

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JANUARY 15, 2020

+ + + + +

The 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 MEMBERS PRESENT:

MICHAEL TURNBULL, Commission Member
PETER SHAPIRO, Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
DANIEL BASSET, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
BRANDICE ELLIOT
ANNE FOTHERGILL
JONATHAN KIRSCHENBAUM
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on January 15, 2020.

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

9:40 a.m.

CHAIRPERSON HILL: All right. Good morning, everyone. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the January 15, 2020 public hearing of the Board of Zoning Adjustment of District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Lorna John, Board member. And representing the Zoning Commission is Peter Shapiro as well as Michael Turnbull.

Copies of today's hearing agenda are available to you and located in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition must have raised their hand and been sworn

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1 in by the Secretary. Also, each witness must fill out two
2 witness cards. These cards are located on the table near the
3 door and on the witness table. Upon coming forward to speak
4 to the Board, please give both cards to the reporter sitting
5 to the table on my right.

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

13 There are procedures for special exceptions and
14 variances pursuant to -- will be followed and listed as you
15 come into the door as the orders of procedures for the
16 appeals as well as the special exceptions and the variances.

17 The record shall be closed at the conclusion of
18 each case except for any material specifically requested by
19 the Board. The Board and the staff will specify at the end
20 of the hearing exactly what is expected and the date when the
21 persons must submit the evidence to the Office of Zoning.
22 After the record is closed, no other information shall be
23 accepted by the Board.

24 The Board's agenda include 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 used.

3 A full order is required when the decision it
4 contains is adverse to a party, including an affected ANC.
5 A full order may also be needed if the Board's decision
6 differs from the Office of Planning's recommendation.

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

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

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

25 Please turn off all beepers and cell phones at

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1 this time so as not to disrupt these proceedings.

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

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

10 MR. MOY: Good morning, Mr. Chairman and members
11 of the Board. Welcome to the first hearing in January.

12 As to remarks regarding today's docket, for the
13 record, Application No. 20184, Fort Lincoln-Eastern Avenue
14 LLC has been postponed, rescheduled to February 26, 2020.
15 Case Application No. 20054, Rupsha 2011 LLC, postponed,
16 rescheduled to March 25, 2020. And finally, Application No.
17 20175 of 57th Street Mews Inc. has been withdrawn by the
18 applicant.

19 Other than that, Mr. Chairman, there are other
20 specific preliminary matters, but staff would advise that the
21 Board address those when I call a case.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
23 Moy. All right. Good morning, everybody. Welcome to a new
24 decade. And now you're going to get sworn in, if you want
25 to testify, please stand and be sworn in by the Secretary to

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1 the left.

2 MR. MOY: Good morning.

3 (Witnesses sworn.)

4 MR. MOY: Ladies and gentlemen, you may consider
5 yourselves under oath.

6 CHAIRPERSON HILL: Okay. Good morning, members
7 of the Board. Welcome back after the holiday. So nice to
8 see you. I was thinking, Mr. Moy, I've been reading this
9 little speech that I read for the past five years. Maybe I
10 could just tape it and then we just hit the tape. And then
11 I can get -- would that be something we could look into?

12 MR. MOY: I like the alternative, but I love to
13 hear your voice live.

14 CHAIRPERSON HILL: How about that video, like, on
15 the plane when, like, the video is right there and you could
16 just do the -- okay. Well, that's my attempt at humor this
17 morning. All right.

18 So we're going to go a little bit out of order to
19 try to get some things taken care of. We're going to do a
20 preliminary -- some preliminary matters with the O Street
21 case, 10135 -- 20135, sorry. And so Mr. Moy, why don't we
22 go ahead and call that first. And then I think we're going
23 to -- well, you'll see what's going to happen. Thank you.

24 MR. MOY: Thank you, Mr. Chairman. So this is in
25 the -- this case application is in the hearing session and

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1 with Zoning Commissioner Peter Shapiro participating.

2 So again, for the record, this is Application No.
3 20135 of 3428 O Street LLC as amended for area variance from
4 the corner store requirements, Subtitle U, Section 254.6(g),
5 to operate a corner store on the first floor and basement of
6 an existing mixed-use building in the R-20 Zone at premises
7 3428 O Street, Northwest, Square 1228, Lot 76.

8 And I believe, Mr. Chairman, this was last before
9 -- this was previously before the Board on December the 11th,
10 2019.

11 CHAIRPERSON HILL: Okay, great. Good morning.
12 If you could please introduce yourselves from my right to
13 left.

14 MS. ROTH: Melinda Roth representing the
15 opposition party in status.

16 MR. SULLIVAN: Marty Sullivan on behalf of the
17 Applicant.

18 MR. DANA: Andrew Dana from Call Your Mother.

19 CHAIRPERSON HILL: Okay, great. All right. So
20 you guys, we've seen all of you a long time and a lot and
21 everything. So again, what I'd to try is, like, let's all
22 try to just calmly get through this day. Okay?

23 Well, by the way, this is a really long day for
24 us. Okay? So I'm going to try to do this case as
25 efficiently as possible. So what I wanted to do is kind of

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1 get up here and get through a couple of preliminary matters.

2 And I want to point out something to Ms. Roth that
3 I've noticed through your filings. I wanted to clarify a
4 couple of things so that you'd have a little bit of time to
5 kind of rethink what I'm about to tell you. And then we're
6 probably going to go ahead and doing our meeting cases, which
7 that means we do our decisions.

8 Mr. Shapiro is not actually here with us for the
9 day. He's only here for this case. And then -- so that's
10 why we're doing this first. And then Commissioner Turnbull
11 will be here.

12 So in terms of the preliminary matters, I guess
13 there was a motion to postpone. And then there was, I guess
14 -- well, there's a whole bunch of filings that we've had.
15 I mean, Ms. Roth, I guess what I wanted to kind of talk to
16 you about, the motion to postpone.

17 I mean, this has gone on since October now in
18 terms of what we've been doing. And honestly, this case has
19 gone on quite a long time for us. And I know that obviously
20 this is only your case. So, like, this is the only thing you
21 have to do in terms of -- you're not here every week. So
22 this is obviously something that's very important to you and
23 your neighborhood there.

24 I guess what I wanted to say in terms of the
25 motion to postpone, we normally do for party status is the

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1 people come to the case, they come to the day. They have to
2 ask for party status the day of the hearing. And so then we
3 go ahead and determine whether or not they have party status
4 at that moment, right? And if we think that they make the
5 criteria for party status, then they are allowed the
6 opportunity to go ahead and present at that time, right?

7 So what I've done or what we've done with the
8 Board here is this has been, as you know, a little bit of an
9 ongoing process where we denied party status. Then upon
10 further reflection, we determined to go ahead and grant party
11 status to you. And then there was time for -- I think we
12 took a break for a while to go ahead and give you an
13 opportunity to kind of get your thoughts together.

14 So what I want to do today was again -- unless the
15 Board has some other questions for Ms. Roth, I mean, I would
16 not be in support of postponing this any longer. And so I
17 would be denying the motion to postpone based on the fact
18 that I believe you've had a lot of time to go ahead and get
19 your thoughts together.

20 Because normally -- again, you would normally have
21 just been given -- you would've immediately granted party
22 status and then you would've presented your case. So you've
23 had a lot of time to kind of think about what you wanted to
24 do.

25 The only other thing that I wanted to point out,

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1 and this is why I wanted to bring you up here now in order
2 to kind of get this together to kind of talk this through,
3 is you're party status for you, right? Like, you've been
4 granted party status for yourself. You haven't been granted
5 party status to represent a group of people. You haven't
6 been granted party status to represent an association.

7 We've heard from the ANC. We've heard from,
8 actually, different members of the ANC. And we've also taken
9 a lot of testimony from the public at large. We've taken
10 testimony from all sides of this issue, again, in support and
11 opposition.

12 So what I just want to point out to you again,
13 when you come back -- and what we're going to end up doing
14 is probably -- this is, again, as I said, I think that we --
15 there's 150 exhibits in the record, right? And we've had to
16 read through all of them, right?

17 And there's, like, briefs that people have put
18 together and different things that have been brought up in
19 terms of what they think the ANC would have thought of this
20 case. And then we've also had testimony from the ANC, and
21 the Board will have an opportunity to determine what they
22 think the ANC is providing their support or denial on,
23 whatever.

24 So I guess what I'm trying to say is we're going
25 to go ahead and take a break here -- or, not take a break.

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1 We're going to go to our decision cases. And so when you
2 come back, what I'm going to end up doing is we're going to
3 give you ten minutes to go ahead and present on the new
4 filings, right?

5 Then the Applicant is going to have an opportunity
6 to ask questions of those ten minutes. Then the Applicant
7 is going to have an opportunity to present their ten minute.
8 You're going to have an opportunity to ask questions of that
9 Applicant. And then we're going to have to probably talk to
10 the Office of Planning, as well as then we will take public
11 testimony from the public based upon -- this is again -- I
12 think this is our third continued hearing. So -- this is our
13 fourth continued hearing -- thank you so much.

14 So if the public can come up and when they do come
15 up, give us any information that is just based on the new
16 information, not rehashing any of the old information. That
17 will be helpful to us. And I guess that's it.

18 And I'll give you guys both an opportunity to see
19 if you have any questions or if the Board has any further
20 comments as to what I plan on doing now. But I guess I'd
21 just like to -- and not that -- I'm not looking for sympathy
22 or anything. I'm just reiterating, we have a very full day
23 here today. And so I'm trying to get through this day as
24 efficiently as possible. And that's all I just want to point
25 out.

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1 So before I ask, if the Applicant or the party
2 status in opposition has any questions of what I just said,
3 does the Board have any further clarifications they'd like
4 to add?

5 Okay. Ms. Roth, do you have any questions?

6 MS. ROTH: I do. Excuse me. Good morning. I
7 actually have a document to introduce to the record that does
8 authorize me as representing collective views from 15
9 different -- of my neighbors. They are the ones who have
10 helped to contribute to the documents. So I do have that to
11 enter into the record, and I just wanted to clarify that.

12 CHAIRPERSON HILL: That's okay. I have to find
13 out now -- I don't know what that means in terms of whether
14 I'd have to turn to OAG. But I'm sure the attorney would
15 have something to say also about that. Do you have anything
16 else other than that?

17 Okay. Mr. Sullivan, I mean, it's on the fly here.
18 But do you have any comments about that, what was just
19 mentioned?

20 MR. SULLIVAN: She can represent their views.
21 They're not a party, so I don't really know. Like I said,
22 it's for OAG to parse out.

23 CHAIRPERSON HILL: Okay, right. Because they're
24 not -- they haven't been -- okay. Anyway, so OAG, do you
25 have any thoughts on what Ms. Roth just said?

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1 MS. CAIN: Our thoughts on it would be, it was not
2 in the record when the Board awarded party status originally.
3 So it was not something that was taken into consideration.
4 When the Board awarded party status, it was for Ms. Roth as
5 an individual.

6 I think at this point, it could be introduced as
7 sort of additional testimony, but they would not be accorded
8 party status. It would still be Ms. Roth as party status.
9 So to the extent that the submission represents their views,
10 it would go in as, like, additional public testimony. But
11 her -- you would only be considering her as the party, not
12 as these other -- not as a representative of these
13 individuals.

14 CHAIRPERSON HILL: Okay. But then could she
15 provide those individuals' viewpoint? Or that would be
16 something that then the individuals would be able to give
17 during the public testimony portion of this hearing?

18 MS. CAIN: I would leave it that it would be what
19 individuals could give during the public testimony portion.

20 CHAIRPERSON HILL: Okay. All right. So Ms. Roth,
21 then you're back to the beginning, which is that you go ahead
22 and represent yourself, okay, and represent the -- you can
23 share whatever, I guess, opinion. I mean, I'm also not an
24 attorney, so I'm just trying to help, right?

25 Which is to say, I would assume you can share the

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1 opinions that you heard from your neighbors and whatever in
2 your ten minutes. But you're representing you, right? How
3 is your property affected?

4 You're representing yourself, and then during the
5 public testimony will be if there's anybody here, which I do
6 see some familiar faces, we'll go ahead and have an
7 opportunity to hear from them. On, again, what has happened
8 since the previous -- sorry, since the previous hearing, not
9 rehashing all the other stuff. Okay. All right. So that's
10 it.

11 So then you guys go ahead, and we're going to go
12 ahead and do our meeting cases and that means decisions. And
13 we'll see how this goes. Okay. Thank you very much.

14 (Whereupon, the above-entitled matter went off the
15 record at 9:56 a.m. and resumed at 10:32 a.m.)

16 CHAIRPERSON HILL: Okay. All right. Mr. Moy, if
17 you could please call us back.

18 MR. MOY: Thank you, Mr. Chairman. The Board is
19 back in session and it's at or about 10:32.

20 And for the transcript, I want to reread the case
21 application and it is 20135 of 3428 O Street LLC as amended
22 for area variance from the corner store requirements,
23 Subtitle U, Section 254.6(g). This would operate a corner
24 store on the first floor and basement of an existing mixed-
25 use building, R-20 Zone at 3428 O Street, Northwest, Square

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1 1228, Lot 76.

2 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
3 Okay. If you could please introduce yourselves for the
4 record once again.

5 MS. ROTH: Melinda Roth, party in opposition.

6 MR. SULLIVAN: Marty Sullivan on behalf of the
7 Applicant.

8 MR. DANA: Andrew Dana from Call Your Mother.

9 CHAIRPERSON HILL: Okay. All right. So let's
10 see. I just want to kind of review a little bit of what has
11 been going on with this.

12 So at the 12/11/19 hearing, the Board reconsidered
13 its previous party status decision and awarded party status
14 in opposition to Melinda Roth. We took testimony from the
15 Applicant, the Office of Planning, the party in opposition,
16 and the relief for the variance from the corner store
17 provisions of U254.

18 We decided to go ahead and have a limited scope
19 hearing on this day, 1/15, and requested the following
20 information from the parties, which was in Exhibit 136. The
21 opposition party's supplemental statement regarding the
22 amended relief for a corner store, which is now in Exhibit
23 142 to 142(f). Applicant's response to the original
24 submittal, ANC's submittal was optional. There was a request
25 by the opposition party to extend their deadline for the

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1 materials submitted, we did extend their deadline.

2 Okay. At the BZA hearing on 12/4, we requested
3 that the applicant explore the issues about compliance with
4 the corner store regulations of U -- sorry, U254. We then
5 also continued for a limited scope hearing back in October
6 30th about the configuration on some of the interiors, as
7 well as the line management, because I know there was
8 concerns at that point about, again, the immediate
9 neighborhood and how this relief requested might affect that
10 immediate neighborhood.

11 So as I mentioned before when we brought everybody
12 up, I'm going to go ahead and give Ms. Roth ten minutes to
13 go ahead and present the information concerning the limited
14 scope hearing that we're in right now. And then Mr. Sullivan
15 will have an opportunity to ask some questions of you.

16 Then we're going to go back in terms of the same
17 way, in terms of Mr. Sullivan will have ten minutes to
18 present anything he might want to present to you concerning
19 the additional information. And we may or may not take
20 testimony from the Office of Planning, because they did
21 submit their supplemental report. It'd just be whether or
22 not the Board has any questions, I think, of the Office of
23 Planning.

24 And with that, I'll go ahead. You have ten
25 minutes on the clock. And Ms. Roth, you can begin whenever

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1 you like.

2 MS. ROTH: Okay. Thank you. I just want to say
3 I know we've had some concerns about the timing of this. And
4 I want to just reiterate that I think it's incredibly
5 important to get this right. And there's no amount of time
6 that -- I mean, we shouldn't be rushed in order to just
7 facilitate all of the business that the BZA has today. Okay.
8 So first of all --

9 CHAIRPERSON HILL: And I don't mean to interrupt
10 you.

11 MS. ROTH: Sure.

12 CHAIRPERSON HILL: I won't interrupt you.

13 MS. ROTH: Stop my clock, then.

14 CHAIRPERSON HILL: I'll stop your clock. You
15 don't have to worry. It's just like soccer, I've got it in
16 my head.

17 So you have been afforded a tremendous amount of
18 time. Okay? This -- we get each and every case right.
19 There are numerous cases that we have every week, there are
20 thousands that we do every year.

21 And so I find it a little insulting to think that
22 I -- or, this Board do not think that your case is important.
23 And so just I understand what you're trying to say, and I'm
24 just letting you know -- and I understand you can disagree
25 with how much time you've been afforded. But I think that --

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1 and I know that I've done my best, I really have, to make
2 sure that you've not been surprised about anything, that
3 you've had a little time with everything. Even today was out
4 of the ordinary. We went ahead and started. I didn't want
5 you to -- I wanted you to have time to kind of put it
6 together.

7 And so I just want to let you know. I mean, I'm
8 not trying to -- I just want to let you know that, like, I'm
9 trying to do my best to make sure that you have time and the
10 people that are here has time to do the presentation for
11 their case.

12 So again, all you have to do is go ahead and focus
13 on why you believe that the -- I'm sorry -- your issues with
14 the case, why you believe they're not meeting the
15 regulations. And so I just wanted to start with that and
16 just kind of keep you focused on that.

17 MS. ROTH: Thank you, and fair enough. I think
18 that due to the fact that the applicant has amended their
19 application, we have to really pretend almost that the first
20 two hearings didn't exist. I was not afforded party status
21 for those first two hearings and had the inability to cross
22 examine anyone during any of those testimonies.

23 We, by the way, still cannot find representation.
24 So we already had the motion for a continuance denied
25 earlier. And we appreciate that you did discuss that before.

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1 I just want --

2 CHAIRPERSON HILL: It's okay. I want to address
3 so I have a little bit of conversation with this again is
4 that the Board's practice, if the Board sees that the relief
5 that's being requested is more intense than a different form
6 of relief, the Board the asks the applicant to go ahead and
7 take a look at that kind of request.

8 The reason why is the Board doesn't want to grant
9 relief that is more intense than is possibly necessary,
10 right? And I'm not even saying that we're going to grant
11 this relief.

12 What I'm saying is that we don't want to waste our
13 time, the Board's time, going through issues that are more
14 burdensome or intense or could possibly change things for the
15 community in a way that's much more detrimental, right? So
16 that's why we were, like, go ahead and take a look at
17 something else.

18 So in terms of the -- again, the party status
19 issue that you're bringing up and the point that you're
20 making with the time, okay, in terms of cross examination for
21 the earlier items. Again, we -- I think that we, again,
22 looked back upon this and reconsidered you as your individual
23 home allowing you time for party status.

24 So I just wanted to kind of clear those items up
25 in what you had just mentioned to us now. So Mr. Moy, you

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1 can go ahead. It's 30 seconds that got kicked off the clock,
2 Mr. Moy. So why don't you go ahead and start at ten again.
3 Okay? And Ms. Roth, you can begin whenever you like.

4 MS. ROTH: Okay. And I just want to say fair
5 enough. And as the party status person, I have never read
6 a D.C. zoning regulation before in my lifetime. I feel still
7 not quite comfortable.

8 But I now do understand what you are talking about
9 in terms of requirement to have applicants go for the lowest
10 amount of relief necessary. And we do appreciate the amount
11 of time that you and the other Commissioners have put into
12 this case given the number of exhibits. Having said that,
13 there's pundits online have actually said that this is all --

14 CHAIRPERSON HILL: Ms. Roth, you're starting to --
15 I'm just trying to understand if I'm starting the clock now
16 or not. Are you --

17 MS. ROTH: Sure.

18 CHAIRPERSON HILL: -- making your case? Okay.

19 MS. ROTH: Yeah, you can start the clock.

20 CHAIRPERSON HILL: Okay. All right.

21 MS. ROTH: Okay. Thank you. That this is really
22 all for show and that the fix is in. Call Your Mother was
23 ready to open this morning. The curtains were lifted.

