, anyway, I haven't even gotten to the Office of
24 Planning and I'm going to give the Office of Planning report
25 because it's there.

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1 But so, I'm again just making a statement to
2 clarify for myself that there were the items with the ANC
3 that they had conditions. Right?

4 We already have one statement from the Board member
5 here and another statement from the Commissioner that any
6 connection to 505 Dahlia might not be happening anyway just
7 because it makes people uncomfortable. I don't know.

8 So, if we get past that one, right, then you still
9 have the -- a prohibition on the daycare and it's patrons
10 using the parking lot behind 502 Dahlia Street, Northwest and
11 the shared driveway with 400 Dahlia Street, Northwest.

12 Was that something that your client was in
13 agreement to?

14 MR. SULLIVAN: Yes.

15 BZA CHAIR HILL: Okay. And then, a reserved
16 pick-up, drop off are on Dahlia Street, Northwest at the
17 daycare entrance of no less than 60 feet as supported by the
18 letter by both the Department of Transportation and 4B01
19 Commissioner, correct?

20 MR. SULLIVAN: Yes.

21 BZA CHAIR HILL: Okay. And then, the cap is where
22 we're having a little bit of a disagreement currently.
23 Office of Planning is at 62. The ANC is at 50. And, you're
24 still asking for 60. Is that correct?

25 MR. SULLIVAN: That's correct. And, one other

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1 issue that they brought up on the agreement, I didn't know
2 we'd be getting in the specific terms of the agreement, but
3 the Applicant was happy to agree to guidelines and procedures
4 for the families. And an instruction --

5 BZA CHAIR HILL: For the drop off and pick-up?

6 MR. SULLIVAN: -- to them. Sure. And, making sure
7 they don't turn around on the street and that they enter a
8 certain way because we do want them to enter from the west
9 because that leads to the parking spaces and --

10 BZA CHAIR HILL: Yes.

11 MR. SULLIVAN: -- and then, they wouldn't be
12 turning around.

13 So, and I think it's a testament to we have had a
14 lot of discussions and that were ten, I think we're ten
15 people away, ten students away. And, I do think we agree on
16 just about everything else.

17 So --

18 BZA CHAIR HILL: Well, the agreement that you don't
19 -- well, this is where I don't know what you guys had and
20 we're, again, we're going to get to the Office of Planning,
21 where you're not -- so, you're going to put -- and we've had
22 information about how people drop off and the direction they
23 come in and all that stuff. Right?

24 And, even, you know, some information where it
25 said, you know, if you're, I don't even know whether it was

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1 this specific, but if you violate it three times or
2 something, you'll be asked to leave or whatever it is.
3 Right?

4 You know, I don't know what this says here and I
5 don't know what you're going to end up coming up with, right,
6 but your client would be willing to come up with some kind
7 of instructions as to how to use the parking. I'm sorry, as
8 to how to use the pick-up and drop off is how, you client has
9 agreed to that.

10 And then, also put some kind of, you know, teeth in
11 there saying that, you know, if you do not adhere to these
12 drop off and pick-up rules, you might be asked to leave.

13 MR. SULLIVAN: Asking to leave would be -- yes,
14 that would be the extreme. There would be some intermediate
15 --

16 BZA CHAIR HILL: Yes, I'm not saying -- I'm just
17 saying there would be something there --

18 MR. SULLIVAN: Yes, there would be something.

19 BZA CHAIR HILL: -- that says if you are
20 continually doing this the wrong way, you know, I'm not
21 asking for, I'm just letting you know, I'm not asking for a
22 specific number and I don't want to get here anymore in terms
23 like, there are just something in it that says, if you're
24 completely going to disregard everything, you might be asked
25 to leave. And, I'm happy with the might be asked to leave.

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1 MR. SULLIVAN: Yes. And, even more so to the just
2 having that as a written condition and it's my advice always
3 to my clients that it really behooves the center to operate
4 in that way.

5 BZA CHAIR HILL: Okay. What I'm trying to get to
6 is, I don't have enough time right now to figure out this
7 condition. This condition is something that you guys are
8 going to have to work out because it's getting late. Okay?

9 And, I can already tell, I'm about to lose some
10 Board members. So, let's see, so, okay. So, that's that.

11 And then, we're stuck on the 50 right now, the 50
12 and the 60, is that correct? Like you guys are still at 50,
13 they're at 60, is that correct? Okay, you can just say yes
14 in the microphone.

15 MS. GREEN: yes.

16 BZA CHAIR HILL: Okay, thank you.

17 And then, you're still on the ten-year sunset,
18 they're on the five year sunset, correct?

19 MR. SULLIVAN: Yes, I think that's correct.

20 BZA CHAIR HILL: Okay, thank you.

21 All right, I'm going to turn to the Office of
22 Planning.

23 MS. GREEN: Mr. Chair, may I just one simple --

24 BZA CHAIR HILL: Yes, one second.

25 MS. GREEN: -- thing.

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1 BZA CHAIR HILL: Yes, sure.

2 MS. GREEN: I've been referred to as Commissioner.
3 I'm a former Commissioner.

4 BZA CHAIR HILL: No, no, I'm sorry. I meant former
5 Commissioner.

6 MS. GREEN: That's okay.

7 BZA CHAIR HILL: Absolutely, I agree.

8 MS. GREEN: I just -- I know there are
9 Commissioners probably listening and --

10 BZA CHAIR HILL: Yes, yes, yes. No, no, yes, yes,
11 no, that's right, yes. I was just giving you credit for
12 actually having to do this job at some point in time.

13 MS. GREEN: Thank you.

14 ZC CHAIR HOOD: So, once a Commissioner, we're
15 always say Commissioner.

16 BZA CHAIR HILL: This much is true. But I want to
17 be former one day. Okay, Office of Planning?

18 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
19 and members of the Board.