24 CHAIRPERSON HILL: Again, I can't believe we're
25 doing this. So I can't believe you're bringing up things

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1 like the fix is in and that, I mean --

2 MS. ROTH: Stop the clock.

3 CHAIRPERSON HILL: -- it's also -- like, I mean,
4 you're not even arguing your case. You're basically making
5 some kind of a public statement here about how the fix is in.
6 That's exactly what you just said, right?

7 And so are you going to make your case about the
8 regulations? Or are you not going to make your case about
9 the regulations? Because I got to let you know again, the
10 fix is not in, right? Okay? And I got to let you know again
11 -- I keep saying this. I mean, it's as if you haven't read
12 any of the other exhibits, right?

13 As I mentioned before many times to you and now
14 I'm going to -- as I mentioned before many times to you
15 before and I was even quoted somewhere in something, it's not
16 a popularity contest, right? Okay? But if it were a
17 popularity contest, there's people on both sides, right?

18 And in terms of the testimony that we've taken,
19 we have testimony from the Office of Planning that has given
20 their recommendation. We have testimony from your ANC. Your
21 ANC has voted in favor of this. Okay? Right? And yet still
22 it doesn't mean that we're not looking at this as we're
23 supposed to and as we're charged to.

24 So again, I can't specify enough how close you're
25 getting to, like, an insulting line, right, as though what

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1 we do -- as if you're the first person that I've been here
2 for five years having to do this, right? I actually have to
3 analyze the regulations.

4 There are a bunch of Commissioners here. They
5 raised their hands a little bit earlier ago. I assume they
6 think we take a look at the regulations and try to understand
7 what is going on and make our analysis from that.

8 So the reason why I keep stopping is every time
9 you start your argument, you start to tell us about something
10 that's not related to zoning, right? So that's why I'm just
11 trying to focus you on things that are related to zoning, and
12 I'm going to stop you every time you start to tell us about
13 things that aren't related to zoning. Okay?

14 MS. ROTH: Okay. Well, let's move on to things
15 that are related to zoning then. So the first point, and
16 this is a critical one for this particular case, is BZA
17 suggested that the applicant apply under the corner store
18 provisions. And there has been terminology from OAG and from
19 Office of Planning that they could apply as a matter of
20 right.

21 But a clear reading of the regulations, the law
22 is very clear, you can only apply as a matter of right as a
23 grocery store. I can read Sections 254.13 which talks about
24 grocery stores and 254.14. When it is not a grocery store,
25 it is not a matter of right and had to be granted a special

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1 exception from the BZA which is possible in this case. But
2 along with that are requirements that have to be met.

3 And because the applicant believed -- because of
4 the fact that it was said from the OAG and from Office of
5 Planning, the applicant obviously believed that they had this
6 matter of right to apply. They ignore all of these
7 requirements in order to get that special exception to open
8 as a prepared food shop, as a bagel shop. And this actually
9 creates a little bit of a flaw in what the analysis that the
10 Office of Planning went through, and we'll get to that.
11 Okay?

12 So in order to do -- in order to apply under the
13 corner store requirements, there were two other successful
14 cases that also self-certified that they met all the
15 requirements. But in those other two cases since 2016, both
16 the applicant and the Office of Planning went through the
17 entire requirements for a corner store.

18 The applicant here and the Office of Planning here
19 does not go through any of those requirements, demonstrating
20 that either that specific requirement is not applicable to
21 them or how they meet it.

22 Okay. In addition to that, if they are applying
23 under the corner store provisions, we believe that they would
24 need waivers of these other requirements. And there are
25 three -- there are two listed. One is 254.6(c) which states

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1 they are not within 500 feet of three other corner store use.
2 And 254.8, there's no information on the record, no
3 demonstration from the applicant about the provision that
4 they would only be reheating and preparing and no cooking.

5 Now the applicant has argued that they have self-
6 certified at their own risk. But what happens is if they
7 need these other waivers which we believe they do, then this
8 will be remanded by the zoning administrator right back and
9 we will have yet another hearing here. So we do believe that
10 is important.

11 Okay. If or once those requirements are met, then
12 because they cannot apply as a matter of right -- and you can
13 see the language here for 254.14, a corner store use that is
14 not permitted as a matter of right, blah, blah, blah, shall
15 be permitted as a special exception under the following
16 conditions.

17 And the very first condition is a corner store
18 shall be located so that it is not likely to become
19 objectionable to neighboring property because of noise,
20 traffic, deliveries, or other objectionable conditions. And
21 they have to then demonstrate that they're not.

22 It's not up to me or my neighbors to prove that
23 they are. It's up to them to prove that they are not. And
24 in the record are statements from both adjacent property
25 owners, thereby qualifying as neighboring property, about the

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1 noise, the traffic, the deliveries, the smell, and fire
2 safety. None of this has been addressed.

3 And because the applicant ignores that there's no
4 matter of right to open under the corner store provisions,
5 they ignore this requirement to address this issue. They
6 don't demonstrate that it is not objectionable because in the
7 record, we have two testimony -- two statements that it is
8 objectionable.

9 Okay. So there are so many legal issues. Going
10 back to two slides ago when we talked about the requirements
11 that we believe they need a waiver from, there's 254.6 which
12 is the Saxbys rule that they can't be within 500 feet of
13 another -- of two -- of one or more eating and drinking
14 establishments.

15 And C, which is the requirement of they can't be
16 within other -- more than three other corner lot uses. And
17 we believe that they are and have demonstrated in, I believe,
18 Exhibit C in our filing -- Exhibit 142 C.

19 And that location requirement cannot be waived
20 unless the applicant demonstrates that the corner use will,
21 under 254.15(b), not negatively impact the economic viability
22 or vitality of an area zoned MU or NC that is closer than 750
23 feet to an R-20 zone or 500 feet to any other R zone.

24 This is not what they're asking for. This is not
25 the 750 foot rule that they're asking for a waiver from.

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1 This is a condition for them to be able to waive the more
2 than three corner store uses.

3 And this might be a poorly written legal language.
4 But it clear that the applicant has to demonstrate that they
5 will not impact that economic viability. And we have
6 testimony in the record from the owner of Wisemiller's and
7 from Saxbys that it absolutely will impact their economic
8 viability.

9 And moreover, the way that this is written, it
10 doesn't even talk about the location of the applicant or the
11 subject property. It says that you can't impact the economic
12 viability of the commercial zone to an R-20 zone.

13 So I think it's poorly written. But if you read
14 this carefully, we could make a very strong argument that
15 this refers to the main Georgetown commercial corridor and
16 that we, again, would argue that locating not in that main
17 commercial corridor absolutely affects the economic viability
18 of it.

19 Okay. We talked a popularity contest. So we have
20 in Exhibit 7 of the record 70 owners -- 70 property owners
21 who were notified about this application who are within 200
22 feet. Eighty-eight percent of those 70 owners who have
23 participated in any way, a letter, testified, et cetera, are
24 in opposition.

25 Call Your Mother contacted quite a number of

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1 people. They had two form letters. We've talked about this.
2 In summary, there were 73 letters sent to the BZA for this
3 particular case. If you ignore the duplicates where a person
4 sent in more than one letter, there were 23 against and 41
5 in favor.

6 But it is important to look at the addresses of
7 those people. Seventy percent of those against are within
8 200 feet, and it goes up to 83 percent who are within 250
9 feet.

10 However, only 7 percent of those 41 people who
11 sent in letters are in support of this variance. And that's
12 going as far as 250 feet. It's within 200 or 250 feet. And
13 only 2 of those 3 letters that were in favor from those that
14 will be most impacted are actually from businesses. They're
15 not residents that have to live there. They're from the
16 businesses.

17 Okay. Now let's get to the 750 foot rule. Seven
18 hundred fifty foot rule, we talked about this last time.
19 It's meant exactly for this case. Even if you get past all
20 of the previous corner store requirements I spoke of and the
21 legal issues, they still need relief from this rule. And the
22 whole point of this rule was to stop corner stores moving
23 into residential areas when a commercial zone was nearby.

24 The applicant argues that the MU-3 zone which they
25 are located within 750 feet is an anomaly, that it's only a

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1 half block. It's actually a full block, and it's not an
2 anomaly. It is a known commercial zone. It was known when
3 this 750 foot rule was put into the regulations just for
4 Georgetown.

5 We strongly believe that this would be precedent
6 setting, that any other businesses with corner store use
7 would be able to move into residential zones, pay lower rents
8 like Call Your Mother, and ask for waivers of this rule. And
9 this amounts to changing the zoning map.

10 Okay. Here is a demonstration that applicant
11 argues that they're not within 750 feet if you walk or drive
12 it. But this clearly demonstrates that they are not only as
13 the crow flies within 750 feet. But walking or driving,
14 they're at 700 feet.

15 And by the way, the applicant also says that
16 they're well in excess over the 750 feet to the main
17 commercial corridor in Georgetown. And we have a measurement
18 in the record in Exhibit C that shows that they are seven
19 hundred and I believe eighty-five feet which is only 35 feet
20 away. It is not well in excess.

21 Okay. I have 30 seconds, but let's get to the
22 burden of proof for the area variance that has not been met.
23 We know the three prongs. I'm not going to go through them.
24 We've talked about the fact that there's no exceptional
25 situation with the property. We've proven that with

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1 photographic evidence about the large shop windows and the
2 corner door.

3 We've also talked about how the applicant only
4 argues about conversion to residence. They ignore the actual
5 fact that there are many other retail or services possible
6 where there's no variance required, including opening up as
7 a matter of right as a retail bagel store.

8 So we want to remind what the court found in
9 Palmer which is that the use or prior use of a particular
10 property is inapplicable to the first condition that the
11 property itself be unique. In other words, just because it's
12 always been commercial doesn't make it unique. It makes it
13 that it has always been commercial.

14 Again, in the Palmer case, they found that the
15 only aspect about the location in question that is unique is
16 the desire to utilize it in the way that the applicant wanted
17 to utilize it. And that consideration cannot support a
18 variance. And consequently, it was found that there was no
19 extraordinary exceptional situation in that case.

20 We've made an argument that there's zero practical
21 difficulties. Not only are there numerous other potential
22 uses of the space. But again, the burden of proof is on the
23 owner. Not the tenant, not the neighbors, but on the owner.
24 And this record is, absolutely just like Palmer, manifestly
25 devoid of evidence bearing on the difficulty of the owner,

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1 financial or otherwise.

2 So part of that is the only evidence that they
3 have submitted is the fact that it might be difficult for the
4 landlord, the owner to find another tenant. It's not
5 evidence of a difficulty when it's a theoretical,
6 hypothetical condition.

7 We don't know that it would be difficult for the
8 owner to find another tenant because they never tried. And
9 in fact, the statement from the real estate agent which is
10 included in Mr. Dana's testimony in their response to our
11 brief, it says that many other businesses were interested in
12 this space.

13 It is not a variance -- the granting of a variance
14 because it might be a better business is not -- that's not
15 at issue here. The fact is, is that there's many other uses
16 and there's been no evidence of the difficulty required.

17 The applicant also cites the fact that the BZA can
18 consider a wide range of factors, including economic use.
19 Again, we've made this point before. But just because it
20 might be less valuable economically, that does not qualify
21 as a difficulty. And here is the real estate agent's own
22 statement which says, in marketing Mike's property, many
23 potential businesses asked about the space and were
24 interested in the space.

25 CHAIRPERSON HILL: Ms. Dana, I'm just going to

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1 interrupt you.

2 MS. ROTH: Ms. Roth.

3 CHAIRPERSON HILL: Oh, sorry. God, I keep doing
4 that. I'm so sorry. Ms. Roth, the -- I just want to let you
5 know where the time is. I just want to make sure you kind
6 of get a chance to kind of sum up.

7 MS. ROTH: I'm summing up.

8 CHAIRPERSON HILL: Okay. Thank you.

9 MS. ROTH: Thank you. And I'm rushing through it.
10 All right. So the applicant would make you think that this
11 is just about turning the toasters around. And that actually
12 we believe is really in order to deflect the fact that they
13 need to prove those first two prongs.

14 And we want to just, again, remind the Palmer case
15 where BZA's decision to grant the variance, the court
16 reversed it, and here's the statement. The issue is not the
17 reasonableness or the feasibility of the BZA's decision but
18 rather compliance with the statutory requisites.

19 And that is the problem here. And again, the law
20 is on -- the law is clear. The law is on our side. And if,
21 for some reason, there is a granting of the variance, there's
22 so many different legal issues that would be clear upon
23 appeal.

24 I'm not going to talk about the substantial
25 detriment to the public because I do believe that we've gone

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1 through that and we might agree to disagree there. I do want
2 to just mention the detriment to the zoning plan.

3 In granting a variance, it's, like, changing the
4 zoning map. And the reason I say that is because the
5 applicant has argued that one of the unique features of this
6 property is that it's close to this half a block even though
7 it's a full block MU-3 commercial zone.

8 If that's the case, then all of the properties
9 including mine are unique. And that can't be -- therefore,
10 that cannot -- that's not the standard for meeting
11 uniqueness. Because if you want that MU-3 zone to not be
12 zoned commercial, then you have to change the zoning law.
13 You have to amend the regulations. That's the answer, not
14 a variance because it happened to be within 750 feet of that.

15 CHAIRPERSON HILL: Okay. You're over five minutes
16 now. I just want to let you know.

17 MS. ROTH: Okay. I will -- I mean, if that's my
18 time limit, then I will finish.

19 CHAIRPERSON HILL: Well, I'm just giving you an
20 opportunity to wrap up.

21 MS. ROTH: Okay. Well, in wrapping up, we
22 understand that the BZA is required to give great weight to
23 the ANC and to the Office of Planning. We believe that
24 because they considered -- because the ANC did not even
25 consider the first two prongs, they only considered the third

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1 prong in their decision.

2 We believe that the ANC's split vote is less
3 meaningful. We also believe having attended at the ANC
4 meeting that existed, the Commissioners voted for Call Your
5 Mother because of its popularity. The student commissioner
6 even explained that he had 7,500 students that wanted
7 alternative food options, and it had nothing to do with the
8 regulations or the law. We urge you to look at Exhibit 154
9 which just came in and talks about why the ANC's vote was a
10 little flawed.

11 And then under Office of Planning which we know
12 they're hard working and have many cases. We just believe
13 that their analysis has been incomplete because they did not
14 go through all of the requirements of the corner store. And
15 it's inaccurate because they did not -- they themselves had
16 said that a corner store was a matter of right. But this is
17 clearly not the case.

18 And I spoke to the Office of Planning, and they
19 said that the matter of right issue came from OAG and was
20 agreed to by the BZA. Like, they just took that as -- they
21 didn't challenge that. Okay. I'm happy to --

22 CHAIRPERSON HILL: Okay.

23 MS. ROTH: -- answer questions. We do believe
24 that what is most important is that the neighbors who are
25 most impacted by this decision are in opposition of granting

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1 the variance. We think that this changes the zoning map, the
2 zoning regulations. And we hope that the BZA will deny the
3 variance.

4 CHAIRPERSON HILL: Okay, great. Just to be clear
5 -- thank you for your testimony. Just to be clear at the
6 very end there. The corner store use, they're self-
7 certifying. The applicant is self-certifying. So that's why
8 we're getting to the corner store.

9 Okay. Does the Board have any questions of the
10 opposition -- party in opposition?

11 VICE CHAIRPERSON HART: Yes, I do. Thank you very
12 much. While you say you don't really know zoning, that's
13 really not that --

14 MS. ROTH: I'm going to hang up a shingle.

15 VICE CHAIRPERSON HART: Okay. I appreciated that
16 because I think it was a very thorough reading of the -- and
17 understanding of the zoning regulations. So kudos to you on
18 that.

19 I did have a question. You raised several zoning
20 related questions. And one in particular had me a little bit
21 -- just understanding -- I want to understand your thoughts
22 on this.

23 You raised that this should be a -- because it is
24 a corner store, you said that it should only allow a grocery
25 store. And because this is not a grocery store, that this

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1 case should be a special exception under Subtitle U, 254.14.
2 You raised that earlier in your -- one of the first three
3 things. You said there were two zoning regs that should
4 apply, and I don't know if you recall that.

5 There is an earlier provision that talks about
6 254.13 -- and I just don't know, I don't understand -- which
7 is a corner store for which the use is a fresh food market
8 or grocery store devoted primarily to the retail sale of food
9 shall be permitted as a matter of right subject to the
10 following conditions. And I just didn't understand why you
11 were -- you're saying that's not the case because it is --
12 you don't think that that applies?

13 MS. ROTH: Correct. There's no mention in the
14 application of a grocery store. It is not retail food only.
15 It's clearly food to be -- it's -- they've said many, many
16 times within their application that they are a prepared food
17 shop, that they are a bagel shop, that they are -- want
18 people to -- that they want to be able to toast the bagels
19 for people and have them eat them.

20 And the conditions for the grocery store matter
21 of right use are very clear about the percentage of the
22 property that has to be dedicated to specific purposes. And
23 there's no demonstration in the application that they are
24 applying as a grocery store which is the only matter of right
25 corner store provision. If they're not a grocery store, then

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1 they're subject to 254.14. I hope that answers that.

2 VICE CHAIRPERSON HART: Okay. That is helpful to
3 understand your view on that. Thank you. I also wanted to
4 ask a question about -- you made a statement that if this
5 would change the zoning regulations for your neighborhood
6 because a corner store could be virtually any site. It could
7 be, you said, your property. Are you on a corner? Or was
8 your property previously used as a commercial or retail use?

9 MS. ROTH: No, it's not about my specific
10 property. But within 200 feet of this particular corner
11 store are several other nonconforming uses, including several
12 businesses on 35th Street. There's a dry cleaner, a hardware
13 store, a --

14 VICE CHAIRPERSON HART: I was just going to
15 statement that you made that this could kind of open up for
16 any particular site.

17 MS. ROTH: Yes, and so we believe that any of
18 those sites -- in fact, one of the owners of one of those
19 sites is waiting for this decision because they will come and
20 ask for the same waiver because they would like to be able
21 to have a restaurant come into their site as well.

22 So we know -- what we're saying in terms of the
23 precedent, it's not about my house. It's about these other
24 business uses that exist throughout Georgetown. The whole
25 point of the corner store provisions and the 750 foot rule

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1 was -- if you read what we submitted in the last hearing, I
2 think the language was that Georgetown is already well served
3 by corner stores.

4 And that's why this 750 foot rule was agreed to.
5 And all other parts of the corner store provisions for all
6 other zones, it's actually 500 feet. It's less onerous in
7 other zones. It's harder in Georgetown because Georgetown
8 was already determined to be well served by corner stores.

9 VICE CHAIRPERSON HART: And thank you. I was also
10 going to point to that in your zone that interior lots would
11 have to actually be used for three consecutive years under
12 the zoning regs as that. They have to be -- they have to
13 almost -- I don't want to say grandfathered. But they have
14 to be in that use already to be able to even be considered,
15 so --

16 MS. ROTH: And Commissioner Hart, the barbershop,
17 the dry cleaner, the hardware store are all interior lots
18 which are, according to the regulations, defined as corner
19 store use. They met the -- they would met the regulations
20 even though they are interior lots.