20 BZA CHAIR HILL: Oh, it's good evening now, Office
21 of Planning.

22 MS. BROWN-ROBERTS: Oh, good evening. I'm sorry.

23 I just wanted to make a few comments on some of the
24 discussion that has been going on.

25 And, you can see in our report, we had -- there

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1 were 62 children. That was obtained from the Applicant's
2 submission. I wasn't aware that it had been reduced to 60.
3 The 60 is fine with us. We don't have a problem with that.

4 There's been a lot of discussion about the property
5 at 505 and the ANC mentioned and referred to OP in their
6 discussion about that.

7 We did not evaluate that because it was not part of
8 the application. However, we did talk to the Applicant to
9 note that we were not supportive of having parking in -- on
10 that property or, you know, children going back and forth.

11 And so, but, as I said, we mentioned that, it was
12 not a part of our recommendation but we did speak to the
13 Applicant about that.

14 Regarding DDOT is not here tonight and they asked
15 me to just put in a few words for them in response to some
16 of the comments that were put in the record.

17 They reported that one of the questions was DDOT
18 report including incomplete information about parking. And,
19 their response was that DDOT's report included a review of
20 curb side parking directly adjacent to the church.

21 One of the things that they mentioned that a CTR
22 study was not done because it did not reach to the threshold.
23 Their point is that if there was an increase of up to 50
24 children, then that would have triggered a study to be done.
25 But based on the Applicant's submission that 80 percent of

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1 the children walked, they were going on that and that their
2 recommendation is within the standards that they usually use
3 for making a wider study.

4 And, so, therefore, the Office of Planning is in
5 support of the application for 62 children. Again, we noted
6 that the final number will be assessed by OSSE and that the
7 maximum number of staff persons shall be six and hours of
8 operation shall be 7:00 a.m. to 6:00 p.m. Monday through
9 Friday.

10 And, we would incorporate any recommendation from
11 the District Department of Transportation.

12 Thank you, Mr. Chairman. And, I'm available for
13 questions.

14 BZA CHAIR HILL: Okay, thank you, Ms.
15 Brown-Roberts.

16 The -- when you say the maximum, the final number
17 of children allowed will be determined by OSSE, what does
18 that mean exactly?

19 MS. BROWN-ROBERTS: OSSE, after -- as part of the
20 review process and the licensing process, after you make a
21 determination and say, yes, they can get this number of
22 children, they go in and actually do an inspection of the
23 site, do the measurements and all that to see, you know,
24 because there's a measurement for each child. It's spacing
25 for child.

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1 BZA CHAIR HILL: For each prisoner.

2 MS. BROWN-ROBERTS: No. And, so, based on that, in
3 some instances, they have come up with a lower number than
4 what is -- than what the BZA approves. So, they have asked
5 us to always make that comment because a lot of Applicants
6 will come in and say, well, BZA approved me for 62 and they
7 are saying that --

8 BZA CHAIR HILL: I got it.

9 MS. BROWN-ROBERTS: -- and they don't --

10 BZA CHAIR HILL: Okay, got it, thank you.

11 Okay, does anybody have any more question for the
12 Office of Planning?

13 I have Mr. Sullivan there. Mr. Sullivan -- well,
14 before I ask Mr. Sullivan, because Ms. Green's right there.
15 Ms. Green, do you have any questions for the Office of
16 Planning?

17 MS. GREEN: Just, I guess, just the quick point.
18 Is the -- you relied on the statement of the Applicant and
19 relying on that, there was no study done?

20 MS. BROWN-ROBERTS: That was what -- you're talking
21 about the transportation study?

22 MS. GREEN: Yes.

23 MS. BROWN-ROBERTS: That was what was told to me by
24 DDOT.

25 MS. GREEN: Okay. So, if the Applicant had, I

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1 guess, an advantage or an interest in maximizing the, you
2 know, their statement?

3 MS. BROWN-ROBERTS: I don't know. I can't answer
4 that.

5 MS. GREEN: Okay. I guess, I'm sorry.

6 BZA CHAIR HILL: That's all right, I understand.
7 I mean --

8 MS. GREEN: That concerns me.

9 BZA CHAIR HILL: -- what you're -- I don't -- in my
10 experience in terms of DDOT, with this number of children,
11 I don't think they would have necessarily needed that study
12 anyway.

13 You know, I'm just saying, even if they were all
14 driving, right, like that's kind of a study that Mr. Sullivan
15 might be able to speak to more of that, like, you know,
16 that's a study that -- isn't it a study that we get when
17 there's so much larger number of, you know.

18 It's not something for a small transportation
19 number. It's like, you know, a school or like, you know, a
20 really big development project.

21 MS. BROWN-ROBERTS: Yes, from DDOT's perspective or
22 I think what triggers the study is that they have to have a
23 100 total personal trips would have to be met before a study
24 would be done.

25 BZA CHAIR HILL: A 100 total personal trips per

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1 day?

2 MS. BROWN-ROBERTS: Per day, yes.

3 BZA CHAIR HILL: Right, okay.

4 MS. GREEN: That would be.

5 BZA CHAIR HILL: So, I don't know. I mean, okay.

6 MS. GREEN: Sixty --

7 BZA CHAIR HILL: Right, you're getting at like, so
8 again, you're saying nobody's walking? So --

9 MS. GREEN: Well, I'm not saying that.

10 BZA CHAIR HILL: So then, everybody's driving and
11 they're going to come twice a day and therefore, DDOT's going
12 to ask them to a very expensive study. Right? So, I'm just
13 saying, it's not a -- I'm just telling you this now, it's not
14 a small number, right?

15 MS. GREEN: Yes, I understand.

16 BZA CHAIR HILL: Okay. Do you have any more
17 questions for the Office of Planning?

18 MS. GREEN: No.

19 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have
20 any question for the Office of Planning?

21 MR. SULLIVAN: No.

22 BZA CHAIR HILL: Okay. Is there anybody here
23 wishing to speak in support? Is there anyone wishing to speak
24 in opposition?

25 So, the opposition's over there, support's over

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1 there. Okay.

2 So, let's go ahead and we're going to bring
3 everybody up. Why doesn't everybody get the table. We're
4 going to bring up support and opposition at the same time and
5 we're going to go through -- all right, did everybody get
6 sworn in?

7 Okay, all right. So, let me get everybody out back
8 off there first. And then, we're going to bring up both
9 support and opposition.

10 And then, we're going to swear everybody in also.
11 All right, if anyone hasn't taken the oath, if you could
12 please stand and take the oath administered by Mr. Moy?

13 Oh, you need to -- you both already took the oath,
14 correct? Okay.

15 SECRETARY MOY: So, it's you two, right? No, you
16 can stand in place.

17 (Witnesses sworn.)

18 SECRETARY MOY: Thank you.

19 BZA CHAIR HILL: Okay, there we go. So, if you
20 could please introduce yourself for the record?

21 We'll just, yes, we'll start with you, sir.

22 MR. KERR: Michael Kerr.

23 BZA CHAIR HILL: And where do you live, MR. Kerr?

24 MR. KERR I live at 529 Cedar Street. I share a
25 border with the church and I've been there 22 years.

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1 BZA CHAIR HILL: Okay. And, you please?

2 MR. ALEXANDRIA: My name is Hypatia Alexandria,
3 6114 7th Place. And, I'm in support of the --

4 BZA CHAIR HILL: Okay. And, where do you live, I
5 mean, what's your name, please?

6 MS. RIOS: My name is Tamara Rios, R-I-O-S, and I
7 live in 89 11th Street. I'm in support of Mi Palacio. I'm
8 waiting for a space to put my grandson.

9 BZA CHAIR HILL: Okay, all right. Well, you'll
10 have an opportunity -- can you turn off your microphone,
11 please. I'm sorry, I need just one microphone at a time.
12 Thank you so much.

13 So, you'll all have an opportunity to speak for
14 three minutes. Okay? The clocks are on the top there. And,
15 Mr. Kerr, we're going to start with you. Okay?

16 MR. KERR: I don't need three minutes.

17 BZA CHAIR HILL: Okay.

18 MR. KERR: I'm in favor of the daycare center
19 expanding with the conditions set by the ANC. I participated
20 in the discussions with the church before that, with the
21 people who went to the ANC.

22 I think they're reasonable. And, I think that part
23 of the reason that we need them is a question of trust with
24 the woman who runs the daycare center, but not with the
25 church.

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1 And, I also think that the Board ought to know that
2 we have a lot of public facilities in our neighborhood. We
3 have a good school that's been recently expanded. We have
4 a pool that's been recently expanded. We have Coolidge High
5 School that's recently been expanded. We have construction
6 now going on in the library. And we have the Takoma subway
7 station.

8 This is a community that supports a lot of daycare
9 now, supports the improvement of the daycare center at the
10 church with certain conditions. And, has been able to handle
11 very good public services supported by the District of
12 Columbia in Washington, in our neighborhood and we're proud
13 of that.

14 BZA CHAIR HILL: Okay, great. All right, thank
15 you, Mr. Kerr. If you could just turn off your microphone
16 there for a second.

17 Miss -- how do you say your name again? Mr. Kerr,
18 you have just remain there in case the Board has questions.

19 You can go next, please.

20 MS. ALEXANDRIA: Okay. I just want to run quickly
21 since it's so late. I'm supporting this from the parents'
22 point of view. I'm also a planner, I'm doing my PhD right
23 now. And, I participate in a lot of transportation
24 committees and especially the ones that serve under
25 represented communities.

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1 So, as a parent, I feel that we are looking at the
2 greater good here where potentially 60 families could benefit
3 from this daycare center. And, the discomfort that two
4 people in the block feel, we -- I'm pretty sure that the
5 center is not trying to overlook their concerns. But I think
6 once you weigh them, the general good, public good overtakes
7 the individual preference.

8 Also, I hear a lot of -- as a planner, you know, I
9 hear that there is a lot of anecdotal talk about what
10 potentially could go wrong. But I don't see a lot of
11 substantial evidence of undue hardship to the neighborhood
12 because of ten extra children.

13 Also, I understand that there are concerns about
14 transportation, but from the point of view of a planner, you
15 can't ask an individual to police the traffic. That's either
16 DDOT, DC DOT or the police. But perhaps guidelines to manage
17 that would be better than, you know, telling parents what to
18 do when you don't have the authority to tell them what to do
19 exactly with traffic.

20 So, I guess that's the extent of my support.
21 Again, I'm very concerned with the ability to not serve
22 potentially more families because of the concern of a
23 minority number of individuals. I'm pretty sure that they
24 -- Mi Palacio is taking a look at their concerns.

25 But also, I want to note that we, from what I hear,

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1 we are not addressing 505 Dahlia here, so it should be
2 concentrated on the number of potential kids that are
3 registering there in the center.

4 Thank you.

5 BZA CHAIR HILL: Thank you. You can stay right
6 there, please.

7 Ms. Rios, go ahead.

8 MS. RIOS: I'll be short.

9 I'm here, I've been waiting in -- I've been waiting
10 for a space for my grandson. I have daughter. She's
11 disabled right now, so I'm going to help her to raise him.

12 I need a place like Mi Palacio. I need a
13 background with the Spanish bilingual place.

14 When I went to go there hearing before, I was told
15 that there are two other places by somebody. And, I went to
16 check them and I'm not happy with what I see. So, I'm still
17 on the waiting list and hopefully, this issue could be
18 resolved.

19 Thank you.

20 BZA CHAIR HILL: Okay, great. Thank you. Does the
21 Board have any questions for the witness?

22 Okay, all right, thank you all very much.

23 Okay. Could the party status people and the
24 Applicant please come back up to the table?

25 All right, Mr. Sullivan, okay, so, let me see where

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1 we were. All right, so normally what happens now is we --
2 well, I've got a couple of things I want to talk through.

3 And then, normally what happens now, Mr. Sullivan,
4 is there is rebuttal. And then, after the rebuttal, we do
5 a little bit of a conclusion and a little bit of conclusion.
6 I'm pretty much done. Okay? So, you know, I don't -- if you
7 really have to say something, we might ask for you to put a
8 conclusion in writing, but we will do a brief conclusion.
9 I just want to kind of hear a little bit of a summary of
10 what's going on.