21 VICE CHAIRPERSON HART: Understood. And there was
22 something else that you -- now I can't think of it. I'm
23 sorry. I was trying to think of what you were saying and
24 also think about what the next question was. And now I can't
25 remember what it was. So I'll let my fellow Board members

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1 ask questions while I try to remember this.

2 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. And
3 Vice Chair Hart touched on this a bit. But can you go back
4 to your slide and talk a little bit more about your -- the
5 not negatively impacting the economic viability of? And it's
6 an of what?

7 As I was hearing you talk, I heard you taking that
8 to mean not impacting the economic viability of two
9 establishments. And I was reading this as not impacting the
10 economic viability of the area. So help me to understand
11 what point you're making there.

12 MS. ROTH: Okay.

13 COMMISSIONER SHAPIRO: And if you could pull up
14 that slide again.

15 MS. ROTH: All right. So there's actually three
16 points about --

17 COMMISSIONER SHAPIRO: I don't think this is the
18 slide, but I guess you're working toward that slide. So I'll
19 give you a little --

20 MS. ROTH: Okay.

21 COMMISSIONER SHAPIRO: -- leeway.

22 MS. ROTH: All right. So there's actually three
23 points. One is that if we were just talking about the
24 difference between the grocery store and another corner
25 store, then the very first requirement of not being a grocery

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1 store but still being a corner store is that it should be
2 located where it's not objectionable to the neighboring
3 properties. So I talked about that, and that's one issue.

4 COMMISSIONER SHAPIRO: Yeah, go straight for the
5 economic viability.

6 MS. ROTH: Okay. So if we look at the rule that
7 the applicant is actually asking for a waiver of, they're
8 asking for a waiver of 254.6(g). And we have testimony, of
9 course, from the owner of both Wisemiller's and Saxbys from
10 the last hearing that it would economically affect them, and
11 they are within that 750 foot rule there. Wisemiller's is
12 in the MU-3 zone.

13 So if you actually read -- this is different
14 language. So that is -- this language is that you can't
15 waive these two conditions unless the applicant demonstrates
16 254.15(b), that it wouldn't negatively impact the viability.

17 And this is not talking about necessarily
18 Wisemiller's or Saxbys. This -- the way that this is
19 written, it says that you can't waive the location
20 requirements. And we believe that 254.6(b) is not needed.
21 There's only one current corner store use that is an eating
22 and drinking establishment. There's not more than one.

23 And I think you, yourself, Commissioner Shapiro,
24 established that at the last hearing, that it's only Saxbys.
25 And therefore, they don't need relief from 254.6(b). We do

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1 believe they need relief from 254.6(c) which is that there
2 are more than three corner store use, establishments within
3 750 feet --

4 COMMISSIONER SHAPIRO: I just want to --

5 MS. ROTH: -- within 500 -- within 200 feet.

6 COMMISSIONER SHAPIRO: Let me stop because I'm
7 still having trouble understanding exactly what point you're
8 making with what you have in quotes here. Because you keep
9 bringing it back to a specific establishment, and this is not
10 related to a specific establishment.

11 MS. ROTH: It's very confusing to me too. And I
12 really struggled with this. And I had several neighbors who
13 we read through this. We had hours on the phone and strategy
14 sessions where we're thinking about what this actually means.

15 So what this means in quotes is that in order for
16 you to waive the three corner store use issue, the applicant
17 has to demonstrate that they do not negatively impact the
18 economic viability or vitality of any zone that is closer
19 than 750 feet to the R-20 zone.

20 COMMISSIONER SHAPIRO: And so --

21 MS. ROTH: So it's not talking about a specific
22 location. It's talking about --

23 COMMISSIONER SHAPIRO: So let me stop you there.

24 So --

25 MS. ROTH: Yes.

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1 COMMISSIONER SHAPIRO: -- you were saying that if
2 this store comes in the way they want to come in, that they
3 are going to have a negative impact on the economic vitality
4 of the nearest commercial zone?

5 MS. ROTH: Actually, two commercial zones, the
6 smaller MU-3 zone which they are within 750 feet. But the
7 way that this regulation reads is that this -- we interpret
8 it as the main Georgetown corridor where they are 785 feet
9 away.

10 COMMISSIONER SHAPIRO: So --

11 MS. ROTH: And the reason why they'd have that
12 negative impact is because they're not going there. They're
13 going into the residential zone.

14 COMMISSIONER SHAPIRO: So Call Your Mother is
15 going to hurt the Wisconsin Avenue commercial zone?

16 MS. ROTH: Correct.

17 COMMISSIONER SHAPIRO: Okay. Thank you. That's
18 all I have for now, Mr. Chair.

19 CHAIRPERSON HILL: Did you remember what you had?
20 Okay. All right. Mr. Sullivan, so you have any questions
21 for the party in opposition?

22 MR. SULLIVAN: No, thank you.

23 CHAIRPERSON HILL: Okay. Would you like to have
24 your 15 minutes now it looks like we ended up going?

25 MR. SULLIVAN: Sure.

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1 CHAIRPERSON HILL: And you can go ahead and start
2 whenever you like.

3 MR. SULLIVAN: Thank you. I want to touch on
4 self-certification because even though you made it clear that
5 it's self-certified, a lot of the questions had to do with
6 issues that I believe are covered by self-certification,
7 specifically the last point that we just talked about
8 affecting the economic vitality of that zone which has three
9 uses, I think, inside that zone.

10 That's a requirement to waive a location
11 requirement. We're not asking to waive that location
12 requirement. The --

13 COMMISSIONER SHAPIRO: Can you --

14 MR. SULLIVAN: Sure.

15 COMMISSIONER SHAPIRO: -- go into a little bit
16 more detail around that?

17 MR. SULLIVAN: Yes. Ms. Roth is arguing that we
18 are required to request relief from that requirement. Our
19 position is that, well, we're not asking for that. So it's
20 not before the Board.

21 And I submitted to the Board the Lester case which
22 made it really clear when it comes to self-certification.
23 If it's an issue that's completely undisputed and they use
24 the example of buildings on the plan as five feet higher than
25 what everybody understands is the height limit, then the

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1 Board will make a determination on that. But if it's
2 disputed at all, the Board will leave it to the zoning
3 administrator.

4 Everything other than the 750 foot rule under
5 254.6(g) has been self-certified. Now to dig into that a
6 little bit, she's relying on one statement in the zoning
7 handbook that completely misreads the regulations. And the
8 handbook says that you have to be a grocery store. That's
9 just not true.

10 If you read the language that she -- excuse me,
11 254.13 says a corner store, for which the use is a fresh food
12 market or grocery store, shall be permitted subject to the
13 following conditions. What they're saying is there's a
14 subset of corner store. And if you are in that subset, you
15 have these additional restrictions.

16 The language prior to that premising what can be
17 a corner store is in 254.2 which says a corner store use
18 shall be a retail, general service, arts design and creation,
19 or eating and drinking establishment use subject to the
20 provisions of this section.

21 So that's the first thing you read. We are an
22 eating and drinking establishment. And then you go further,
23 we are not -- under 254.13, we're not a fresh food market or
24 a grocery store. So we're not subject to those conditions,
25 and we're not subject to asking relief for those conditions.

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1 The second error I believe she makes is she
2 includes five stores which are not corner stores and calls
3 them corner stores. I have -- if the Board, again, wants to
4 get into this because I still think this isn't in the
5 umbrella of self-certification.

6 I have a determination letter from the zoning
7 administrator saying that --

8 COMMISSIONER SHAPIRO: Mr. Chair, can I --

9 CHAIRPERSON HILL: Sure.

10 COMMISSIONER SHAPIRO: So this is a question for
11 us. Do we want him to get into areas that are self-
12 certification?

13 CHAIRPERSON HILL: Well, I guess -- I mean, we can
14 speak to or look at -- well, what I've understood from the
15 Office of Planning in their report is that the self-
16 certification criteria is basically on them. Okay?

17 And so I can clarify with the Office of Planning.
18 And also then I don't -- Mr. Moy, you can stop the clock
19 again. I've lost Mr. Moy. All right. We're back to soccer
20 time. Okay. So if -- I'm sorry?

21 COMMISSIONER SHAPIRO: I'm asking in part because
22 as Ms. Roth says even in her testimony that this is really
23 about a careful adherence to the statutory requirements. If
24 this is -- if we are going to do that and if this falls in
25 the area of self-certification, then I don't think we should

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1 be taking it up. But I'm curious to see where you are and
2 where the Vice Chair is.

3 CHAIRPERSON HILL: Okay. I'm going to turn to the
4 Office of Planning in one second. And Mr. Sullivan, I know
5 you're here a lot and you don't intend anything. But, like,
6 this thing has been really hot in general.

7 Can you refer please to the opposition as Ms.
8 Roth? Okay? And I mean, you just said she. Let's just go
9 with Ms. Roth, Mr. Sullivan. Okay? And maybe that's must
10 me hearing it a certain way just because I'm testy.

11 So the Office of Planning, the question, I guess,
12 you hear from the Commissioner, what are your -- I mean, is
13 this within our purview, or this is just basically on them?
14 All the self-cert stuff is on them, right, with the corner
15 store. And we don't necessarily have to talk about it is
16 what the question is.

17 MS. MYERS: For the record, Crystal Myers with the
18 Office of Planning. Yes, I mean, the BZA reviews relief.
19 And the only relief that's related to this case now is just
20 the variance relief from the 750 feet location.

21 The rest of it is outside of our purview. So the
22 Office of Planning didn't even review the matter of right
23 criteria of the corner store section because OAG and the
24 applicant have determined that this is a matter of right use.
25 And Office of Planning does not interpret the zoning

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1 regulations. We review what we are asked to review. And in
2 this case, it was just relief from the 750 feet.

3 CHAIRPERSON HILL: So then for my clarification,
4 that would be then on the zoning administrator?

5 MS. MYERS: The zoning administrator is the
6 official, I guess, body to determine the zoning regulations.
7 But in this -- but you can also have self-certification. So
8 whenever a case comes in to the BZA, it's either referred by
9 the zoning administrator or self-certified by the applicant.
10 And in this case, the applicant has self-certified.

11 CHAIRPERSON HILL: Okay. Mr. Shapiro, does that
12 answer your question?

13 COMMISSIONER SHAPIRO: It does. And it sounds
14 like we're -- then we are off track.

15 CHAIRPERSON HILL: Okay. So Mr. Sullivan, I guess
16 if you want to just continue to argue the 750 foot variance
17 that you're here for. However, if -- I mean, for my
18 clarification, I'm going to throw a monkey wrench, I suppose.

19 For my clarification, if there are things in the
20 testimony that you heard from the -- it's all in the record.
21 And whatever is in the record, if you think there is some
22 clarification that the Board needs in terms of the arguments
23 that has been put forward by the opposition. If you have an
24 opinion on that, I would like to hear it.

25 So I mean, we have now at least touched on the

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1 fact in terms of the corner store use and the grocery store
2 use and the self-certified -- I'm sorry, the self-
3 certification. However, if there is anything you'd like to
4 use your time with that, again, is zoning related, please go
5 ahead.

6 MR. SULLIVAN: Thank you. So just to tie up that
7 loose end about the self-certification. The language in the
8 Lester case is, I think, really dispositive and helpful if
9 you can look at that. We submitted that as an exhibit to
10 what we filed yesterday. She mentioned two special exception
11 cases.

12 CHAIRPERSON HILL: Mr. Sullivan, I know you didn't
13 mean to do it. Ms. Roth.

14 MR. SULLIVAN: I'm sorry. Ms. Roth mentioned --

15 CHAIRPERSON HILL: Thanks.

16 MR. SULLIVAN: -- two special exception cases, and
17 those were actually special exception requests. So that's
18 why they had to prove the special exception criteria. She
19 also mentioned one point -- small point that other --

20 COMMISSIONER SHAPIRO: Ms. Roth.

21 MR. SULLIVAN: -- similarly -- Ms. Roth mentioned
22 other similarly situated uses would become restaurants.
23 Restaurants, to be clear, are not permissible under the
24 corner store regulations.

25 In fact, that is significantly limited. It says,

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1 there shall be no onsite cooking of food or installation of
2 grease traps. However, food assembly and reheating is
3 permitted in a corner store. That's where prepared food shop
4 comes in versus a restaurant which is really distinct and
5 significant difference in the eyes of the zoning
6 administrator.

7 So regarding the relevant issues I would like to
8 address. And then I would like to reserve a little bit of
9 time for Mr. Dana to respond to some of the things that were
10 submitted by Ms. Roth.

11 This application, in my opinion, isn't nearly as
12 controversial as Ms. Roth would have you believe. Ms. Roth
13 continues to say that -- make it sound like this is the most
14 controversial and damaging use that one could imagine. And
15 yet there are numerous persons in support, including, of
16 course, the ANC and the Office of Planning, who 100 percent
17 disagree with her opinion on the impact of this.

18 What some may have thought was a close call when
19 this was a use variance, and that's the situation that this
20 Board has regularly approved when there's a historic
21 commercial use.

22 Especially recently, they have approved several
23 use variances including one a few blocks away at 1510 31st
24 Street just a month or two ago where a salon was converted
25 to an office use based on testimony from the contract

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1 purchasers of the difficulty that the owner had in finding
2 a service tenant.

3 So now -- before, it was a use variance. Now it's
4 been downgraded essentially as far as the standard of relief
5 to an area variance.

6 And as we provided in our final submission, we
7 think there are a confluence of exceptional conditions with
8 the property primarily involving the commercial history of
9 the building, its constant and recent commercial use, its
10 current commercial configuration including not only the
11 overall layout in a strictly nonresidential setting, and the
12 commercial refrigerator downstairs which is said would be
13 useful for this proposed use.

14 In addition, we have an exceptional condition of
15 being that use with a changing use in a zone where corner
16 stores are permitted but being located near the small outlier
17 of the MU zone.

18 It's not the main M and Wisconsin areas of that
19 zone as the ANC has discussed in its second resolution that
20 they submitted this week where they did address all three
21 prongs of the variance argument, I might add. They talked
22 about the purpose of the 750 rule, and it was meant to not
23 bleed commercial uses away from M and Wisconsin.

24 The tiny half block area of MU zone that this
25 applies to, as you can see on this picture that's up right

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1 here, it's three or four uses. It's not even located in --
2 under the comp plan future land use map, it's smack in the
3 middle of a residential zone. So it's not even zoned
4 correctly.

5 And in addition, we're dealing with the practical
6 difficulty of having a nonconforming use and being able to
7 continue to sustain the building in a viable use within the
8 context of the zoning regulations.

9 As you know, the special exception relief that
10 used to be available for a change from one nonconforming use
11 to another was effectively gutted when they took out the
12 neighborhood facility language. And that's no longer
13 available, and that was a change made in 2016 that made this
14 even more difficult.

15 So these conditions make it unnecessarily
16 burdensome to use the property for a permitted use for which
17 it was built and maintained. And this relief, which I would
18 call practically de minimis, would resolve that unique
19 condition and allow Call Your Mother to operate as a corner
20 store meeting all the other requirements, therefore, but for
21 this 750 foot rule.

22 I want to highlight the ANC's participation
23 because I think that's sort of been given short consideration
24 here. To this point, they haven't really been front and
25 center.

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1 But they have issued strong support for this
2 application. I wouldn't call it a split vote. It was a 6
3 to 2 vote. It is the position of the Advisory Neighborhood
4 Commission.

5 Commissioner Palmer attended the second hearing
6 before you and she provided excellent testimony about the
7 diligence with which the ANC has evaluated this case. She
8 even went as far as talking to the SMD Commissioner from Call
9 Your Mother's other location.

10 And then the ANC took that issue up again under
11 the area variance standard this week and issued a
12 comprehensive resolution, in my opinion, nailing the area
13 variance test on all three prongs. And you've even -- so --
14 and likewise, we have the Office of Planning support
15 steadfast throughout from the use variance into the area
16 variance.

17 Regarding Prong 3, which I don't really want to
18 touch on. I think the Board has heard it all. Ms. Roth
19 continues to say that we've submitted no evidence whatsoever
20 that it won't --

21 CHAIRPERSON HILL: Mr. Sullivan --

22 MR. SULLIVAN: -- be a substantial detriment.

23 CHAIRPERSON HILL: -- I'm just going to kind of
24 cut you off a little bit. I mean, again, I lost my timer.
25 So I think you're about -- like, you got four minutes over

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1 this time. So I just wanted to make sure you're tracking.
2 Okay? If you have -- also you said Mr. Dana. So I'm just
3 trying to keep you --

4 MR. SULLIVAN: I'm good. Yes, thank you. So I
5 think the Board has plenty of information in the record
6 showing that there is an exceptional condition. There's a
7 confluence of exceptional conditions which lead to an
8 unnecessary burden.

9 One small point on the unnecessary burden. In our
10 submission yesterday, we highlighted the case law that talks
11 about one of the practical difficulties which could qualify
12 for an area variance.

13 Well, there's two factors. One can be just added
14 expense and inconvenience which is apparent obviously just
15 from the lack of options that this owner has and the things
16 that they would have to do in order to find a sustainable
17 tenant or convert to residential. And I think you have
18 evidence in the record, both in a submission from that
19 landlord and from his real estate agent which is strong
20 evidence of that fact.

21 And the other thing that can be considered is the
22 degree of relief being requested. Whether you look at it as
23 the degree of relief between a retail use and a prepared food
24 shop in this particular context or the difference between 750
25 feet or 580 feet as the difference for this small zone.

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1 So I would like to turn it over to Mr. Dana to
2 clear up a few things that he would like to respond to from
3 Ms. Roth. Thank you.

4 MR. DANA: Thank you. He hit a lot of my points.
5 So I'm going to be bouncing around a little bit. And first,
6 I want to say happy National Bagel Day. It is today, in
7 fact. So welcome, everybody.

8 The variance does not implicate the intent and
9 purpose of the zoning regulation. When we were in the zoning
10 meeting at DCRA, this is not the point they measured to. So
11 the building easily meets the relevant distance required for
12 a corner store if the relevant distance from the building to
13 the nearest commercial zone is measured as one would walk or
14 drive between the properties.

15 The building failed that distance requirement only
16 because the zoning administrator measured the distance as the
17 crow flies. The zoning regulation does not explicitly say
18 how to measure this distance.

19 Also, Chris Matthews testified here who served on
20 the subcommittee that rewrote the residential zoning rules.
21 He explained that the intent of the 750 foot rule is to keep
22 the commercial activity on M and Wisconsin from encroaching
23 down the side streets. The rule was never intended to
24 restrict the historical commercial use of stores on corners
25 elsewhere in the neighborhood. Mr. Matthews also noted that

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1 the one isolated commercial block on 36th Street that is
2 within 350 feet is an anomaly.

3 Just to reiterate what Mr. Sullivan said is the
4 ANC has now supported us twice, 6 to 2. Not once, twice.
5 They resubmitted and that was optional. And ANC Commissioner
6 Rick Murphy, who individually opposes the variance on
7 principle, here under oath acknowledged that the majority of
8 his constituents favor granting the variance. The Office of
9 Planning also supports the variance.

10 Denying the variance will create a practical
11 difficulty for the owner. The requested variance will allow
12 Call Your Mother to operate profitably by selling bagel
13 sandwiches. Bagel sandwiches make up 59 percent of our
14 revenue, so it's a substantial amount of our revenue.