11 In terms of where we are with some of these issues
12 and conditions, right, you know, you guys already went
13 through the ANC. Right? And, the ANC got to where they were
14 at a 50-person cap with a five-year sunset.

15 I think that the Board is not comfortable with this
16 505 Dahlia stuff, okay? And, you know, whatever happens with
17 that is , you know, whatever the good neighbor policy and/or
18 to be quite honest, again, if it's somebody's right to do it,
19 and there's a way that they're doing it and they're doing,
20 I'm just, you know, if -- and they're doing it and it's
21 completely eight separate children, eight separate
22 everything, I don't know how -- I don't what you --

23 But to Office of Planning's point, and I'm just
24 even looking to my fellow Board members, they didn't think
25 there was such a great idea, kids walking back and forth

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1 across the street, right? That's safety thing, right?

2 So, there's a mixed bag going on up here even for
3 like, you know, whether or not somebody can do it by right
4 and it turns out that it's more dangerous for the kids, I
5 don't know. Right?

6 So, that all being said, I don't think 505, if I'm
7 wrong or not reading the Board up here, as something that
8 Board interested in, correct? Okay.

9 So, it's 7:25. So, now we're back down to the 50
10 and the five-year and the DDOT. So, in terms of DDOT, you
11 don't have -- the Applicant doesn't have any objection with
12 the conditions that DDOT put forward in Exhibit 68, correct?

13 MR. SULLIVAN: Correct.

14 BZA CHAIR HILL: Okay. And then, the hours of
15 operations from the OP report from 7:00 a.m. to 6:00 p.m.
16 Monday through Friday and any additional recommendations from
17 the District of ==

18 So, the hours of operation, the Applicant doesn't
19 have any questions about that, correct?

20 MR. SULLIVAN: Correct.

21 BZA CHAIR HILL: Okay. So, now, we're down to the
22 50 children and the five-year sunset.

23 So, I'm going to kind of -- I guess the Board's
24 going to have to think about it. And then, we'll hear --
25 we'll get to the end here in terms of you can go ahead with

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1 your rebuttal, Mr. Sullivan. We'll have conclusion, we'll
2 have conclusion and then we'll kind of talk it through a
3 little bit. Okay?

4 All right, so, Mr. Sullivan, rebuttal?

5 MR. SULLIVAN: Thank you.

6 Just a short closing, we don't really have any
7 rebuttal testimony.

8 The reason why that we think that the 60 kids is
9 okay, because we think that some of the other conditions are
10 pretty aggressive.

11 And, also, a lot of the comments that you've heard
12 relate to general -- a general condition with traffic in the
13 neighborhood which we think don't really implicate ten
14 additional children. And, the Applicant wishes to serve as
15 many children as possible.

16 That being said, if it's the Board's strong
17 recommendation that 50 works, of course, the Applicant would
18 want to get approved for 50 rather than be told no for 60.

19 So, but that's the thinking that if -- especially
20 if it was a five-year term, we think that's pretty small
21 term. We think the 60 still makes sense with everything that
22 we've heard today about potential impacts and the incremental
23 impact that additional ten children would have.

24 That's all I have.

25 BZA CHAIR HILL: Okay. So, I went out of order in

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1 this. So, this isn't to rebut anything they just said. Do
2 you have any conclusion to add, Ms. Green?

3 MS. GREEN: Just a quick conclusion. This is a big
4 ask, I think. It is doubling the amount of children. It's
5 from 25 to more than doubling. And, to say just ten more
6 children, it isn't just, I mean, it's 35 more children.

7 So, I think this issue of incrementalism can be,
8 you know, you can see it in different ways. And, that is,
9 I think, the way some of the neighbors see it. It's a big
10 ask.

11 Therefore, the five-year, the impact is not seen
12 yet. We don't know how many people, in fact, walk. I think
13 that's a real open question.

14 The traffic issues are an open question.

15 So, I think the five-year sunset would be
16 appropriate because I think there are an awful lot of issues
17 that we don't know about because of a lot. And, that's why
18 I'm hoping you will do the 50 and the five-year.

19 BZA CHAIR HILL: Okay, all right, thank you.

20 Mr. Sullivan, your client's raising their hand. Is
21 there something you'd like to add? Could you just turn off
22 your microphone, Ms. Green?

23 Mr. Sullivan, you can keep talking about that
24 because I don't know what you guys are talking about because
25 I have no question with the Office of Planning.

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1 So, Office of Planning, just to bring you back in
2 on this, right, because now I don't know what we're going to
3 end up talking about over here in a little bit. But like,
4 I have a question for the Office of Planning that I want some
5 Board members to hear in terms of the 60 people. How did you
6 get to the 60 people? You didn't -- you don't have a
7 necessary analysis for that?

8 I mean, the Applicant put 60 people on there, I'm
9 sorry, you got to 62, I mean, how did you get to the 62
10 children?

11 MS. BROWN-ROBERTS: That was what was submitted on
12 the application.

13 BZA CHAIR HILL: Right, and that's okay. But I'm
14 saying, you analyzed that.

15 MS. BROWN-ROBERTS: and, based on our -- right,
16 based on our analysis, we found that the 62 was okay.

17 BZA CHAIR HILL: Okay. And, how did you get to
18 that decision? Based upon what analysis?

19 MS. BROWN-ROBERTS: Based on the analysis that's
20 laid out in the -- under 203.1(h).

21 BZA CHAIR HILL: Okay.

22 MS. BROWN-ROBERTS: Yes, that's the criteria for
23 the child development -- for the daytime care.

24 BZA CHAIR HILL: Okay, all right.

25 Okay, Mr. Sullivan, was there some final comment?

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1 MR. SULLIVAN: It based on -- we based our number
2 on the building code, of course, and what the building code
3 would permit. That's where -- how we started with the 60.

4 I think one of the things that's in the record that
5 is something maybe that you get a little more than others.
6 We have specific representations from the actual families on
7 the letters of support saying that on most days, they walk,
8 if they do.

9 BZA CHAIR HILL: Okay, their driving, they're
10 walking. Okay, was there anything else?

11 MR. SULLIVAN: So, that's a little bit more. But
12 in any sense, that's not every day, of course.

13 BZA CHAIR HILL: Okay, okay.

14 MR. SULLIVAN: Because of the weather and all that.

15 BZA CHAIR HILL: So, we're not going to close the
16 hearing, but I want to kind of talk up here just a minute and
17 see where we are with this.

18 Father, what was your last name, again?

19 MR. HARMON: Harmon.

20 BZA CHAIR HILL: Harmon, Father Harmon, I just have
21 to say, I was so pleased when you raised your hand and took
22 the oath. You know, it's just like -- I would think that's
23 your oath every day. You know, right.

24 So, okay. Let's see, okay, so, in terms of us,
25 right, so where are we with this? Okay? I've -- I don't

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1 know where we are with this. So, we're stuck on -- I don't
2 even know if I want to get terribly involved with it.

3 I mean, I can kind of do -- I'm sharing up here in
4 terms of this one thing with the Board. I see how they were
5 at 25. Now, they want to go to 50. Now, they want to go to
6 -- and I'm sorry, they want to go to 60. The Office of
7 Planning thought that it was 65 -- 60 was -- they were
8 comfortable with 62. And then, you know, and 60 and then
9 whatever OSSE would allow.

10 And then, a -- and then, Office of Planning had
11 nothing to do with the sunset provision.

12 You know, I've -- I'm kind of all over the place in
13 terms of what I think of this. I mean, I think that five
14 years in a sunset provision is a very difficult thing to do
15 if it's going to be 50 children.

16 I think that, yes, I'd be open for any kind of a
17 discussion. So, I guess I'm -- I guess we don't need to --
18 we could also now that I'm even speaking out loud with my
19 fellow colleagues, Board members, we could close the hearing
20 and then we can just deliberate if we're all ready to
21 deliberate.

22 And so, because it's not really up to anyone else.
23 Okay? So, do we need anything else from the Applicant or the
24 party status people before we close the hearing?

25 Okay, all right. So, I'll close the hearing.

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1 Okay, so then, is the Board ready to deliberate? I'm asking.
2 Okay, yes, I guess that's yes. Okay. So, does somebody want
3 to try to tackle the 50 children and the five-year thing?

4 Mr. Hood, where are you?

5 ZC CHAIR HOOD: Let me get my glasses.

6 So, what I had thought about, and I have -- after
7 listening to the ANC as far as -- and the Office of Planning
8 how they came up with their analysis, also request, I had a
9 sunset provision at five years and 62 -- 60 of what was being
10 requesting with all of the conditions asked for by the ANC
11 with the exception of the address, I think it was 505 Dahlia.

12 That's where I am to start the discussion.

13 BZA CHAIR HILL: Chairman Hood is at 60 kids, five
14 years is what he -- and this is all for adverse impact.
15 We're all trying to figure out adverse impact.

16 So --

17 ZC CHAIR HOOD: With all conditions asked for by
18 the ANC.

19 BZA CHAIR HILL: With exception of the one, right.

20 ZC CHAIR HOOD: With the exception of 505.

21 BZA CHAIR HILL: Right, the 505 Dahlia. Okay.

22 ZC CHAIR HOOD: And the good neighbor policy,
23 again, should come into play there.

24 BZA CHAIR HILL: Yes.

25 ZC CHAIR HOOD: And trust.

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1 VICE CHAIRPERSON HART: Yes, I mean, I understand
2 but I think that the -- are we just talking about the
3 conditions, nothing else?

4 BZA CHAIR HILL: I think, at this point, we're
5 talking about the conditions. We can go into the merits of
6 the case whenever you want to. But, you know, whatever you
7 want to do.

8 VICE CHAIRPERSON HART: Okay. So, I understand
9 that -- I understand what Chairman Hood is saying in terms
10 of in some ways, it's almost the Applicant is looking for the
11 60. The ANC is looking for the five years. And, at some
12 place in the middle you're kind of -- that's where you're
13 getting to.

14 And, I, you know, I understand also that it's hard
15 for the daycare to say, well, five years, we may or may not
16 be here if the Board in five years decides that, you know,
17 this is -- there are some issues and that they're not going
18 to allow that to happen, that they won't extend it past the
19 five years.

20 So, I think where -- I think I am -- I think I
21 could be in support of that. But I know that there is the,
22 you know, this issue about the, the five years is the hard
23 part about that for me.

24 The number I'm not necessarily that much of an
25 issue with between 50 or 60, but the five to ten years, ten

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1 years seems like a long time in terms of, you know, by that
2 point, you know, these kids, they'll be, if they're starting,
3 I'm not sure of exact what age they're starting, but you
4 know, kids could be pretty far along in their schooling by
5 the time that this is -- they'll be out of the daycare by
6 then.

7 So, I don't know. I'm -- I think it's five and 60
8 I could support. But I'd like to hear about where my other
9 Board members are in terms of the five versus ten years.

10 And, for the rest of the -- I mean I think that the
11 Applicant has provided enough information for me to be able
12 to support the application. I know that there are the, you
13 know, the parties in opposition to this.

14 But in some ways, I kind of think that they are
15 more -- that the parties in opposition are more in support
16 of most of this, but there are some particularities of this
17 and some uncertainties that they are not comfortable with
18 that they want to have some assurance and they are -- the
19 method in which they are trying to get that assurance is to
20 have party status so that they can have a little bit more
21 input as opposed to just giving testimony which would have
22 been just, I mean, testimony, the party status has more ways
23 of asking questions and being more a part of the -- of this
24 procedure or this process, or I should say this proceeding.