15 Otherwise, Call Your Mother is at risk of its
16 revenues being inadequate to cover the rent. And the owner
17 is at risk of having a failed tenant. The current owner
18 explained that he is reliant on the rental income he can
19 charge a commercial tenant. As the Board knows, many retail
20 shops are failing all over Georgetown, and there is no
21 guarantee the owner will be able to find a viable tenant.

22 The building is in a very dense urban area. Just
23 quickly, the property is near Georgetown University, schools,
24 churches, and other shops as well as the main commercial
25 strips of Georgetown. The building is also on a public bus

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1 line. It literally turns at our corner. The request
2 variance will not unduly change the fabric of the
3 neighborhood.

4 Really quickly, just to go through it. We have
5 agreed to the conditions to be open only 7:00 a.m. to 3:00
6 p.m. We'll have weekly pest control. We will not play music
7 outside. We actually unplugged the music outside that the
8 florist had there, even though they never had a permit for
9 that.

10 We will not serve alcohol. We will not have
11 outside seating. We actually removed a flower bed so we
12 could have more line space so there would be no line issues.
13 And we will not partner with any delivery services such as
14 Uber Eats or Caviar.

15 In conclusion, we understand that some neighbors
16 are disappointed that a florist is now becoming a bagel shop.
17 But we will be selling bagels either way. We're just asking
18 that we can toast and top the bagels for our customers.

19 Ms. Roth today said that the business not being
20 able to operate is theoretical. I would argue their entire
21 case is theoretical about hurting other businesses down the
22 block, about the neighborhood, about the rats.

23 We have proven time and time again in Petworth and
24 in Parkview that we operate a really smooth professional
25 business and keep the neighborhood clean and under control.

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1 So it is a case of theoretical v. actual.

2 Thank you.

3 CHAIRPERSON HILL: Okay. Mr. Sullivan --

4 MR. SULLIVAN: Thank you. That's all, yes.

5 CHAIRPERSON HILL: -- after that, I think you're
6 done. Okay. All right. Ms. Roth, do you have any questions
7 for the applicant?

8 MS. ROTH: I do.

9 CHAIRPERSON HILL: Okay. So I'm going -- okay,
10 so go ahead and ask your questions.

11 MS. ROTH: Okay. This is to Mr. Dana directly.
12 So Mr. Dana, isn't it true that you have testified many times
13 that you said you're going to be a great neighbor?

14 MR. DANA: Yeah.

15 MS. ROTH: Are you responsible for the social
16 media for Call Your Mother.

17 CHAIRPERSON HILL: Whoa, whoa. So what normally
18 happens now with these questions, people sometimes get a
19 little off track. So the questions are supposed to be
20 whatever the testimony just was, right?

21 So whatever testimony Mr. Sullivan just gave --
22 and actually, he's the attorney. I always get a look about
23 this. Apparently, he's not even supposed to be answering
24 questions.

25 But Mr. Dana is the person that gave testimony as

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1 the applicant. And so basically, you're just asking any
2 questions to Mr. Dana about the testimony he just gave.
3 There's was nothing about social media. There was nothing
4 about anything like that. It's just the questions that he
5 just gave.

6 Because after this, I have to go through back to
7 the public testimony again. I'm going to go to the Office
8 of Planning. We're going to have a quick summation in terms
9 of the conclusion. And so I just want to make sure we stay
10 focused, Ms. Roth. That's all I'm just trying to do is just
11 stay focused.

12 MS. ROTH: I'm trying to focus. In his testimony
13 that was submitted last night around 11:00 p.m., there is a
14 line that they're going to be great neighbors. And I believe
15 --

16 CHAIRPERSON HILL: Okay. I'm talking about --
17 well, and this way, I made it a little confused. But I'm
18 talking about the oral testimony that was just given right
19 now. I mean, you're asking questions about the testimony
20 that was just given right now in terms of the presentation.
21 So can you go ahead and ask questions about that?

22 MS. ROTH: I think it's important to introduce
23 into the record some of the things that have been stated
24 because they have been, for lack of a better word, pretty
25 negative and pretty evil about the neighbors.

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1 CHAIRPERSON HILL: Yeah. Again, I mean, in terms
2 of --

3 MS. ROTH: I'll just put it in my --

4 CHAIRPERSON HILL: -- what might --

5 MS. ROTH: I'll put it in my closing statement if
6 I'm not allowed to ask the question.

7 CHAIRPERSON HILL: It's not that you're -- I'm
8 just trying to keep us focused. I mean, I'm just trying,
9 like -- I'm trying to understand whether or not you're now
10 just presenting more testimony. And so that's what I'm just
11 trying to clarify, right?

12 MS. ROTH: Fair enough.

13 CHAIRPERSON HILL: So --

14 VICE CHAIRPERSON HART: Mr. Chairman?

15 CHAIRPERSON HILL: Yeah?

16 VICE CHAIRPERSON HART: Yeah, and really, the
17 cross examination is to bring out points about the zoning
18 regulations that were not -- these are for the Board to have
19 more clarity around information. And so I think that's what
20 we're trying to get to. Are there points that the applicant
21 made that you're trying to get clarity around the zoning
22 regulations and focusing on that?

23 This is a little different than if you were at
24 kind of a trial in front of a judge because then you'd have
25 all these different things. But we're trying to focus on

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1 that.

2 And I know that you are -- and you've said that
3 you're somebody that does this. And I understand that, and
4 we're just trying to understand how -- the questions that are
5 trying to illuminate and to clarify some points around the
6 zoning that may not be clear.

7 MS. ROTH: Okay. Fair enough. I'll save it for
8 closing. I think I get a closing statement, correct?

9 CHAIRPERSON HILL: Yeah, but we're just -- I mean,
10 again --

11 MS. ROTH: Okay. I'll keep it moving.

12 CHAIRPERSON HILL: No, no, no, no, no. That's
13 okay. I was -- we've kind of gone from, like, a four-hour
14 hearing and a four-hour hearing to a three-hour hearing to
15 now what's going to end up being, I guess, an hour and a half
16 hearing.

17 And the reason I'm just saying that is, like,
18 we've heard a lot of different things with a lot of different
19 information. I'm just trying to make sure that the Board
20 gets your opinion on the zoning issues --

21 MS. ROTH: Okay.

22 CHAIRPERSON HILL: -- that -- okay, that you
23 brought up.

24 MS. ROTH: Yeah.

25 CHAIRPERSON HILL: Sure, okay.

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1 MS. ROTH: I'm ready to go.

2 CHAIRPERSON HILL: Okay.

3 MS. ROTH: Okay. So Mr. Sullivan, so you
4 testified that you are not applying as a grocery store. Is
5 that correct?

6 MR. SULLIVAN: No.

7 MS. ROTH: Okay. So if you're not applying as a
8 grocery store, are you saying that -- isn't it true that
9 254.14 applies if you are not applying as a grocery store?

10 MR. SULLIVAN: Objection. I'd say we're back at
11 self-certification.

12 CHAIRPERSON HILL: Right. So I would agree with
13 Mr. Sullivan. I mean, all of the issues in terms of the
14 corner store that you had brought up before I think are
15 really actually something that would be before the zoning
16 administrator and wouldn't be under our purview.

17 MS. ROTH: Well, in the previous hearings here,
18 it was stated that they have the matter of right to open as
19 a corner store. And we strongly believe that the regulations
20 state that they clearly do not.

21 And by claiming that they have the matter of right
22 to open, they are self-certifying, claiming that they don't
23 need relief from these other provisions, and ignoring these
24 other provisions.

25 And we believe it is a complete skirting of the

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1 regulations by saying that they're not a grocery store. But
2 we're not saying that they don't have the right to self-
3 certify.

4 CHAIRPERSON HILL: No, no. But you kind of are.
5 They --

6 MS. ROTH: No, but in that self-certification,
7 it's very clear that they have to demonstrate that they meet
8 the requirements.

9 CHAIRPERSON HILL: But that's not before us.

10 MS. ROTH: It was in the previous two corner store
11 provision cases.

12 VICE CHAIRPERSON HART: Well, actually, so under
13 the corner store regulations, Subtitle U, 254.2, a corner
14 store's use shall be a retail, general service, arts design
15 and creation, or eating and drinking establishment use
16 subject to the -- sorry, eating and drinking establishment
17 use subject to the provisions of this section.

18 So that's U 254.2. So that establishes what that
19 is. And I understand that you talk about whether or not
20 that's a grocery store or not. But one of the things that
21 Mr. Sullivan just noted was under the zoning regs, what they
22 are telling you is they're saying, this is what a corner
23 store.

24 And then they start saying, well, a corner store
25 in U 254.13 -- a corner store for which the use is a fresh

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1 food market or grocery store. So they're saying a further
2 limitation of what that corner store is.

3 Not that anything else doesn't apply. It's just
4 that we've already established what a corner store is. When
5 it's one of these two things, then you have to do these. And
6 so that's what it's describing.

7 MS. ROTH: I think you have to go one section
8 further to --

9 VICE CHAIRPERSON HART: And --

10 MS. ROTH: -- 254.14.

11 VICE CHAIRPERSON HART: I'm not saying I'm not.
12 But what I'm saying is that this is a -- what they're talking
13 about is the corner store -- they've already --

14 CHAIRPERSON HILL: Hey, hold on. Go ahead, Mr.
15 Shapiro.

16 COMMISSIONER SHAPIRO: If I can, Mr. Vice Chair,
17 Mr. Chair. I believe that in this odd way what we're arguing
18 right now is the imagined appeal of the zoning administrator
19 --

20 VICE CHAIRPERSON HART: You're right.

21 COMMISSIONER SHAPIRO: -- which is down the road.
22 If that happens, we'll deal with that then. But that doesn't
23 seem like it's before us at all.

24 CHAIRPERSON HILL: So Ms. Roth, this is -- if I'm
25 going to see you again later -- okay? And that's what this

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1 whole thing is all about -- okay? I'm going to give you five
2 minutes, okay, to answer your -- to ask your questions, okay,
3 because I got to get moving along. Okay?

4 And so if you're going to appeal a zoning
5 administrator decision, that's a whole other thing. You
6 understand -- I know you understand what the issues are
7 before you right now. I know you just heard all the things
8 that he had to say. I know that you know that there's 150
9 submissions in this case already.

10 And so I don't really know exactly -- I just want
11 to make sure you're not trying to reargue this. Just please
12 ask your questions about the applicant. And if this is going
13 to turn into a hobby, like, later on down the road, then
14 we'll see you again later. Okay? So go ahead and ask your
15 questions.

16 MS. ROTH: Yes, sir. It is not a hobby. Believe
17 me. I mean, the neighbors and I have put in a lot of time
18 and effort to try to understand how best to present and argue
19 this case. So let me ask of the applicant. Were you all at
20 the most recent ANC meeting?

21 MR. DANA: We were not.

22 MS. ROTH: Okay. So I was there as were many of
23 my neighbors, and --

24 CHAIRPERSON HILL: But what's --

25 MR. SULLIVAN: Objection. He didn't testify --

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1 CHAIRPERSON HILL: Oh, my God. Now hold on, hold
2 on, hold on.

3 MS. ROTH: So the testimony --

4 CHAIRPERSON HILL: Hold on, hold on. Mr. Sullivan
5 just popped in, and what I'm just saying is you're giving in
6 new information. This is just for questions about the
7 testimony they just gave.

8 MS. ROTH: Okay.

9 CHAIRPERSON HILL: That's all this is about.

10 MS. ROTH: I understand. Mr. --

11 CHAIRPERSON HILL: Okay. I don't know if you
12 understand or not.

13 MS. ROTH: I'm trying to.

14 CHAIRPERSON HILL: That's all this is about.
15 Okay?

16 MS. ROTH: Mr. Sullivan testified that the --

17 CHAIRPERSON HILL: You get two more questions, Ms.
18 Roth.

19 MS. ROTH: It's a little -- with all due respect,
20 that's a little unfair. Mr. Sullivan --

21 CHAIRPERSON HILL: Oh, believe me. I will say
22 this again and again. Okay? Do you see all the people that
23 are back there?

24 MS. ROTH: I do.

25 CHAIRPERSON HILL: It's a little unfair to them.

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1 Okay, right? Because we have to end this at some point.
2 Okay?

3 MS. ROTH: I'm sure when they're going that they
4 would like to --

5 CHAIRPERSON HILL: So -- no, no. Believe me. I'm
6 sorry. I'm letting you know. You've had a lot of time. I
7 keep saying it over and over again. You've had plenty of
8 opportunity. You're trying to reargue your case. You're
9 trying to reintroduce information. Please ask your questions
10 about the testimony that was just given.

11 MS. ROTH: Okay. Mr. Sullivan testified that the
12 ANC did deliberate three prongs. He was not there, and they
13 did not deliberate the three prongs. Ms. Palmer's written
14 testimony --

15 CHAIRPERSON HILL: Okay. What Mr. Sullivan's
16 testimony was -- and you're not asking a question right now.
17 What Mr. Sullivan's testimony was that he believed that the
18 ANC had provided whatever -- talked about the three prongs.
19 And in their resolution, I guess that's what he's speaking
20 towards. Now what is your direct question, please?

21 MS. ROTH: My question was whether they were there
22 to --

23 CHAIRPERSON HILL: And the answer was no.

24 MS. ROTH: Okay. All right. Is Call Your Mother
25 paying rent currently?

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1 CHAIRPERSON HILL: That wasn't in any of the
2 testimony.

3 MR. DANA: And yes.

4 MS. ROTH: Well, they --

5 CHAIRPERSON HILL: That's a question --

6 MS. ROTH: So the --

7 CHAIRPERSON HILL: -- that you had asked before.

8 MS. ROTH: The testimony refers to added expense
9 and inconvenience.

10 CHAIRPERSON HILL: Okay. So --

11 MS. ROTH: And so I'm trying to get to the --

12 CHAIRPERSON HILL: Okay. So the answer was yes.

13 MS. ROTH: He specifically said --

14 CHAIRPERSON HILL: The answer was yes.

15 MS. ROTH: He -- so he --

16 CHAIRPERSON HILL: What's your next question?

17 MS. ROTH: So Mr. Sullivan specifically said that
18 there are -- that you can consider practical difficulties as
19 added expense and inconvenience. And what are the practical
20 difficulties or inconvenience of the owner right now?

21 CHAIRPERSON HILL: So your question is what again?

22 MS. ROTH: So Mr. Sullivan testified --

23 CHAIRPERSON HILL: You're asking --

24 MS. ROTH: -- just now --

25 CHAIRPERSON HILL: -- what are the practical

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1 difficulties --

2 MS. ROTH: That there were -- that you can -- that
3 you --

4 CHAIRPERSON HILL: Right.

5 MS. ROTH: -- that you as the BZA --

6 CHAIRPERSON HILL: Right.

7 MS. ROTH: -- can consider any added expense and
8 inconvenience. And we're trying to get to what that
9 practical difficulty --

10 CHAIRPERSON HILL: And I'll let the --

11 MS. ROTH: -- and what that added expense and
12 inconvenience is.

13 CHAIRPERSON HILL: -- applicant answer the
14 question as I understand it. But just to clarify what I
15 think they were saying was that the practical difficulty was
16 that if the applicant can't meet their rent, they aren't
17 going to be able to pay the rent. So your question right
18 now, I guess, to the applicant is that if they are getting
19 paid rent right now, what's the problem? Is that your
20 question?

21 MS. ROTH: Sure.

22 CHAIRPERSON HILL: Mr. Sullivan?

23 MS. ROTH: It can be.

24 MR. SULLIVAN: So I will refer to things that are
25 in the record since I'm not submitting testimony. But I

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1 think there's ample evidence in the record of potential and
2 likely expense and inconvenience if this is denied.

3 CHAIRPERSON HILL: Okay. All right. So that's
4 your answer. So Ms. Roth?

5 MS. ROTH: Okay. So Mr. Dana just testified that
6 we will be selling bagels no matter what. And so isn't it
7 true that you have the ability to open right now and sell
8 bagels without the granting of the variance?

9 MR. DANA: I also just testified that 59 percent
10 of our sales are from bagel sandwiches. So yes, we could
11 open. But we're worried about our financial stability, our
12 viability --

13 CHAIRPERSON HILL: Okay. So Mr. Dana, your answer
14 is yes. Okay. Ms. Roth, last question?

15 MS. ROTH: I'm good.

16 CHAIRPERSON HILL: Okay. All right. Does the
17 Board have any questions for the Office of Planning? I mean,
18 I just want to know if the Board has -- like, I saw the
19 Office of Planning's report. Does the Board have any
20 questions for Office of Planning?

21 (No response.)

22 CHAIRPERSON HILL: Does the Office of Planning
23 have anything they like to submit other than their
24 supplemental testimony?

25 MS. MYERS: No.

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1 CHAIRPERSON HILL: Okay. Does the applicant have
2 any -- I'm sorry. Does the opposition have any questions for
3 the Office of Planning?

4 MS. ROTH: If you'll let me.

5 CHAIRPERSON HILL: I don't mind -- I mean, Ms.
6 Roth, I'm just trying to keep us focused. As long as it's
7 focused on the zoning issues, you're welcome to ask
8 questions. And hopefully, we can get them answered and we
9 can keep moving on. Do you have any questions for the Office
10 of Planning?

11 MS. ROTH: I do. I mean, I spoke to the Office
12 of Planning several times. And they actually told me to
13 bring up these issues where the applicant doesn't --

14 CHAIRPERSON HILL: What was your question, please,
15 for the Office of Planning?

16 MS. ROTH: Okay.

17 CHAIRPERSON HILL: I just need focused questions
18 just so I can get through the day.

19 MS. ROTH: Okay. Do you believe that --

20 CHAIRPERSON HILL: And so I can officially handle
21 this case because that's kind of what my job is.

22 MS. ROTH: Do you -- your volunteer job.

23 CHAIRPERSON HILL: Yeah, thank you so much.

24 MS. ROTH: Do you believe that Call Your Mother
25 can open as a corner store as a matter of right?

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1 MS. MYERS: As this is a self-certified case, I
2 didn't -- we didn't evaluate how it complies with the matter
3 of right criteria. So as a matter of right, by definition,
4 if it meets the criteria, if zoning administrator gives the
5 permit, then they can open as a matter of right, corner store
6 use.

7 MS. ROTH: Okay. And then the next question is,
8 isn't it true for the other two corner store cases under the
9 corner store provisions Case No. -- I don't have this one --
10 Case No. 19650 and Case No. 19623 that in the Office of
11 Planning approval, you went through each of the requirements
12 even though both of those two applications were also self-
13 certified?

14 MS. MYERS: I believe those two were special
15 exception cases, and we do evaluate special exception cases
16 by the special exception criteria.

17 CHAIRPERSON HILL: I'm sorry. You have to speak
18 in the microphone.

19 MS. ROTH: No more -- no further questions for
20 Planning.

21 CHAIRPERSON HILL: Okay. Thank you. Mr.
22 Sullivan?

23 MR. SULLIVAN: No questions.

24 CHAIRPERSON HILL: Okay.

25 MR. SULLIVAN: Thank you.

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1 CHAIRPERSON HILL: Is there anyone here wishing
2 to testify in favor or in opposition? Okay. All right.
3 Okay. If you guys -- well, first, whoever is wishing to
4 testify in opposition, could you raise your hand? Okay.
5 That was two of you. Okay. Could you guys come on forward
6 then and just sit down here at the end? Okay. Hi. So if
7 you could please introduce yourselves for the record.