25 So, that's kind of where I am. I'm in support of

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1 it. I'm fine with the rest of the conditions. And, I've got
2 to tell you where I was with the five year and 60 students
3 and that I'm in agreement about 505 Dahlia. I just -- while
4 I understand that there are concerns here, it almost feels
5 like it's something that's a DCRA thing or something that you
6 can kind of deal with at a different level.

7 But I also understand that there's frustration with
8 DCRA trying to get, you know, trying to go through the
9 enforcement arm or process can get somewhat, you know,
10 daunting or somewhat annoying I guess at points.

11 So, that's where I am.

12 MEMBER JOHN: So, where I am is, I'm not in support
13 of limiting the students to 50 because, as we all know,
14 sitting on this Board that there's a dire need for childcare
15 facilities in the city. And, we have seen the numbers.

16 And, I think the facility has to be licensed. OSSE
17 will look at the facility to see if it can operate in that
18 site. DCRA will also look at it. So, I think putting a
19 limit on it is not the way to go, especially, we haven't
20 heard any complaints about the quality of the education or
21 anything like that. So, if we have a good daycare facility
22 that's able to provide quality daycare, I can't see putting
23 all of these restrictions on it at, you know, at this time.

24 They have to ramp up. They have to get their
25 staff. Comfortable with dealing with more students. I think

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1 they need more than five years. I think ten years is
2 reasonable. And, if we allow ten years, then we should have
3 some sort of way for the community to be able to get some
4 assurance maybe through a liaison or something. We've done
5 this before where there is a representative from the school
6 and the ANC, you know, sort of implement the good neighbor
7 policy and make sure that this school is really living up to
8 all of the conditions.

9 So, that might be one way to help, you know, to
10 mitigate the residents' concerns about parking.

11 I know that intersection really very well. I used
12 to pass it several times a day. So, there is a traffic issue
13 there. And, there's a parking issue. And so, it can't be
14 attributed to the school. That's a problem at that area.
15 There is a Safeway down the street. There is the Metro
16 center. I'm sorry, the Metro station. It's a very busy
17 area.

18 So, I think that DDOT has no objection and DDOT has
19 identified how the pick-up and drop off can operate properly.

20 I think that I agree that we should not include the
21 prohibition of 505 Dahlia Street, Northwest because that is
22 telling a private property owner what they can do with their
23 property. And, I think that is intrusive.

24 I agree that the parking and the shared driveway
25 could be intrusive. I didn't hear anyone address that. And,

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1 you know, I -- if the Applicant doesn't object to that, I
2 would not objection personally because it's not as intrusive
3 as the prohibition with respect to 505 Dahlia Street.

4 So, those are my thoughts and I just have to say
5 that daycare, people who do daycare do God's work. And,
6 having a classroom full of three year olds is a difficult
7 thing. So, when there's a good daycare center, I can't see
8 tying their hands and perhaps limiting their ability to grow
9 and succeed. Especially a daycare facility that is
10 supporting low income to moderate income parents in the city
11 where daycare is so expensive.

12 So, I speak personally about this issue because I
13 care deeply about it. And so, those are my thoughts.

14 ZC CHAIR HOOD: Mr. Chairman, can I -- since we're
15 dialoguing, first of all, I know about the traffic up in that
16 area, too. That's why I stay from up there as much as I can.
17 I go when I have to.

18 But I will say, while I agree with, I don't
19 disagree with anything that any of my colleagues have said.
20 But I do know that, you know, sometimes, past practices have
21 worked.

22 There was another case in this city some years ago
23 that -- the exact same -- some of the same issues, some of
24 the same things. And we put a sunset provision in. And,
25 when they all came back, and that just gives the neighborhood

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1 and the community a voice after five years to be able to come
2 back and say, this is okay this is for a grant.

3 So, in that particular case, when they came back,
4 everybody was there in support. It gave us also -- it gave
5 the community a voice to have some checks and balances to
6 make sure that the Applicant at that time had a good neighbor
7 policies.

8 What people want in this city, what I found over
9 the years, what people want is certainty. Nobody's against
10 daycare. Nobody's against senior housing. Nobody's against
11 any of it. We just need to find the strike the balance.

12 So, that's why I say five years, however many, 60
13 students, I mean 60 kids. And then, all of the work-arounds
14 or the work things that you can work out with the traffic.
15 I don't think that's unreasonable.

16 And I think in five years, if everybody's doing
17 what they're supposed to be doing, former Commissioner Green
18 will be down here with more people in support. And, it won't
19 be as hard and the hearing would take probably about 15 --
20 10 or 15 minutes. The longest part will be the opening
21 statement.

22 So, that's just kind of where I am. I think you
23 need the communities and want to make sure we have the checks
24 and balances. So, that's my discussion for why I came to
25 what I came up with.

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1 BZA CHAIR HILL: Okay. I -- it's not that I don't
2 know where I am. I kind of wanted to take a five minute break
3 just so I can like just stand for a minute.

4 But, and we might do that if y'all will be -- if
5 you're all -- because what I'm now about to say, I'm a little
6 confused. Right? Okay, when I say confused in that, I think
7 that -- and I'll tell you where I've gotten to. I think,
8 again, the Office of Planning had done their analysis within
9 the criteria that is in the regulations. They have set the
10 number at 62 and whatever, you know, DSSE thinks is -- sorry,
11 OSSE, thank you, believes is applicable. Right? So, that's
12 actually something that, you know they again look at space,
13 they figure out whatever, right?

14 The community has been concerned about this
15 increase from 25 students to 60 students or 62 students,
16 okay, which is doubling the amount of what they have. Right?

17 And so, I do also -- so then, that's how I guess
18 the ANC got to 50 at some point. I don't know, I wasn't
19 there at the meeting, obviously, so I don't know how they got
20 to 50. Right?

21 I am also, however, swayed and impassioned by our
22 Board member who is making a very good point. That, you know,
23 as many children that can be served in this population group,
24 in a good facility, as long as it's working and the community
25 is not harmed or, you know, because this is all -- we haven't

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1 even gotten to the arguing of the case. But like the
2 deterrent to the public good, right? This is all about like,
3 you know, undue impact and, as Mr. Hood has just mentioned,
4 the undue impact to the community if it was zero, then or
5 very negligible, and it's 62 kids, then why would anybody
6 have an issue? Right?