8 MS. CARAVATTI: Marie-Louise Caravatti, 1405-1407
9 35th Street, Northwest.

10 CHAIRPERSON HILL: Okay. And please, the next
11 person?

12 MS. EMAD: Hi, Caroline Emad, the next door
13 neighbor, 3424 O Street, Northwest.

14 CHAIRPERSON HILL: Okay. Did you guys get sworn
15 in today? Okay.

16 MS. EMAD: We did last time.

17 CHAIRPERSON HILL: Okay. That's fine. I wish it
18 lasted that long. Is anybody here -- if there's anybody here
19 who didn't get sworn in who plans on testifying from now
20 until after dinner, please stand up and get sworn in by the
21 -- oh, yeah, by the Secretary to my left.

22 MR. MOY: Or even if you think you might testify.
23 (Witnesses sworn.)

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

25 CHAIRPERSON HILL: Okay, great. Thank you. Okay.

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1 So I know -- I think you both have testified before, correct?
2 So if you could -- and you'll each get three minutes. And
3 I'm just trying to keep you focused. But however you want
4 to take your three minutes, you're welcome to do. We're
5 really here just to talk about what happened since the last
6 time, right? But please go ahead, Ms. Caravatti.

7 MS. CARAVATTI: Yes. I just want to specifically
8 refer to a statement that Mr. Sullivan said that Ms. Roth got
9 the regulations wrong because she was looking at the D.C.
10 handbook.

11 And I have the regulations here which are the
12 official regulations on the Board of Zoning website,
13 dcozdc.gov, which specifically lists the corner store
14 regulations and it's not in the handbook.

15 And in fact, it does say that -- where'd it go now
16 -- 254(c), corner stores shall not be located where there is
17 more than three corner store uses -- not corner stores, but
18 corner store uses -- within 500 feet.

19 And when you go and look up corner store uses, it
20 does indeed say that they can be barber shops, any kind of
21 retail establishments, as we do have on 35th Street. And in
22 fact, when they talk about the practical difficulty of
23 converting to another use, they talk about residential. But
24 the other use could well be renting to another type of
25 business.

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1 I happened to walk into Custom TV which is on the
2 other corner on the same block. It is exactly the same
3 configuration. It is about the same square footage. It has
4 large windows on both sides, and it is -- the use is a custom
5 TV shop.

6 In fact, I talked to the owner and said they think
7 that they can only rent as a restaurant or some kind of
8 prepared food establishment. And he looked at me and he
9 said, oh, well, they could easily rent to a lawyer, even a
10 zoning lawyer perhaps. So the use does not have to be
11 another prepared food store, and there is no enormous
12 practical difficulty.

13 I would just like to say that we have spent an
14 inordinate amount of time looking into all of this. All the
15 neighbors are very busy people. We all work. We've all
16 taken time off work. We have all researched this up the
17 gazoo. We have been reading zoning laws. We've been reading
18 case studies. And we have all fed into the briefs and the
19 testimony that Ms. Roth has given.

20 And so I would really like you to know that this
21 does represent our collective view even though she has not
22 been allowed to represent us formally. The Office of the
23 Attorney General has said that that's not possible.

24 But this whole process has been incredibly
25 complex. These are really complicated legal issues that we

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1 all have to face. It's not a popularity contest. It's not
2 what we feel or how we think about the consequences. These
3 are about the law and specific statutory requirements.

4 And one of the -- and the requirements of corner
5 stores, as Mr. Sullivan has previously stated, there's a
6 whole bunch of requirements and criteria that have to be met.
7 You can't just pick one criteria. That's like trying to get
8 the whole baloney slice by slice if you're going to go one
9 criteria at a time.

10 You have to meet all the criteria, and you can't
11 selectively apply the law. You have to apply all of the law,
12 not just one piece of the law. So I rest my case.

13 Thank you.

14 CHAIRPERSON HILL: Thank you. Please.

15 MS. EMAD: Thank you, Chairman and esteemed
16 members for giving me the opportunity to voice my opinion and
17 my concerns. Just to set the record straight, Mr. Sullivan,
18 I do want CYM, Call Your Mother, to come to Georgetown but
19 not in a residential neighborhood. And Mr. Dana, I do love
20 bagels. I don't hate them. You can tell by looking at me.

21 My concerns are really about the wellbeing and
22 safety of our tenants. And very briefly because I'm sure
23 everyone is tired, CYM was drilling through the holes. And
24 we found out when we inspected the next day that the only
25 thing that separates us is drywall and studs. There is no

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1 cinder blocks, no firewall.

2 If you grant them the variance to cook onsite,
3 that's a big concern for our safety, for the safety of our
4 tenants. And so that's really what I would like you to know
5 because these were requirements for the corner store that
6 were never addressed. And I'm not going to go over the
7 prongs that we hammered for the past several months about
8 noise, smell, and so on and so forth. That's it.

9 Thank you.

10 CHAIRPERSON HILL: Okay, great. Thank you. Does
11 the Board have any questions for the witnesses?

12 (No response.)

13 CHAIRPERSON HILL: Does the opposition have any
14 questions for the witnesses?

15 (No response.)

16 CHAIRPERSON HILL: Does the applicant have any
17 questions for the witnesses?

18 MR. SULLIVAN: No, thank you.

19 CHAIRPERSON HILL: Okay. Thank you all very much.
20 Well, actually, I do have one question for Mr. Dana. So Mr.
21 Dana -- it's Ms. Emad?

22 MS. EMAD: Correct.

23 CHAIRPERSON HILL: So Mr. Dana, have you talked
24 to Ms. -- Ms. Emad, I guess, as the adjacent neighbor to the
25 location. Is that correct?

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1 MR. DANA: We have never chatted. I believe she's
2 the -- you don't live there, right?

3 CHAIRPERSON HILL: Yeah. Okay, well, I'll put it
4 to Ms. Emad. You share a wall. Is that correct?

5 MS. EMAD: That's correct.

6 CHAIRPERSON HILL: Okay. So Mr. Dana, I would
7 just recommend you speak to Ms. Emad and try to figure out
8 what's going on over there. I guess if this doesn't pass,
9 you don't have to worry about that. But if it does pass,
10 then try to figure out how to ease some of her concerns.
11 Okay?

12 MR. DANA: Okay.

13 CHAIRPERSON HILL: And I guess you can see what
14 happens. Sir, pardon me?

15 MR. DANA: Am I allowed to say one thing?

16 CHAIRPERSON HILL: Sure.

17 MR. DANA: Just there is no cooking. We can talk
18 offline, but the --

19 CHAIRPERSON HILL: Okay.

20 MR. DANA: -- whole point is there's no cooking.

21 CHAIRPERSON HILL: Okay. So you can talk to Ms.
22 Emad about that. Okay. Thank you all very much. All right.
23 So let's see. Oh, and you have to give the witness cards,
24 please, to the transcriber over there to my right.

25 So Ms. Roth, I'm going to go ahead and give you

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1 three minutes to give a conclusion. Oh, no. I'm sorry. Is
2 there anybody here wishing to speak in support? Okay. No,
3 I mean, there's -- I see all the -- there's all the support
4 people over there. And so I'm just, like -- so okay. Ms.
5 Roth, if you want to go ahead and take three minutes to give
6 us a conclusion, that would be great.

7 MS. ROTH: I'll do my best which is all I can ask
8 of myself, right? All right. So it's very clear that we
9 believe that the actual applicant, the owner and not Mr. Dana
10 or Call Your Mother, has not met the burden of proof required
11 for this variance.

12 Moreover, they did not meet the requirements to
13 open as a matter of right, and they are subject to those
14 corner store provisions. And we believe we will end up --
15 it'll end up remanded and right back here if they do not ask
16 for relief from those requirements they do not meet.

17 It'll end up being remanded by the zoning
18 administrator or by the courts. They need waivers of these
19 other requirements, and they're only asking for relief from
20 the 750 foot rule.

21 But this was specifically inserted into the
22 regulations and unanimously approved by the ANC and by CAG
23 with absolute full knowledge that the MU-3, the smaller
24 commercial zone, existed.

25 At the recent ANC meeting, someone actually called

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1 Call Your Mother disingenuous. I want to be very clear on
2 the record that was not me. I didn't even know the person
3 who said that.

4 But to the 19,000 followers that follow this
5 Instagram account, Mr. Dana is responsible for this account.
6 And I quote what was stated. There are just some people in
7 Georgetown who really, really, really, really hate bagels.
8 These people are delaying us, #bagelhate2019.

9 And I want to make it clear again as Ms. Emad did
10 that we are all for bagels. There is no one that hates
11 bagels. There is no one that hates Mr. Dana. There is no
12 one -- wishing him success in all of his operations.

13 But in our quiet residential neighborhood, we have
14 zoning regulations for a reason. And this application is
15 trying to get not just a variance but trying to get around
16 many of those other requirements.

17 Mr. Dana has previously testified that he can open
18 as a matter of right. I have been reminded several times
19 that the BZA is under -- that they are supposed to grant the
20 lowest level of relief. And in this case, no relief is
21 needed for them to open as a bagel store. It is not up to
22 you to make sure that they are most profitable.

23 Mr. Dana testified that 59 percent of his sales
24 come from bagel sandwiches. It is clear that they can still
25 sell bagel sandwiches. Their permit from the zoning

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1 administrator allows them to sell bagels and customers can
2 assemble or toast their bagels themselves.

3 We do not believe that they meet the three prongs,
4 most specifically, the first prong. There's no exceptional
5 circumstances with the property. Being located near a
6 commercial zone does not make the property unique. We have
7 photographic evidence on the other aspects of the property.

8 And on the second prong, we believe that the owner
9 has demonstrated zero practical difficulties. They are
10 receiving rent. They will continue to receive rent. And
11 should the lease be broken, it can be sublet. It can be --
12 another tenant can be found.

13 There are plenty of other solutions besides
14 granting a variance which we believe not only doesn't meet
15 these first two prongs but doesn't meet the third prong.
16 They've shown that they will mitigate some of the substantial
17 harm to the public. But mitigate means to decrease and not
18 to eliminate.

19 We believe that granting this variance sets a
20 precedent even though the BZA says that each case is looked
21 at on its own merits. Granting a variance with very little
22 evidence in the record proving the three prongs will only
23 allow any other corner store or businesses to be able to
24 apply for a similar waiver from the 750 foot rule.

25 Thank you for all of the time and patience that

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1 you've shown with me and with all of us as we've tried to
2 learn all of these regulations and go through this process.
3 Thank you.

4 CHAIRPERSON HILL: Thank you. Okay. Mr.
5 Sullivan, also same thing, three minutes.

6 MR. SULLIVAN: Thank you. The Board has on many
7 occasions approved as a use variance similar situations to
8 this and found undue hardship, a much higher standard of
9 relief, including the property in the Georgetown which went
10 from a salon to an office based on testimony from a contract
11 purchaser which they accepted as sufficient.

12 In this case, I think we have more substantial
13 evidence to support the fact that it is unnecessarily
14 burdensome. It doesn't have to be an undue hardship, of
15 course.

16 A lot of the argument from Ms. Roth seems to be
17 based on a use variance argument that it's not impossible to
18 do some other things. That's not what we're arguing. Of
19 course it's possible to find a path to a matter of right use
20 for this landlord.

21 And that may involve subtenants. It may involve
22 legal fees. It may involve getting a substandard tenant that
23 won't sustain the building as well and, yes, won't be as
24 profitable.

25 These are what the Board and the Court of Appeals

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1 have typically categorized as unnecessarily burdensome
2 additional expense and inconvenience which the Court of
3 Appeals is clear on that is something the Board can consider.

4 In addition to, again, I'll go back to degree of
5 relief. If you look at the slide that's in front of you
6 right here misrepresenting the actual -- it's a minor point.
7 It's a minor point.

8 But as you walk from our property to the lot line
9 that is within the MU zone which is where the measurement
10 point is, it exceeds 750 feet. And that's actually the
11 genesis of the mistake that got us here. And so this goes
12 to the middle of the intersection rather than to the property
13 line that's within the MU zone. That accounts for the
14 difference in the square footage.

15 Minor point, but the point is it's de minimis
16 relief in my opinion. I think there's plenty of evidence to
17 support the fact that this is unnecessarily burdensome to the
18 owner. They are very limited in the uses that they can
19 undertake, and they're very restricted by this location being
20 close to this outlier MU zone as we've stated on several
21 occasions.

22 So I think the Board has what it needs before it,
23 and we thank you for your time and consideration and
24 respectfully request your approval.

25 Thank you.

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1 CHAIRPERSON HILL: Okay, great. Thank you. All
2 right. Well, I guess I'll see what the Board has to say.
3 I guess I'd like to -- well, I guess there's a couple things.
4 We can either take a break because I need to kind of, like,
5 chew on a couple of things and then come back and deliberate
6 which I think what I would vote to do. Okay? And so let's
7 go ahead and go to our separate corners and kind of figure
8 out some stuff, and then we'll come back and deliberate.

9 So anyway, so a couple things. Ms. Roth, thank
10 you so much. I know that all your neighbors spent a lot of
11 time dealing with everything. And I hope that you've thought
12 at least we're trying to do our best. And Mr. Sullivan, Mr.
13 Dana, good luck for you as well.

14 You guys are excused. You don't need to be
15 sitting at the table. And we're going to take a break.

16 (Whereupon, the above-entitled matter went off the
17 record at 12:01 p.m. and resumed at 12:14 p.m.)

18 CHAIRPERSON HILL: Okay. Mr. Moy, you want to
19 call us back for whatever you need to call us back for?

20 MR. MOY: No, I think we're good, Mr. Chairman.
21 I think after this quick break, the Board is back in session
22 just for the transcript. And the time is at or about 12:14.

23 CHAIRPERSON HILL: Okay. So just to be clear,
24 we're here now to meet on BZA Case 20135. So I will see if
25 anyone else wants to start.

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1 VICE CHAIRPERSON HART: Yes. I mean, I think
2 we've had a lot of testimony. And I'd first like to just
3 thank all the participants. I know there's been a lot of
4 back and forth and we've had a lot of different kind of
5 discussions about this.

6 So the applicant, Ms. Roth, the party in
7 opposition, the Office of Planning, the ANC, the members of
8 the public that have come to testify, the folks that are here
9 in support of the Call Your Mother shop and those that have
10 come to testify in opposition as well.

11 We spent a whole lot -- we spent a lot of time,
12 and I think that it was helpful to hear from everybody about
13 this. But I wanted to acknowledge that I understood that
14 people were taking time out of their busy schedules to be
15 here and to be discussing this and letting us know where they
16 stood on it.

17 I think that I have enough to be able to decide
18 on the case today. I can start going through that if you'd
19 like. Okay. So --

20 CHAIRPERSON HILL: Sure. Are you ready? Okay.
21 So let's start talking.

22 VICE CHAIRPERSON HART: So some of this I had
23 already kind of thought about. And because we'd had the
24 information already in the record, I have written some of
25 this down. Some of it is -- I'm having to add to or just

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1 understand a little bit more as we were going through the
2 hearing today, because I've had to be able to try to kind of
3 gauge where the information that I've received as of today.

4 So initially, we heard the applicant regarding the
5 request for a use variance to allow the shop to be located
6 in this building at the corner of O Street and 35th Street
7 in northwest. And this was a use variance that was -- that
8 they were seeking at that time.

9 After also hearing from the Office of Planning and
10 from advice from OAG, we didn't request additional
11 information on the -- information on why the project -- how
12 the project -- what -- if the project could actually meet
13 other zoning regs.

14 And the applicant did seek that -- seek more
15 information, particularly looking at determining if this --
16 the applicant to determine whether or not they met the corner
17 store regulations.

18 And in that, this is a self-certified application.
19 And the reason this -- the issue about being a self-certified
20 application is important is the applicant is taking -- they
21 are taking it -- I'll say a risk in requesting the
22 information -- excuse me, requesting the relief under the
23 zoning regulations. This is their stating that this is what
24 they believe that they need for under the zoning regulation.

25 Now the risk is the zoning administrator may

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1 disagree. And the zoning administrator may think that other
2 relief is necessary. And here's the risky part. If the
3 zoning administrator doesn't agree, then that applicant will
4 then have to seek further zoning relief. And so they'd have
5 to come back to the BZA.

6 And typically, we're trying not to add more cases
7 to our docket. So the -- but the applicant has the right to
8 do this self-certification. They could also go forward to
9 have the zoning administrator give their testimony -- not
10 testimony -- give their understanding of what the zoning is.
11 But they didn't go that route. They went for the self-
12 certification, which is, again, their right.

13 So this is -- what the applicant has changed to
14 is that they believe that this is a corner store and that the
15 relief that they're now being -- that's now being sought is
16 an area variance because -- and that's what's now under
17 review, which is the area variance.

18 There's been a lot of discussion about whether or
19 not it's a corner store and all that. That's not what we're
20 -- we're here to talk about what is being requested by the
21 applicant.

22 So saying all of that, where do I stand on the
23 case? So I would be in support of the requested relief. And
24 the reason that I am is because the applicant talked about
25 the -- that they are a corner store. That is not what's

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1 under discussion. It's really whether or not they meet the
2 750 foot rule. That is what is really what we are kind of
3 here and discussing.

4 That's been somewhat -- as I noted earlier,
5 somewhat of a -- that changed during this hearing. But I
6 think that they are within their -- this is what they are
7 moving forward with and this is what we are reviewing.

8 So under zoning, the corner store, they would
9 require the 750 foot relief. And of course, this relief is
10 a -- would be a variance relief. And the applicant in this
11 case, of course, is the property owner, as it always is,
12 although the property owner has given the applicant -- sorry,
13 the owner of the Ask Your Mother or Call Your Mother the
14 ability to represent the owner in this case.

15 So we have to look at the 750 foot rule. And they
16 are -- as you see on this image that's shown, I guess the
17 party in opposition provided an image. But what it shows is
18 that there is the -- there's kind of a zoning map that is
19 shown that we're looking at now on the screen. And that
20 zoning map just includes where the property is with respect
21 to where the MU zone, which the zoning says that they need
22 to be 750 feet away.

23 The property is at least 500 feet, if you're look
24 how the crow flies. There's a dispute whether or not it's
25 700 or 750 depending on how you measure. But it's from this

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1 kind of MU zone that is somewhat separate from the rest of
2 the MU area along Wisconsin and along M Street. And I think
3 that's 36th Street, if I'm not mistaken.

4 And so the question is whether or not there is a
5 -- the applicant meets the three prongs of the zoning
6 regulations. We've heard quite a bit of individual about
7 this. But I will focus on this is about whether or not that
8 -- how the three prongs are connected to that 750 foot
9 distance.

10 And I'll just note that I think that this is --
11 that they do meet that. I mean, you can't kind of move this
12 site. It is where it is. It is already this -- they are
13 seeking this zoning relief.

14 The practical difficulty prong I thought was
15 fairly straightforward in that the distance would not require
16 this -- would not permit this use, which is a matter of right
17 in this zone.

18 And then finally for the third prong is a
19 substantial detriment to the public good and the zoning plan.
20 And I do believe that while there are impacts, and I think
21 that in many cases there are impacts. It's really whether
22 or not they are substantial or undo.

23 And I mean, I think that the applicant has
24 provided information about how they will manage. It seems
25 like the line along the sidewalk is somewhat of a -- has been

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1 somewhat of an issue. And cleanliness has also been somewhat
2 of an issue. The applicant has provided information and also
3 testimony about things that they will do to kind of mitigate
4 that.

5 And I think that it wouldn't be detrimental to the
6 zoning plan as, again, it is a matter of right use in this
7 M-20 -- excuse me, yeah, R-20 zone. I just -- I understand
8 that there's been a lot of kind of back and forth on it. But
9 I come down on agreeing with the applicant and would -- I'm
10 not sure if I can add anymore to it. So, it's where I am.

11 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
12 Yeah, I would associate myself with the Vice Chair's remarks.
13 I think that, again, despite everything else that we've been
14 talking about, it is a self-cert.

15 It's a very specific thing that they're asking for
16 relief for, to actually -- I agree with the applicant saying
17 that the specific thing that they're asking for is de minimis
18 relief, the area variance.

19 Setting that aside, I'm still mindful of the
20 concerns that the community has brought up about the impact
21 of this. And this is where we look at the prong related to
22 substantial detriment to the public good.

23 And I don't see this is a substantial detriment.
24 And I think that the applicant has -- I don't see it as
25 substantial detriment and that that the applicant has brought

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1 up any number of ways in which they're going to address
2 neighborhood concerns around the hours of operation, the
3 line, traffic and parking, trash, pest control, et cetera.

4 So again, I associate myself with the Vice Chair's
5 remarks, and I'm happy to take action on this, Mr. Chair.

6 CHAIRPERSON HILL: Okay. Thank you. I guess I
7 will echo some of the things that Mr. Hart just said in terms
8 of all the people that have come here and all the different
9 -- and all of the time that has been taken in order to put
10 together a case both on the applicant side as well as the
11 opposition side.

12 In terms of the -- I'm going to work a little bit
13 backwards in terms of the prongs, I guess. What I was trying
14 to clarify in going through the hearing again is that it is
15 honestly usually -- well, not always. But it can be very
16 tense, right?

17 And everybody actually has their opinion. And I
18 definitely can share why the immediate neighbors might have
19 some concerns or more of an interest as to what this use --
20 I'm sorry, this area variance might cause for them in their
21 immediate neighborhood.

22 So what I found -- what I struggled with, I guess,
23 with this is that -- and I didn't mean to be so clear on it
24 when I was talking with the -- during the testimony which was
25 that we listen to the Office of Planning, right? We have to

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1 give great weight to the Office of Planning and kind of see
2 what their thoughts are in terms of whether or not something
3 should or shouldn't be granted.

4 Then we go ahead and we listen to the ANC, right?
5 And kind of figure out whether or not the ANC believes that
6 something is meeting the -- either the criteria or that they
7 think -- and the ANC sometimes doesn't hit on all of the
8 technical points, but whether the ANC thinks that they need
9 to -- do believe that they should have this granted, right?

10 Then it goes to the -- so I kind of work backwards
11 again, substantial detriment to the public good. I mean, I
12 think that the applicant -- I can understand why, again, the
13 neighbors might not want a change to their neighborhood in
14 terms of the lines that might form and such.

15 And so I was comforted by the fact that the last
16 -- I guess there's another -- I mean, it's something that was
17 in the ANC having their own problem, right? I mean, it was
18 a 6 to 2 vote, right? I mean, so two members of the ANC
19 came. They -- sorry, two members voted against this, right?
20 So I guess six did, right?

21 And then we had a Commissioner come down and
22 testify in favor. And that Commissioner came by and
23 testified that they had spoken to the SMD where this
24 particular establishment was in another area and had learned
25 about how they were controlling their lines and how things

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1 were going on. So I was comforted by that, right?

2 Then there's also the Commissioner that came that
3 was against -- opposed to this, right? And so -- and I heard
4 their testimony and commented how that Commissioner was here
5 not that much longer ago trying to argue for a different kind
6 of variance that was actually mentioned several times by the
7 applicant.

8 So I do think that the applicant will work with
9 the community to make sure that the lines are taken care of,
10 the actual affect to the immediate neighbors will be taken
11 care of. I mean, that's kind of what I thought was
12 understandable.

13 And I mean, I'm just thinking they talked about
14 the new system that they were going to put together where,
15 like, somebody goes out and how they try to get people going
16 through the line. We even asked for how they were going to
17 put the line together. So that's kind of just kind of a
18 lower issue that I felt as though they, the applicant, would
19 work with the community to fix any kind of issue that they
20 might have.

21 The -- in terms of the substantial harm to the
22 zoning regulations, I was kind of looking back towards the
23 Office of Planning's report in when they didn't think that
24 the 750 feet from the MU-3 zone area was anything that was
25 going to harm the zoning regulation. I mean, I kind of

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1 turned directly to the Office of Planning's supplemental
2 report -- their third supplemental report about that.

3 In terms of the practical difficulty and the
4 extraordinary conditions with the property owner, again, I
5 think that the building already being retail, had been
6 retail, has always been retail, so the conversion back to
7 that.

8 And that, again, that this corner store use is a
9 matter of right use had it not been for the 750 feet from the
10 MU zone, I think that is the practical difficulty. And that,
11 again, that the Office of Planning didn't think that this was
12 going to substantially harm the zoning regulations concerning
13 that 150 feet, I was also then swayed by that in terms of the
14 analysis from the Office of Planning.

15 What came up today, and I don't know how this --
16 it didn't really play into my decision. But I think that the
17 de minimis nature of whatever -- how you measure the 750
18 feet, it didn't even seem like -- it was, like, they were 15
19 feet shy or something like that from even as the crow flies.
20 But if you walk it in the corner, it was going to be over
21 that. And the fact that this MU zone is kind of, like, an
22 odd little outlier I think from what is actually the map
23 itself further just makes me think that it's not a harm to
24 the zoning regulation.

25 So although I can understand, again, the people

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1 that are concerned, I believe that based upon the variance
2 standard and within the zoning requirements, the applicant
3 meets the requirements. And so that's really what is kind
4 of coming down to me.

5 I mean, as I mentioned before and as we've talked
6 about before with other cases, it's not really something that
7 we get to determine, whether we want something there -- I'm
8 sorry, whether we want something there or whether we don't
9 want something there, whether we like an application or
10 whether we like a building. It's just whether or not we
11 think that they meet the requirements for the zoning
12 regulations.

13 And I believe that given all the testimony that
14 we've heard, given all the information that's in the record
15 which is, as I mentioned before, pretty extensive, I do
16 believe that they meet the criteria for us to grant the
17 application.

18 I do think that the conditions that the applicant
19 has agreed to also will help to cause any issues with, again,
20 kind of the community. I mean, they're only open from 7:00
21 to 3:00, right? I think they're going to go ahead and do the
22 weekly pest control that I saw.

23 There was the other things that -- the other
24 criteria that were in the Office of Planning's report. I'm
25 just looking here real quick. Right, the store would be open

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1 every day between the hours of 7:00 a.m. and 3:00 p.m. with
2 deliveries occurring around 6:00 a.m. Shop would have three
3 to six employees per shift. Customer flow should be quick.

4 So that wasn't necessarily conditions. They just
5 seemed to be speaking to -- oh, with the hours of operation.
6 That's with the hours of operation the Office of Planning was
7 saying to mitigate the potential impacts of the use.

8 I mean, I, again, as I've mentioned before -- I
9 who live in a very commercial area in downtown, like, I'm
10 appreciative of no outside seating and no outdoor music. I
11 mean, the applicant seemed to agree to the no Uber and no
12 Caviar which was something that I think was -- I don't know
13 if kind is the right word. But they offered it, right?

14 And so that was something that the opposition was
15 concerned about in terms of, like, people coming to pick up
16 things and going. So I would be also in the opinion that
17 adding those conditions to help the concerns of the immediate
18 community would be something that I would be able to -- would
19 be willing to put in as conditions which is, again, the hours
20 of operation from 7:00 a.m. to 3:00 p.m., weekly pest
21 control, no outside seating, no Uber Eats or Caviar, and then
22 the no outdoor music.

23 I don't really have -- I think that that would be
24 enough for me, I mean, in terms of that. I mean, I know that
25 the -- I guess I'm a little -- and I'm just kind of talking

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1 this through with you guys. I mean, deliveries occurring
2 around 6:00 a.m. -- I guess it just says deliveries
3 occurring around 6:00 a.m. It's very hard to kind of specify
4 when those things might happen.

5 I would then hope that the applicant will do their
6 best to make sure that whatever they can do to not affect the
7 immediate neighbors they will go ahead and do. So I don't
8 have -- I don't really agree with putting together any
9 specific time for the deliveries because I would think that
10 they would go ahead and try to, again, keep them as early as
11 possible so they stay out of the neighbors' way.

12 Because at the end of the day, what I think will
13 hopefully happen is that this -- if we -- well, I'm voting
14 in favor, so we have the votes here now. So if this were to
15 happen, that they would go ahead and do their best to make
16 sure that the community is happy and satisfied. And then if
17 everything goes well, then I don't see that this will be back
18 before us again, right?

19 My concern, again, is -- oh, and again, as far as
20 the -- and this is what the whole -- the next thing that kind
21 of came up during the testimony in terms of the self-
22 certification for the corner store. That's again something
23 that it's self-certified. And that's really within our
24 purview right now. But it would be something that would be
25 at the level with the zoning administrator.

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1 So unless anybody has anything else to add, I'm
2 going to make a motion with those conditions. Okay. All
3 right. I'm going to make a motion to approve Application No.
4 20135 as captioned and read by the Secretary, including the
5 conditions that the hours of operations shall be from 7:00
6 a.m. to 3:00 p.m., there will be weekly pest control, there
7 will be no outside seating, no Uber Eats or Caviar delivery,
8 and then no outdoor music and ask for a second.

9 VICE CHAIRPERSON HART: Just out of curiosity, do
10 we have to specify that it's those two delivery services or
11 just --

12 CHAIRPERSON HILL: I can say no delivery services.
13 I mean, I don't know how and I guess --

14 VICE CHAIRPERSON HART: I just don't -- because
15 these things kind of come and go.

16 CHAIRPERSON HILL: And to be quite honest, yeah,
17 I mean, I don't even know what I feel about that. I mean,
18 and now that you're bringing this up again. I mean, we don't
19 have the people in front of us now. And so, I mean, we can't
20 call people back up.

21 I mean, I don't know -- what is it? And now that
22 you -- I know OAG is about to say something. But now that
23 I'm -- because now I'm confused, right? So delivery service
24 or deliveries, like, I don't even understand what that means,
25 right? Like, I mean, so delivery service is, like, when the

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1 cars come. I mean, I know what Uber is, but --

2 MS. CAIN: I think we could put in language to the
3 effect of no delivery services, delivery apps, and then use
4 Uber Eats and Caviar as examples of that, but not exclusive.

5 CHAIRPERSON HILL: Okay, okay, okay. All of
6 sudden, I felt old. I was, like -- right? So all right.
7 You must feel really old. So all right. That was right
8 under the bus. All right. So, okay. Once again, I'm going
9 to do this.

10 So I make a motion to approve Application 20135
11 as captioned and read by the Secretary, including the
12 conditions that the hours of operation will be from 7:00 a.m.
13 to 3:00 p.m., weekly pest control, no outside seating, no
14 delivery apps such as Uber Eats or Caviar, and no outdoor
15 music and ask for a second.

16 VICE CHAIRPERSON HART: Second.

17 CHAIRPERSON HILL: Motion made and seconded. All
18 those in favor, say aye.

19 (Chorus of aye.)

20 CHAIRPERSON HILL: All those opposed?

21 (No response.)

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as 3 to 0
24 to 2. This is on the motion of Chairman Hill to approve the
25 application for the relief requested along with the

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1 conditions as cited in his motion. Seconded the motion is
2 Vice Chair Hart, and also in support, the Zoning Commissioner
3 Peter Shapiro. No other members participated.

4 CHAIRPERSON HILL: Okay, great. Mr. Shapiro,
5 thanks so much for coming in. We're going to switch out
6 Commissioners. We're going to take another quick five-minute
7 break. And then we're going to get to our second case.
8 Thank you.

9 If anybody has any questions, they can ask the
10 Secretary at the break. Thank you.

11 (Whereupon, the above-entitled matter went off the
12 record at 12:39 p.m. and resumed at 12:53 p.m.)

13 CHAIRPERSON HILL: All right. Mr. Moy, we are
14 back. But I think we're unfortunately just going to have to
15 do a little bit of a tweak because we're going to lose some
16 of our interpreters. So if you could go ahead and call the
17 case that -- did we lose our interpreters? No. Okay. So
18 we can go ahead and call the case where there is an
19 interpreter, and then we'll go along and go back into the
20 order that we had. Okay?

21 MR. MOY: Thank you, Mr. Chairman. The time is
22 about 12:53.

23 And as the Chairman has just said, before the
24 Board is Case Application No. 20117 of Naomi Glassman and
25 Kopano Majara, I believe. And this is captioned and

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1 advertised for a special exception under Subtitle D, Section
2 5201 from the pervious surface requirements, Subtitle D,
3 Section 308.3, alley centerline setback requirements,
4 Subtitle D, Section 5004.1 and pursuant to 11 DCMR Subtitle
5 X, Chapter 10 for an area variance from the lot occupancy
6 requirements, Subtitle D, Section 304.1 -- I don't know if
7 I'm reading too fast -- but to construct an accessory garage
8 structure with a roof deck in the R-3 Zone at premises 4614
9 4th Street, Northwest, Square 3249, Lot 111.

10 And Mr. Chairman, this is -- the preliminary
11 matter is a request for a postponement.

12 CHAIRPERSON HILL: Okay. Could the parties please
13 come to the table. Hello. Good afternoon. Actually, so
14 wait a minute. Hold on. So this was interesting the last
15 time. So go ahead and have -- the interpreter there can also
16 speak if there's any needs or anything that might be what the
17 applicant might want to say. So okay, great. So could you
18 please introduce yourself for the record?

19 MR. GALLAGHER: Yes. I'm Michael Gallagher. I'm
20 an architect for Cipriano, and these are the clients that are
21 on the docket, live on that street, 4624 -- on 4th Street in
22 northeast. And so that's the property that I've been working
23 with for over a year now with the zoning administrators in
24 the Office of Planning.

25 And the last time that I was here, which is after

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1 we talked, I went back to the zoning office right here across
2 the hall and they gave me some additional information that
3 I didn't have before which explains exactly why those numbers
4 didn't work out correctly, which is why I'm asking for the
5 postponement.

6 As of last month, I had discussed with Maxine
7 Robert-Brown from the Office of Planning, and they warned me
8 that they will be out on vacation. And the owner, I
9 explained. We worked everything out with both parties. And
10 they were able to take a few of those requirements off the
11 docket.

12 However, once I met with the owner and they had
13 left on vacation, this is when -- and then Maxine
14 subsequently also went on vacation and I'm assuming she is
15 still on vacation at this time. Okay, yeah. So I never had
16 a chance to actually talk with her after that point. So is
17 there some way we can go ahead without her, or not? Or would
18 it be best to just postpone?

19 CHAIRPERSON HILL: That's okay. I think we'll go
20 ahead and postpone. I have a couple of questions. Did the
21 ANC -- what happened at the ANC?

22 MR. GALLAGHER: Oh, they approved it. They liked
23 it -- they want to see that happen. Can I explain a little
24 bit more as to why that is?

25 CHAIRPERSON HILL: No, wait one second because I

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1 don't want to go ahead and get into all this if we're going
2 to postpone. I just -- I didn't see anything from the -- I'm
3 looking at the record, that whether we got something in the
4 record from the ANC. Do you know if you did get that?

5 MR. GALLAGHER: Yes, yes. I got a letter from
6 them, and I believe I forwarded it along to you as well.

7 CHAIRPERSON HILL: Okay, great. Okay. What day
8 would work best for you guys in terms of the postponement?

9 MR. GALLAGHER: I guess that's really up to
10 Maxine, and I'll follow her lead.

11 CHAIRPERSON HILL: All right. Is there anybody
12 here from the Office of Planning that might be able to help
13 on that as to whether or not -- how much time we might be
14 able to -- I don't know where Ms. Brown-Roberts is. I don't
15 know when the applicant would have an opportunity to look for
16 Ms. Brown-Roberts. I don't know if anybody has had an
17 opportunity to look at this case or not. But I will turn to
18 whoever is walking up here right now to let me know.

19 MS. ELLIOT: Thank you, Mr. Chairman. I'm
20 Brandice Elliot, representing the Office of Planning. And
21 without having too many specifics about this case, we would
22 leave it up to the Board to decide when to put it on the
23 calendar. If there are revisions to what is in the record,
24 we would need some additional time to review those and submit
25 a supplemental report if that's necessary.

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1 MR. GALLAGHER: That's fine.

2 CHAIRPERSON HILL: Are there things that need to
3 be submitted into the record? When does Ms. Brown-Roberts
4 get back? You don't know? Okay.

5 MS. ELLIOT: I'm sorry.

6 CHAIRPERSON HILL: That's all right.

7 MR. GALLAGHER: She said potentially the next week
8 on the 21st.

9 MS. ELLIOT: She's -- I'm sorry.

10 CHAIRPERSON HILL: That's all right.

11 MS. ELLIOT: She's back next week. But again, if
12 there are no changes, we can make arrangements in advance for
13 someone to cover for her. So I wouldn't worry about the
14 timing as much for Maxine specifically to be present.

15 MR. GALLAGHER: Yes. I would prefer if someone
16 to not replace her because we've been working together with
17 her. There have been about 15 different people, have gone
18 through this. And I'd like to keep it as small as possible.

19 CHAIRPERSON HILL: That's fine. So Ms. Brown-
20 Roberts is going to get back next. Mr. Moy, then when can
21 we get this back before us?

22 MR. MOY: Mr. Chairman, the staff's preference
23 would be to reschedule this for February the 5th only because
24 the week prior to that which is January the 29th, we have an
25 appeal with six other cases.

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1 CHAIRPERSON HILL: Which date was that again, Mr.
2 Moy?

3 MR. MOY: The preference is for February the 5th
4 and it probably would also allow time for Ms. --

5 CHAIRPERSON HILL: Sure.

6 MR. MOY: -- Brown-Roberts to review the revised
7 drawings.

8 CHAIRPERSON HILL: Mr. Gallagher, does that work
9 for you?

10 MR. GALLAGHER: Oh, yes. That's fine.

11 CHAIRPERSON HILL: Okay. All right. Okay. Then
12 we'll see you on the 5th. Mr. Gallagher, I hope you enjoyed
13 the first three hours of your day.

14 MR. GALLAGHER: Yes, thank you very much.

15 CHAIRPERSON HILL: Okay. So Mr. Moy, I think that
16 brings us back up to still our second case which is, I think,
17 20163. Is that correct?

18 MR. MOY: That's correct, sir.

19 CHAIRPERSON HILL: And so I think we may take
20 lunch after that, you guys. So just to let you all know.
21 So yeah, thank you.

22 MR. MOY: All right. With that introduction,
23 thank you, Mr. Chairman. So if we can have parties to the
24 table to Application No. 20163 of 719 SIXTH ST LLC, captioned
25 and advertised for a special exception under Subtitle E,

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1 Section 205.5 and 5201 from the rear addition requirements,
2 Subtitle E, Section 205.4 to construct a three-story rear
3 addition to an existing attached principal dwelling unit, RF-
4 1 Zone. This is at 719 6th Street, Northeast, Square 859,
5 Lot 121.

6 CHAIRPERSON HILL: All right. Sorry, guys. If
7 you could please introduce yourselves for the record from my
8 right to left.