7 And so, that's something we don't know however,
8 right, in terms of what would happen with this going from 25
9 to 50 to 62, whatever the final number ends up being, as we
10 talked about.

11 And, I do think that, definitely, you know, the
12 people that are here, they are obviously providing a good
13 classroom setting because, you know, the parents that
14 testified went to the other facilities and are still waiting
15 to get into this facility.

16 And, you know, Father Harmon came here and I have
17 to think that he would care if they are doing something bad,
18 you know. And so, he is, again, here to show that there
19 would be some merit to the good neighbor policy, right, to
20 there being some kind of support for that.

21 So, that all being said, I'm still kind of -- I can
22 go with Mr. Hood and the 60 and the five because in five
23 years, they'd be back here again and you can see what's going
24 on or I could go with seven if that was even getting them
25 closer to ten. I mean, ten is a lot. Right? And, ten is

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1 a lot even in my opinion in terms of like, you know, then
2 people, they'd have to, if it really ended up being bad, you
3 wouldn't know it until later and then, they wouldn't come
4 back here.

5 The problem, and I don't know whether it was just
6 the attorney discussing kind of like, you know, making a case
7 for his client in terms of the five years and I mean, you
8 know, there is a cost to coming back here, right, so that
9 costs money. However, at the same time, you know, I just
10 don't know what I think about it.

11 I mean, I do think that the community -- I think
12 that since they are going from 25 to a larger number, having
13 them come back at some point just to see whether or not
14 things are working out is not such a bad idea.

15 And, also, what I don't like about it, however, is
16 that there will be a different Board here. There will be
17 different community people here and you just never know
18 what's going to happen. Right? I mean, things might be
19 working along great and still, there will be a lot of
20 opposition. I mean, you just don't know. That's what
21 happens when you put the time limits on there.

22 So, but, okay, sorry, does somebody else have
23 something?

24 ZC CHAIR HOOD: I'm just going to add, I left out
25 one key point when I talked about that previous case. When

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1 they came back after those five years, we didn't put any term
2 limits after that. That's how great everything -- everybody,
3 I mean, it was a -- it gave that community a chance to see
4 the optics, to look to see how this was going to work.

5 They came back after five years, they have -- I
6 shouldn't say this because I don't know what's going on now,
7 but it's going great. They haven't had to come back and I
8 know I've been here for a few years, so, you know, they have
9 not been back here. We didn't put a term limit on them.

10 BZA CHAIR HILL: Yes, and I've been here now long
11 enough, not anywhere near as long as you've been here, but
12 I've been here long enough that I have seen it where it does
13 worry me. It only worries me until like people like have to
14 be able to plan.

15 And so, like, you know, you never know, right?
16 Like you can still have a lot of -- everything could still
17 be going along swimmingly and you'll still have opposition.
18 Right? You know, and you just don't know what's going to
19 happen. Right?

20 And so, you know, you go into investments. You
21 have to ramp up. You have to do all those things. So, I
22 don't know where I'm at. I thought I saw a nod over there
23 and I, you know, in terms of the 60 and 7. And, I don't know
24 if that's where we are or we take a break and go to those
25 stand up, go to the restroom and come back.

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1 And so, okay?

2 MEMBER JOHN: So, let me just add one more thing.
3 This childcare facility has the support of the church. They
4 have been operating for eight years without any problems
5 besides the parking that is a problem in that area and the
6 traffic is a problem.

7 So, I mean, I think five years is way too short.
8 I think five years, you're starting something, you know, by
9 five years, you're three or four -- you're just getting to
10 the point where you can see daylight.

11 I think five years is too short. So, I would go
12 for 7 years with a liaison or some mechanism for the ANC to
13 at least keep tabs on what's going on. But, again, I guess
14 I'm preaching to the choir because everybody knows how much
15 we need daycare in this city.

16 And, there have been no complaints. The neighbors
17 haven't come in and said that this is a terrible facility.
18 And, we don't know of any enforcement actions or anything
19 like that. And, so, I would say that that's the way we
20 should go.

21 VICE CHAIRPERSON HART: The only part that I'd add
22 to that is, if this were a new facility, and I would say
23 that, you know, maybe five years is too short, but this is
24 a facility that's been there and it has, as they've said, 70
25 people or at least families on a waiting list.

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1 So to me, they could probably get up to speed
2 pretty quickly in terms of going from the 25 to 50 or 60 in
3 a fairly short period of time. So then, you'd have probably
4 several years' worth of this does work or this doesn't work.

5 So that's why I was thinking that five years might
6 actually be a better term limit to be or time line to be able
7 to then, you know, get there.

8 But I understand what you're point is, and I'm not
9 sure where I am with the seven years, I think that's just,
10 I don't know, I'm not sure where I am with that.

11 MEMBER JOHN: So, I was looking at the
12 organizational structure that has to be put in place for
13 these extra kids into work out all of the kinks. And so,
14 that's what I was saying, that five years is might be too
15 short and, you know, those would be my --

16 BZA CHAIR HILL: Okay.

17 MEMBER JOHN: - two cents.

18 BZA CHAIR HILL: All right. Okay. So, are we at
19 60 and 7 years?

20 Okay, all right. So, let's speak to the criteria,
21 right. So, in terms of the criteria of the application, so,
22 I think that based upon the Office of Planning's report and
23 the standards which are in U203.17 as well as X901.2. I
24 believe they are meeting those criteria. I would agree with
25 the, again, analysis of the office of Planning.

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1 I didn't see in the report from the ANC how much it did
2 speak to those particular criteria but I am happy to see that
3 the ANC is at least in support of some of what we are now
4 talking about and that they have provided their input in
5 terms of some things they'd like to see.

6 I think we've kind of talked through a lot of the
7 conditions which I will repeat and you guys can tell me if
8 I'm missing anything. However, on the actual standards or
9 the merits of the case, is there anything else the Board
10 would like to add in terms of their discussion?

11 Okay. So then, after we get past that, give me one
12 second, okay, so, I'm going to make a motion to approve
13 Applicant Number 20111 as captioned read by the Secretary
14 with the following conditions.

15 The maximum number of children shall be 60, the
16 final number of children allowed will be determined OSSE at
17 the time of permitting and licensing.

18 The maximum number of staff persons shall be 16.

19 Hours of operation shall be from 7:00 a.m. to
20 6:p.m. Monday through Friday.

21 The DDOT condition which is in Exhibit 68 is also
22 going to be implemented. I'm not going to read through that.

23 And, then, also, a prohibition on the daycare and
24 it's patrons using the parking lot benign 502 Dahlia Street,
25 Northwest and the shared driveway with 500 Dahlia Street

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1 northwest, a reserved pick-up, drop off area on Dahlia
2 Street, Northwest at the daycare entrance of no less than 60
3 feet as supported in letter by both the District Department
4 of Transportation and 4B01 Commissioner.

5 And then, a seven year sunset provision to ensure
6 that these mitigation measures are implemented faithfully.
7 In addition to this, there is going to be discussion between
8 the Applicant and the party status to determine some language
9 in brochures that will be or information that will be shared
10 with parents on how to use the drop off, pick-up area with
11 some kind of teeth in there that says that, you know, if they
12 don't -- if they continue to disregard this information after
13 either a certain number of times whatever they decide to talk
14 about, that they might be ejected from the program.

15 And, oh, and also, if the Applicant could work with
16 the ANC I suppose to try to find a kind of liaison program.
17 Like see if there's some liaison that did the Applicant and
18 the ANC could call each other if there's any kind of an issue
19 with any of these mitigation circumstances.

20 Did I miss anything?

21 ZC CHAIR HOOD: Can I amend that last -- not
22 necessarily find a liaison, there's already a structure in
23 place between the ANC and the Application. Let's make it so
24 that the Applicant and if everybody agrees, the Applicant do
25 a check in with the ANC once a year and check in with them

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1 and, you know, like some others.

2 And, I think that's kind of what Board Member John,
3 I think, was going to. That way, they can check in once a
4 year. I don't know whether they go to the meeting and give
5 a report. They have a good meeting up at 4B. They can go
6 in there and give a report, I'm not sure how they do that.
7 But something --

8 BZA CHAIR HILL: Okay. I'll let that also be up to
9 the Applicant. And, now that we're continuing to talk, I
10 think one year, that is a little to infrequent. If that
11 were, you know, something that, you know, go ahead, whatever
12 -- I'm not trying to get around things like this, the
13 Applicant kind of go ahead and, you know, some kind of
14 mandatory check in with the ANC.

15 ZC CHAIR HOOD: Quarterly. I mean, we need to --

16 BZA CHAIR HILL: Right.

17 ZC CHAIR HOOD: -- I think we need to stipulate
18 that I believe, right, Mr. Ritting? We need to put that in
19 the order when that's going to happen so they can refer to
20 it. At least that's what we do.

21 MR. RITTING: Well, if we're going to put it in the
22 order, you need to say now what it is. So, if you haven't
23 reached an agreement about that, then, you can't put it in
24 the order.

25 BZA CHAIR HILL: Okay. So, that's right. So,

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1 we're now in discussion here on this point. Is that I'm not
2 going to specify anything with the -- I'm going to trust
3 because we spoke to the Applicant during the hearing that
4 they were going to work with the party status to come up with
5 language for the drop off, pick-up stuff.

6 And now, it's very late at night, so I don't want
7 to do that, right?

8 And then, the other was that they were going to,
9 yes, right, the brochure -- did I say that already? Okay,
10 the brochure, the drop off, pick-up and then, the now what
11 Chairman Hood is recommending is that there is some kind of
12 a check in. And, I think quarterly is too much. And so, you
13 know, if you want to go -- and I got nods over here.

14 ZC CHAIR HOOD: I said yearly, but you said that
15 was --

16 BZA CHAIR HILL: I know, and then you went
17 quarterly. And so, like, you know, I think biannually like
18 twice a year is fine and they just need to be talking to each
19 other. Right? So, that's something.

20 And the Father is right here, you know. And so,
21 you know, bad things will happen if they don't do what
22 they're supposed to do.

23 So, okay, so I trust that that will move forward.
24 So, did OAG get all the conditions that I listed?

25 MR. RITTING: Yes, but can I clarify the last ones?

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1 BZA CHAIR HILL: Sure.

2 MR. RITTING: I understand what you said. You're
3 also requiring the Applicant to do an annual check in to
4 which I understand to mean have a conversation with the ANC.

5 BZA CHAIR HILL: That's fine, let's keep at annual
6 check in, fine. If they do it more, then great. They should
7 do it more.

8 MR. RITTING: Regarding compliance with the
9 conditions of this order?

10 BZA CHAIR HILL: Yes. Okay, and you got all the
11 other conditions?

12 Okay. I've made a motion, I've listed all the
13 conditions, can I get a second?

14 ZC CHAIR HOOD: Second.

15 BZA CHAIR HILL: Motion made and seconded, all
16 those in favor, say aye.

17 (Chorus of aye.)

18 BZA CHAIR HILL: All those opposed?

19 The motion passes, Mr. Moy.

20 SECRETARY MOY: Staff would record the vote as
21 4-0-1 and this is on the motion of Chairman Hill to approve
22 the application for the relief requested along with the
23 conditions as has been cited on the record. Seconding the
24 motion is Zoning Commissioner Chair Anthony Hood. Also in
25 support, Ms. John and Vice Chair Hart. No other members

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1 present.

2 BZA CHAIR HILL: Okay, the motion passes. Thank
3 you, Mr. Moy.

4 Thank you all very much, hope you have a good, safe
5 ride home. Bye-bye.

6 (Whereupon, the above-entitled matter went off the
7 record at 7:52 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: 12-11-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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