9 MR. KELTY: Good afternoon. My name is Joel
10 Kelty. I am ANC Commissioner for 6C05, and this project is
11 in that SMB. I'm also a licensed architect and active in
12 real estate development.

13 MR. ECKENWILER: Mark Eckenwiler, Commissioner
14 6C04. And I should note for the record that both
15 Commissioner Kelty and I are here on behalf of ANC 6C.

16 MR. SULLIVAN: Thank you. Marty Sullivan on
17 behalf of the applicant, and I'd like to mention that I've
18 got an IT issue.

19 CHAIRPERSON HILL: Okay.

20 MR. SULLIVAN: So if the eye in the sky here's
21 that, if they could come help me.

22 CHAIRPERSON HILL: If IT could come on out, that'd
23 be wonderful.

24 MR. BREWER: Sean Brewer, owner, 719 6th Street.

25 CHAIRPERSON HILL: Could you spell your last name

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1 for me, sir?

2 MR. BREWER: B-R-E-W-E-R. First, S-E --

3 CHAIRPERSON HILL: Brewer, Brewer?

4 MR. BREWER: Yes.

5 CHAIRPERSON HILL: Okay, great. Sorry, I didn't
6 hear you. Thank you. Let's wait for IT.

7 (Pause.)

8 MR. SULLIVAN: Got it. Thank you.

9 CHAIRPERSON HILL: Okay, okay. All right. Let's
10 see. So, okay. So I assume the ANC here also is a party,
11 correct?

12 MR. ECKENWILER: Yes, Mr. Chairman. This is
13 within ANC 6C. So we are automatically --

14 CHAIRPERSON HILL: No, no, no. I got you. I'm
15 saying you're here as a party. You want to participate
16 fully?

17 MR. ECKENWILER: Yes, Mr. Chair.

18 CHAIRPERSON HILL: Commissioner, welcome to the
19 new year. It's been a long morning already, right? So,
20 okay. Let's see.

21 So Mr. Sullivan, I know that there are -- the
22 issues that -- some of the things that, I guess -- gosh, I'm
23 going to try to hone us in a little bit as well, which is
24 that if you want to go ahead and present your presentation
25 for your client, and some of the things that we're kind of

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1 talking about is kind of how you got here already, because
2 we can see you're already there, right, and what's already
3 been built. I mean, there is -- and there was a lot of stuff
4 in the record from the ANC that actually might not -- well,
5 I know it's not necessarily within our purview.

6 Like, there are some things that are, like, in
7 terms -- and Commissioner, I mean, you can speak whatever you
8 want to speak and say whatever you want to say. But I mean,
9 again, as far as, like, good faith and in terms of some of
10 the other things -- it's okay. Just let me finish my one
11 comment here.

12 In terms of, like, some of the things that we read
13 that were in the record and clean hands and things like that,
14 I mean, I guess -- and I know you're very well versed in here
15 in terms of what we try to do which is let's stick with the
16 zoning regulations.

17 And so anyways, so I'm just trying to kind of say
18 overall that we're going to be, again, trying to focus in on
19 how they get here and whether or not they're meeting the
20 standards. And please, go ahead.

21 MR. ECKENWILER: Thank you, Mr. Chair. Not to get
22 at all into the weeds.

23 CHAIRPERSON HILL: It's all right.

24 MR. ECKENWILER: I just wanted to flag for the
25 benefit of the Board that there was a mistake within Office

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1 of Zoning when our letter was uploaded to IZIS. Exhibit 58A
2 was originally an erroneous duplicate of Exhibit 58. That's
3 our letter. That has been fixed as of this morning.

4 So if you haven't looked at it in the last hour
5 or so, there is a new Exhibit 58A. That's now been
6 corrected, what we submitted last week. And so that's now
7 available to you online. So if you're --

8 CHAIRPERSON HILL: Great. No, that's great. So
9 the 58A that is in there now is the new --

10 MR. ECKENWILER: It's what we submitted last week.
11 But because of some sort of oversight, it was not uploaded
12 properly to IZIS. And that has now been corrected.

13 VICE CHAIRPERSON HART: It's not the letter. It's
14 the supporting documentation, correct?

15 MR. ECKENWILER: Yes. So it's attached -- 58A is
16 Attachment A, which is not a duplicate of Exhibit 58, which
17 is what happened originally.

18 VICE CHAIRPERSON HART: Thank you.

19 CHAIRPERSON HILL: Okay, great. That's helpful.
20 Thank you. So Mr. Sullivan, I'm just going to kick 15
21 minutes on the clock so we know where we are. And you can
22 begin whenever you like.

23 MR. SULLIVAN: Thank you, Mr. Chair. In answer
24 to your question about the process, I think we'll start with
25 Mr. Brewer, who is the principal with the ownership entity

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1 and who will speak briefly about the process.

2 This obviously is a de novo request based on just
3 the request to have what is there. So he won't speak long,
4 but he'll be available to answer any questions depending on
5 how deeply the Board wants to go into that. So Mr. Sean
6 Brewer. Thanks.

7 MR. BREWER: How you doing today? All right. So

8 --

9 CHAIRPERSON HILL: How am I doing today? You were
10 here this morning, right?

11 MR. BREWER: Yeah.

12 CHAIRPERSON HILL: Did you get sworn in at the
13 beginning?

14 MR. BREWER: Yes.

15 CHAIRPERSON HILL: How do you think we're doing
16 today? Okay. All right. Please go ahead, Mr. Brewer.

17 MR. BREWER: So we got to this process. We bought
18 the property in July of 2018, hired an architect, gave him
19 money to get our plans and permit. He gave me a permit. We
20 started construction.

21 We built up, got the wall check late. When they
22 came back, they said that one side was 9 feet. The other
23 side was 13 feet. And I was kind of not understanding how
24 one side could be 9 feet and the other one could be 13.

25 The building to the right had a recess. And the

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1 building to the left, we were flush with. So I was trying
2 to figure out how we got 13. And once I found out, they
3 flagged us for -- when I did the wall check, they flagged us
4 for -- they gave me a stop work for wall check not being
5 right. And that's when I had to hire Marty to come and get
6 relief.

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: Okay. So short overview here.
9 Currently, a three-story building. That lower level is a
10 full story under the definition of a story. So it is three
11 stories, single family dwelling.

12 The construction is completed, as you saw, and we
13 are 13 feet past the rear wall of the adjoining neighbor on
14 one side. And so we're requesting relief from the 10 foot
15 rule under E205.4.

16 The benefit of having the structure built, I think
17 for the Board and actually for the neighbors, is the fact
18 that you know exactly what is going to be there and you know
19 how to evaluate it better. And in this case, we do have the
20 written support of both neighbors on the right and the left.

21 Here's a plat showing the 13 feet on one side.
22 It's -- the addition on the back, it goes 9 feet back from
23 the main wall of the building to the south. But you can see
24 there's a constructed porch there. That's why I use the two
25 and a half feet. So -- but that's not the side that we're

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1 asking for relief from anyway.

2 Here's a side elevation showing the addition in
3 the back. It's three stories. It's 9 feet in total. So it
4 was already 4 feet past the building to the right as you look
5 at the plat -- or to the north as you look at the plat.

6 Here's a picture of the front elevation and the
7 rear elevation, floor plans. So I'll go through the
8 requirements quickly. This is in harmony with the general
9 purpose and intent of the zoning regulations and won't tend
10 to affect adversely the use of neighboring property.

11 We're relying principally on the fact that we're
12 only going three feet past the ten foot rule and also that
13 we have the support of both neighbors in that regard and the
14 shadow studies that I'll go into.

15 The height of the building wasn't increased, and
16 the density isn't being increased. It continues to be a
17 single family dwelling. I've gone over this, three feet past
18 the ten foot rule, two and a half feet past the building on
19 the left. And there's very little difference and the impacts
20 are light between the matter of right ten foot addition and
21 the proposed, now existing, 13 foot addition.

22 Privacy as well is not impacted. There's no
23 windows on either side of the building. So privacy does not
24 change. The addition accessory structure is viewed from the
25 street, alley, or other public way, doesn't substantially

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1 visually intrude.

2 There was no addition made to the top of the
3 building, so there's no change at all from the front and from
4 the back. It is a relatively minor addition at 13 feet. So
5 the Office of Planning is in support, and both adjacent
6 neighbors are in support. And we believe we meet the
7 requirements of E205.4.

8 Here's the shadow study showing a line that shows
9 the difference between the matter of right and the additional
10 shade as a result of the three additional feet. And you can
11 tell from going through these that that is minimal additional
12 shade. This would be the time when there was the greatest
13 impact from that. Well, no, it's just from that dotted line
14 actually on the bottom one.

15 VICE CHAIRPERSON HART: Can you explain that --
16 actually, going back one. I'm not exactly sure I understand
17 what this is telling me.

18 MR. SULLIVAN: So go to the first one. The --

19 VICE CHAIRPERSON HART: And let me be actually a
20 little clearer. I don't understand in that particular image
21 what the -- if you go back to where you were with the -- I
22 don't know when this was. Keep on going. Next one. This
23 one. Okay. So this area here that's the lighter gray shade,
24 why is that larger than the matter of right shade?

25 MR. SULLIVAN: That's --

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1 VICE CHAIRPERSON HART: Why is that that much
2 larger? I could understand a little bit, but --

3 MR. SULLIVAN: Yeah.

4 VICE CHAIRPERSON HART: -- I don't understand
5 that.

6 MR. SULLIVAN: I think they're denoting the -- let
7 me look at the next one after that.

8 VICE CHAIRPERSON HART: And so -- I mean, and this
9 is also a case where I'm not exactly sure what it means by
10 matter of right then.

11 MR. SULLIVAN: Matter of right is --

12 VICE CHAIRPERSON HART: No, no. I know what the
13 term means. I'm trying to understand what it means in this
14 context, so --

15 MR. SULLIVAN: Okay. So I think that might --
16 maybe there's an error on that one.

17 VICE CHAIRPERSON HART: So --

18 MR. SULLIVAN: But that's why I want to start at
19 the beginning.

20 VICE CHAIRPERSON HART: -- I mean, there are
21 several of them that are like that, that are very --

22 MR. SULLIVAN: Yeah.

23 VICE CHAIRPERSON HART: -- unclear. So I couldn't
24 quite understand what the point was for those particular
25 images, if it is -- if that's the matter of right. And then

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1 there's another one that looks like it's much more -- it
2 looks like it's more significant. I don't know why it's that
3 much of a difference between them. And I just was curious.

4 I can understand this one because I can kind of
5 get my mind around that. But it seems like there's something
6 that's not calculated right in them. And I think it would
7 be helpful for us to actually have that to have a better
8 understanding of what the impacts might be.

9 MR. SULLIVAN: Okay. Yeah, I'm certain that's not
10 accurate. I notice that too as I see that based on the
11 progression here, so --

12 VICE CHAIRPERSON HART: Yeah. Again, I mean, just
13 looking at where we were with -- I'm not saying that it's
14 right or not. But it's the kind of first look at them. And
15 I'm, like, I don't understand what that is -- why that is
16 such a discrepancy between the two shadows that are there.

17 MR. SULLIVAN: Right, understood. And I'll go
18 through these from the beginning, but I may not be able to
19 explain that. And I'll ask if Mr. Brewer can explain it.
20 And if not, then maybe we would need to provide an
21 explanation for that. I understand that.

22 Pointing out, of course, as you would expect at
23 three feet -- additional three feet would not be of undo
24 impact in that situation. And it shouldn't show up like
25 that.

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1 So on the first three slides, you see that it's --
2 the difference there is very minor. And again, we have the
3 support of this person as well. So here's the slide, and --

4 VICE CHAIRPERSON HART: What it almost looks like
5 is that where they say, matter of right shade, this little
6 word right here, it looks like that should keep on going.
7 But I don't know exactly if I'm reading that correctly. It
8 should keep on going this way --

9 MR. SULLIVAN: Yes.

10 VICE CHAIRPERSON HART: -- so that this whole
11 thing should be shaded in. But I don't know if that's -- I'm
12 not trying to add something to it. I'm trying to understand
13 it.

14 MR. SULLIVAN: I think you're correct. It would
15 go all the way to the end. And then the additional shade
16 would be the width of that line as you see.

17 VICE CHAIRPERSON HART: And we don't need to dwell
18 on it. I just wanted to just get some clarity around that
19 because it's -- they're vastly different and I don't know why
20 they're vastly different.

21 Mr. Sullivan, the other question I had was with
22 regard to just understanding the -- what I -- I don't know
23 if it's a discrepancy or not. But in the plans and -- well,
24 actually, in the image that we saw, the photograph that we
25 saw was the rear of the building and it showed the doors and

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1 all that stuff.

2 And is there a stair that's coming off of this
3 second -- first floor? What do you call that, the first
4 floor? Okay. So there's a stair that comes off of that.
5 That's correct?

6 MR. BREWER: Yes, the first floor.

7 VICE CHAIRPERSON HART: So is that included?
8 What's included in the lot coverage? Because you're really
9 close to the lot coverage, and I don't understand what the --
10 the section shows a stairwell on the back of here. But
11 you're really close to the lot coverage.

12 I don't know if that deck right -- actually,
13 there, that deck that's -- sorry. That deck that's right
14 here or the top of the stairs, if that's included in the lot
15 coverage.

16 And I only bring it up only because it is
17 something that is raised that is included as -- I just need
18 to understand if there's a discrepancy that I'm trying to
19 kind of fit within my -- to understand better that you can
20 talk about.

21 MR. SULLIVAN: And so there is -- there was a --
22 so if you look at rear elevation and front elevation, the
23 rear elevation in previous plans and I think what we may have
24 filed originally mirrored what you see on the front
25 elevation. There was more of a landing.

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1 And the zoning flagged that as not being limited
2 to just the stairs and landing to the main level. And so a
3 portion of it did count and take us over. So we altered that
4 to be what you see in front of you now for the rear
5 elevation. So it just goes out and down. So none of that
6 counts in lot occupancy.

7 VICE CHAIRPERSON HART: Wait a minute. So, say
8 that again.

9 MR. SULLIVAN: The rear stairs --

10 VICE CHAIRPERSON HART: Yeah.

11 MR. SULLIVAN: -- because it goes from the ground
12 to the main level --

13 VICE CHAIRPERSON HART: Yeah.

14 MR. SULLIVAN: -- is excluded from lot occupancy
15 calculation.

16 VICE CHAIRPERSON HART: Because of the size of the
17 deck? Is that what you're telling me?

18 MR. SULLIVAN: Well, it's a specific exclusion
19 because it's stairs that go from the ground to the main
20 level.

21 VICE CHAIRPERSON HART: Yeah, but I'm just saying
22 --

23 MR. SULLIVAN: And you lose the exclusion when
24 your landing begins to become a deck.

25 VICE CHAIRPERSON HART: And so you're -- it's the

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1 definition of that being a landing as opposed to a deck?

2 MR. SULLIVAN: That's correct.

3 VICE CHAIRPERSON HART: Okay. So it is not
4 included in lot occupancy?

5 MR. SULLIVAN: It is not. It was previously. We
6 shrunk it so that it's not.

7 CHAIRPERSON HILL: And so just to be clear for us,
8 because this was what we were looking at earlier, those --
9 they're just stairs that go directly to that door?

10 MR. SULLIVAN: They are stairs, and then you have
11 a necessary landing. And there's a well known case on this.

12 CHAIRPERSON HILL: How big is the necessary
13 landing?

14 MR. SULLIVAN: So you can tell from the rear
15 elevation. It's just enough to get from the stairs --

16 CHAIRPERSON HILL: I mean, I can't tell --

17 MR. SULLIVAN: -- to the --

18 CHAIRPERSON HILL: -- from that rear elevation.

19 MR. SULLIVAN: So let me show you on the plat.

20 CHAIRPERSON HILL: It just looks like stairs.

21 MR. SULLIVAN: I can show you. Plans here.

22 CHAIRPERSON HILL: Right, the three feet. The
23 three feet?

24 MR. SULLIVAN: Yes.

25 CHAIRPERSON HILL: Okay.

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1 MR. SULLIVAN: Self-certified, by the way.

2 VICE CHAIRPERSON HART: I understand that. What
3 I was --

4 MR. SULLIVAN: Yeah.

5 VICE CHAIRPERSON HART: -- trying to understand
6 was there was -- it looked like -- and I don't know if I saw
7 it in an earlier drawing or something. But there looked like
8 there was a discrepancy between what was shown on the section
9 and then what was shown on the -- in the -- in one of the
10 plans. And I can't recall which plan it was now that I was
11 looking at.

12 But I was -- there were a couple of things that
13 I wanted to talk to you about. One of them was that. The
14 other one was the shadow study. And I think you're
15 understanding that that needs to be updated so that it is
16 accurately showing what's actually shade and not.

17 CHAIRPERSON HILL: Okay. Is that kind of it, Mr.
18 Sullivan?

19 MR. SULLIVAN: Yes, that's it.

20 CHAIRPERSON HILL: Okay, yeah. Because we're just
21 going to work through this, I guess. So Mr. Hart did start
22 to ask some of his questions. Does the Board have any other
23 questions of the applicant?

24 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
25 just had -- Mr. Sullivan, you said earlier that the mistake

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1 was caused by the architect. Was that him not being familiar
2 with the regs? Or was that because -- the only dimension I
3 see for this building is on the interior. There's no
4 dimensions on the exterior to measure it from where you are
5 to a relationship to any building on either side. It's just
6 a point of clarification from why you say it's the
7 architect's fault.

8 MR. BREWER: Yeah, I don't know if he -- I mean,
9 I just took what he gave me as far as the plans, the permit,
10 everything that was approved. And I went with what he gave
11 me. So I don't know where he messed up or went wrong at.

12 COMMISSIONER TURNBULL: So it was not initially
13 the mistake of DCRA because they have nothing to gauge where
14 it's taken from. They simply saw a plan saying nine foot,
15 whatever it is, going to the back wall. But no -- there's
16 no reference to where it is in relationship to either of the
17 side dwellings.

18 MR. SULLIVAN: Yeah, I don't think -- we're not
19 asserting or suggesting that DCRA had any --

20 COMMISSIONER TURNBULL: Okay.

21 MR. SULLIVAN: -- role in getting us to this
22 point, yeah.

23 COMMISSIONER TURNBULL: Okay.

24 CHAIRPERSON HILL: Okay. Anyone else?

25 (No response.)

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1 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler?

2 MR. ECKENWILER: We just have a quick question for
3 Mr. Brewer.

4 CHAIRPERSON HILL: Sure.

5 MR. ECKENWILER: Mr. Brewer, you said the
6 architect was he. What is the name of the architect you're
7 referring to?

8 MR. BREWER: Mr. Yaw Agipong -- Oteng-Agipong.

9 MR. ECKENWILER: Could you spell that?

10 MR. BREWER: Y-A-W O-T-E-N-G A-G-I-P-O-N-G.

11 CHAIRPERSON HILL: Can I ask you a question, Mr.
12 Eckenwiler? I mean, the only reason why -- I just --

13 MR. ECKENWILER: We'll come to this in our
14 presentation --

15 CHAIRPERSON HILL: Okay. That's okay.

16 MR. ECKENWILER: -- Mr. Chair. I promise.

17 CHAIRPERSON HILL: No, no, no. That's okay. I'm
18 just -- like, I don't know.

19 (Simultaneous speaking.)

20 CHAIRPERSON HILL: The person is not here. Yeah,
21 I'm just trying to figure -- okay. Okay, great. I'm sorry.
22 Any other questions for them?

23 MR. ECKENWILER: No, Mr. Chair.

24 CHAIRPERSON HILL: Okay. So Commissioner, you can
25 go ahead and give us your testimony.

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1 MR. ECKENWILER: Thank you, Mr. Chairman. As
2 indicated in our letter, which is Exhibit 58 in the record,
3 ANC 6C voted unanimously to oppose this application and to
4 offer as the testimony to be given by me and Commissioner
5 Kelty.

6 The applicant here -- again, just referring to
7 this, the applicant is asking for after-the-fact approval for
8 a three-story addition already constructed. It extends 13.32
9 feet past the neighbor to the north. That's what we see to
10 the right here in these photographs.

11 ANC 6C is in opposition for two different reasons.
12 The first is that we believe this fails the test set forth
13 in Section 5201.3, specifically the undo adverse impact to
14 the air and light of that privacy to the north, No. 721.

15 And second, and you talked about this a little bit
16 before, you can look at this a couple different ways. One,
17 you can look at this as the applicant coming to this Board
18 with unclean hands.

19 Or to frame it another way, the information that
20 is before the Board is not consistent. Some of it is plainly
21 inaccurate. I'm trying to choose my words carefully here.
22 And the Board, we believe, should not grant relief on this
23 questionable record because there are so many
24 inconsistencies, things that are simply not only unexplained
25 but, in our view, unexplainable.

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1 So let me begin because I know this is where your
2 interests lie most greatly, speaking to the zoning
3 regulations themselves. So the special exception criteria
4 from the ten foot setback rule under 5201.3, I've already
5 mentioned the substantial undo adverse impact to air and
6 light, the party to the north.

7 I agree. There's no privacy impact here. As we
8 can see on the photo to the right, there are no windows. So
9 nobody is going to be looking down in there. But the truth
10 is this is a 13.32 foot addition, and we fundamentally
11 disagree.

12 I respect Mr. Sullivan. We see him on a fairly
13 regular basis. But his view that the only thing that the
14 Board needs to look at is the 3.32 feet past matter of right
15 we just think is wrong.

16 Section 5201.3 uses the word, addition. And so
17 what the Board should be doing is what the Board would do if
18 this applicant came to you beforehand, before a single brick
19 or stick was constructed. What is the existing condition and
20 what's the resulting proposed condition?

21 And when we look at that 13.32 foot extension, the
22 delta between those two things is obviously significant. And
23 therefore, the shadow studies that you have before you in
24 addition to the anomalies that Vice Chair Hart just flagged,
25 it doesn't really reflect the comparison that the Board --

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1 we believe the Board should be making. And it certainly is
2 not consistent with what ANC 6C's past practices or how we
3 read the regulation.

4 So we believe that there is, in fact, an undo
5 adverse impact here. And for that reason alone, the Board
6 should deny this application.

7 But second, and this really goes to the
8 application overall, the Board really should look at all the
9 inconsistencies. I mean, let's just start with what the
10 depth of the addition is.

11 Mr. Sullivan has said repeatedly and the
12 application is very consistent saying this is a 13 foot
13 addition. The wall check that was done in April of 2019 says
14 it's a 13.32 foot addition. And I'll grant you four inches
15 isn't all that big of difference.

16 But why not actually just give the correct number?
17 And the more that we begin to look at this case -- so
18 starting with this sort of professed unawareness of the
19 existing condition and whether or not what they were
20 proposing was actually going to be beyond the neighbor's rear
21 wall, how far that extent was going to go.

22 As described, starting on page 3 of our letter,
23 the zoning reviewer made this clear to the applicant's agent
24 multiple times. But more importantly, what the applicant
25 submitted, so if we start with Exhibit 58A.

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1 So you can see the zoning reviewer here said,
2 look, you haven't given me information that's going to comply
3 with a ten foot setback rule. Gets a response that says --
4 and this is on the second page of Attachment A -- the rear
5 wall does not project. Go see the DOEE sheet, which you have
6 attached there.

7 And if you look at that sheet over in the far
8 right-hand side, you can see that what's depicted there is
9 two rear facades in line with each other. So 721 there on
10 the left is directly in line with the rear facade of the
11 applicant's property.

12 Moreover, look over to the far right and you can
13 see that 717 is depicted as actually extending further than
14 the applicant's property. That last bit was never true. If
15 you go back -- if you look at the photographs that we have
16 in the record of the rear of all these properties, 717 to the
17 south, it's not deeper. It's not level with this new
18 addition.

19 I mean, this is off by nine feet. And the other
20 depiction here to the left that these two facades were
21 somehow aligned. That's one representation. These
22 representations kept shifting.

23 And so, in fact, if we now look to Exhibit B, a
24 zoning reviewer in September of 2018 comes back and says, no,
25 you really still haven't given me appropriate information.

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1 Gets another reassurance pointing to basically the same
2 document.

3 Tab C, the zoning reviewer says, no, the ten foot
4 rule is real. We need to have an in-person meeting about
5 this because I'm not satisfied. And what they get is a plat.
6 This, again, is showing here -- so this the last sheet on Tab
7 C that shows to the north perfectly aligned rear facades.

8 And the lot to the south in its existing condition
9 as compared to the former condition -- actually, the then
10 existing condition of 719 6th Street showing that the
11 neighbor to the south extended nine feet further.

12 The explanation that's given for all this alleged
13 confusion is that somehow somebody, this alleged architect --
14 and I do want to point out Mr. Oteng-Agipong is not an
15 architect. He does not hold an architectural license. He's
16 never held an architectural license in D.C. I've looked it
17 up.

18 In fact, Property Quest showed something entirely
19 different. And if you look on our letter on page -- bear
20 with me one moment -- on page 5, you can see Property Quest
21 was off. But it didn't show those rear facades of 719 and
22 to the north 721 as in alignment. So there is no way that
23 this can account for the inaccurate depiction that was
24 presented to DCRA.

25 So it does not -- it is not credible that someone

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1 relied upon Property Quest when what they drew really wasn't
2 what was on property quest. And just to be really super
3 clear about this, that person had available to him what was
4 on Property Quest because if you look at the last sheet of
5 Exhibit A, there's another sketch there kind of at the top
6 center. And that actually does depict what was in Property
7 Quest.

8 So they knew what was is Property Quest. But all
9 these other drawings including this plat that was submitted
10 to DCRA, it's not consistent. It's not a consistent story.
11 And so that explanation, that excuse simply does not hold
12 water.

13 But it gets worse because after obtaining the
14 permit, the applicant constructed this rear addition. They
15 went more than one foot above ground before getting their
16 wall check which you're not allowed to do.

17 So even if you get a permit, that doesn't mean you
18 can just build your building, right? You have to build the
19 footings under the building code, and then you stop. A
20 licensed surveyor comes out and looks at how much you built.

21 That's why it's called a wall check to see where
22 the walls are and determined -- this is Exhibit D. This is
23 a license surveyor determined that what was constructed was
24 13.32 feet past the building to the north. So we know from
25 this -- because this surveyor actually stamped it. It's a

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1 licensed professional and has a duty to be truthful that the
2 addition is 13.32 feet.

3 We know that this was -- it's not just that it was
4 constructed in violation of the ten foot rule. It was
5 constructed before the wall check had even been completed.
6 Or maybe it was constructed after the wall check was done.
7 I don't know really, but that would be even worse. So best
8 case scenario is they built the building that they didn't
9 have wall check approval for.

10 And then because I know that you're not really
11 interested in every jot and tittle of all the history here.
12 All of this was carried forward in the application to you as
13 members of this Board, making these representations about,
14 well, it was just a miscalculation. It was an honest mistake
15 based on Property Quest. And it's only a 13 foot addition.

16 That's not so. It is simply untrue. And for
17 those reasons as well, the fact that the applicant has shaded
18 the actual extent of this addition. If you look at the
19 drawings, there's also this suggestion about from what was
20 there before on this property. Is it nine feet further deep?
21 Is it nine and a half feet further deep? There's conflicting
22 information in the record on that.

23 If you look at, for instance, this drawing that's
24 here up on the screen right now. That says nine feet. If
25 we look at the stamped architectural drawings which by the

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1 way were stamped by an actual architect, Gayll Worsley who
2 is a woman who's not Mr. Oteng-Agipong. So I don't even know
3 who it was who allegedly made this mistake in reliance on
4 Property Quest.

5 So that says nine feet, another set of drawings.
6 And you can see that is the applicant's own submitted plans
7 --

8 CHAIRPERSON HILL: Okay.

9 MR. ECKENWILER: -- 52(b) Sheet A0003. I'm almost
10 done, Mr. Chairman.

11 CHAIRPERSON HILL: Okay.

12 MR. ECKENWILER: And then most importantly, so you
13 got Exhibit 52B. They submitted into the record these DCRA
14 stamped plans. But notice they didn't actually give you that
15 other stuff that we dug up, right?

16 They selectively including some things from their
17 permit application. They didn't give you some other things
18 that would have undermined this narrative that's being
19 presented to the Board. And there's just so much
20 inconsistency here, not just within the materials themselves
21 but with what we know from other things like the surveyor
22 approved wall check.

23 ANC 6C simply cannot be a party to this kind of,
24 again, I'll say inaccurate application. And so in addition
25 to our reasons under Section 5201.3, we also oppose this for

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1 the clean hands/candor/accuracy and completion of the
2 application grounds.

3 And that's all I have. I don't know if my
4 colleague has anything to add.

5 MR. KELTY: I'll just second Commissioner
6 Eckenwiler's comments, and I'll note two things. There was
7 also discussion that we had about whether the relief should
8 be judged based on the original condition versus as built.
9 I think he spoke about that, but I think I want to reinforce
10 that.

11 The other thing is that when the law talks about
12 not being in harmony with the regulations or being in harmony
13 with the regulations, I don't see how you can be in harmony
14 with the regulations when you're asking for permission after
15 the fact and you're undermining the purpose and effectiveness
16 of the zoning regulation itself.

17 So that's all I have to add.

18 CHAIRPERSON HILL: Okay. All right. Does the
19 Board have any questions for the Commissioners?

20 VICE CHAIRPERSON HART: Just one question for Mr.
21 Eckenwiler. Good to see you this year. So you were talking
22 about the 5201, and you noted something that I just want to
23 get a little clarity on.

24 You said that what the Board should be looking at
25 is the existing condition before this addition was put on and

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1 the proposed addition in terms of what the impact might be.
2 I know we have also sought information on what the matter of
3 right is because they could just do that as under zoning
4 itself.

5 And so why not just look at the matter of right
6 versus what is proposed under -- what they are -- well, I'll
7 say proposed but what's actually been built. But for these
8 purposes, we are looking at it as a proposed addition.

9 MR. ECKENWILER: So Mr. Chair, I think you've --
10 Vice Chair, pardon me. You put your finger on this. We
11 actually think that there's an undo adverse impact even if
12 they just went out to the ten feet. But the zoning regs
13 allow -- would allow them to do that. It's a matter of
14 right. It's an even more exaggerated undo adverse impact if
15 they go to 13.32 as has now been constructed. So that's the
16 way I would characterize our perspective on this.

17 VICE CHAIRPERSON HART: Thank you.

18 CHAIRPERSON HILL: Okay. Anybody else?

19 (No response.)

20 CHAIRPERSON HILL: Okay. I got a couple of
21 comments, questions, whatever. Just to let everybody know,
22 we're going to take lunch after this. Okay? So it's 1:45.
23 Don't know how much longer this is going to go, and lunch
24 will take at least 45 minutes. So you can do with that what
25 you want.

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1 All right. Let's see. Does the applicant have
2 any questions for the ANC?

3 MR. SULLIVAN: No, thank you.

4 CHAIRPERSON HILL: Okay. So Commissioner, I mean,
5 honestly, I really do respect you guys. And I really do
6 respect you coming down here. I respect you taking all the
7 time that you do. I see you out on the street. I say hello.

8 I'm saying all this because, like, what I'm trying
9 to get to the chase of, like -- or the chase of, it's been
10 built, right? Nobody likes the fact that it's been built and
11 people are coming in after the fact to analyze what's going
12 on, right?

13 A lot of the things that you mentioned in terms
14 of the discrepancies with the plans and everything that's
15 going on, I'm not necessarily -- I'm not disagreeing with it.
16 I'm just trying to clarify with -- I'm just kind of going to
17 talk this through because it's already been a five-hour day
18 and it looks like it's going to be another six hours, right?

19 So the -- right. So we went ahead and I don't
20 know what my colleagues might need in terms of continued
21 drawings. I mean, from my standpoint, I know -- I think
22 you've been here before again with me.

23 I'm always interested in what the matter of right
24 thing was versus what the additional affects are, right?
25 Because they can do the matter of right by matter of right,

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1 as you just mentioned. And I do agree with you that the way
2 the language is, is the addition is the addition. So you
3 should take a look at the whole addition, right?

4 The conflict that I'm having right now with this
5 a little bit is that the two adjoining neighbors don't have
6 any issues with it. Okay? You can respond. Just give me
7 a second. That the two adjoining neighbors don't have any
8 issues with it, I suppose. And that it is, again, a 3.4 inch
9 whatever, 3.2 additional feet from -- that I would be looking
10 if this were before us and not built, right?

11 I, however, again -- and actually, the worst was
12 Chairman Hood. He hates it the most. He always is speaking
13 about, like, coming here after the fact, okay, trying to get
14 approval.

15 But what we look at -- what I'm going to look at
16 is, again, how we would look at this if it wasn't there. The
17 fact that it actually is there, you can actually really see
18 it, right?

19 And so I guess you could make any comments because
20 you seem like you're going to have a comment about something
21 I was going to say. But the question I do have for you is
22 that what you guys would like to see happen is it be torn
23 down and brought back to the ten feet. Or I mean, I'm just
24 trying to understand what it is that the ANC would like to
25 see happen.

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1 MR. ECKENWILER: If the applicant is unable to
2 meet the standards for a special exception under 5201, then
3 yes, those are the consequences. I'm not going to spend any
4 more time talking about the history about this is kind of a
5 self-inflicted condition.

6 CHAIRPERSON HILL: But I understand. No, I'm just
7 cutting you off for just one second. You're saying that
8 they're not meeting the conditions. So therefore, you think
9 that it should be torn down.

10 MR. ECKENWILER: Sure.

11 CHAIRPERSON HILL: Okay. There you go. That's
12 all right. I mean, I'm just saying you're in denial --
13 you're voting in denial. So you all think they don't make
14 the -- it's okay. I'm just asking the question.

15 MR. ECKENWILER: I want to come to the question
16 you posed about the neighbors being in support.

17 CHAIRPERSON HILL: Oh, yeah. Sure.

18 MR. ECKENWILER: So a couple observations. One,
19 neighbors can be wrong, right? You have neighbors here in
20 opposition. We saw that this morning. You see that all the
21 time. People come in and neighbors have sometimes good
22 faith, sometimes frivolous objections. And you still grant
23 relief.

24 And we had a case not that long ago where the next
25 door neighbor to the north was very unhappy. Came in,

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1 opposed this as a party.

2 CHAIRPERSON HILL: We both grant and deny relief

3 --

4 MR. ECKENWILER: Yes, right, right.

5 CHAIRPERSON HILL: -- Commissioner, just to kind

6 of --

7 MR. ECKENWILER: So the point is that the neighbor
8 is not necessarily right. And the neighbor in ostensible
9 support isn't any more right or wrong than the neighbor
10 before the fact.

11 But one of my colleagues also before we took our
12 vote at the ANC has a very interesting observation along
13 these lines which is if you're the neighbor here and this
14 thing is already built, the inclination for a lot of people
15 would just be to throw up their hands and say, well, what are
16 you going to do? You can't fight city hall. What's done is
17 done. And I'm just -- I'm tired. The construction is over.
18 I'd just as soon have it be over with.

19 We don't know that that's the attitude. I'm not
20 going to represent to you that I've spoken to that neighbor.
21 But there are plenty of reasons why the neighbor support --

22 CHAIRPERSON HILL: Okay.

23 MR. ECKENWILER: -- would not be persuasive.

24 CHAIRPERSON HILL: Commissioner, I'm sorry. We're
25 basically having an offsite conversation here. And so I was

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1 just kind of curious again. I was mentioning that the
2 neighbors were in support. That's all I was mentioning and
3 that -- that was all I was mentioning.

4 So -- but -- okay. So I'm going turn to the
5 Office of Planning.

6 MS. FOTHERGILL: Good afternoon. I'm Anne
7 Fothergill with the Office of Planning. And the Office of
8 Planning rests on the record in support of the application
9 and finds that the application meets the review criteria.
10 And I'm happy to take any questions.

11 CHAIRPERSON HILL: Okay. So Ms. Fothergill, in
12 terms of, like -- I mean, what I'm most -- well, I said most
13 curious. The lot occupancy, right? They are very close to
14 the lot occupancy, right?

15 And so what Vice Chair Hart mentioned in terms of
16 the lot occupancy, that three foot landing that I guess is
17 by code, right, they have there. So that doesn't not count
18 towards lot occupancy. Is that correct or do you know?

19 MS. FOTHERGILL: That is correct that the zoning
20 administrator has determined that when stairs lead directly
21 to the door and there isn't an additional deck, then that
22 does not account for lot occupancy. And as you mentioned,
23 they are -- they have stated that they are at 60 percent
24 which -- so they are within the lot occupancy regulation for
25 this zone.

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1 VICE CHAIRPERSON HART: Yeah, I thought they were
2 a little higher.

3 CHAIRPERSON HILL: I thought it was, like, 69.
4 Like, they were right up against the 70. That's why we were
5 -- okay. Hold on one second.

6 MR. SULLIVAN: We're not asking for lot occupancy.
7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: No, no, no. I know. But I
9 thought you were, like, right up to the limit that --

10 MR. SULLIVAN: I think so, and I think we were
11 over when it was a larger deck.

12 CHAIRPERSON HILL: Right. So that's --

13 MR. SULLIVAN: Yes.

14 CHAIRPERSON HILL: -- the whole reason why you put
15 it back. Give me a second, Commissioner. Right. So the
16 three -- right. So you're, like, at 69 point something or
17 other, right?

18 MR. SULLIVAN: I believe so, yes.

19 CHAIRPERSON HILL: Okay. Commissioner, you had
20 a comment?

21 MR. ECKENWILER: Yeah, actually, this was when
22 this application first came in. This was one of the first
23 issues that I discussed by email with Mr. Sullivan. We had
24 a fairly extended exchange about this.

25 There is a difference. So -- and this goes back

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1 to Vice Chair Hart's confusion earlier. I think if you look
2 at Case Exhibit 6. So those were the original submitted
3 architectural plans. That showed a -- it was a much wider
4 deck. It wasn't clearly not full width of the building, but
5 it was a lot wider than just a landing. And we had also
6 questioned that.

7 What you have at Exhibit 52B, so the supplemental
8 plans which were really just the old stamped permit plans
9 that were -- when the permit was issued in December of 2018,
10 those simply show a simple landing, basically the width of
11 the stairs. And that's consistent with the plat, Exhibit 2
12 in this case, that you have.

13 So I think that may account for some of the
14 disparity. And I would just flag however the Board decides
15 this case, I think it might be useful to have some clarity
16 about which set of plans it is that you're actually
17 approving.

18 VICE CHAIRPERSON HART: And I would -- I think I
19 would agree with that in making sure that where we are with
20 it. Do we have any other --

21 CHAIRPERSON HILL: No. I mean, I was going to ask
22 does the Board have any questions for the Office of Planning.

23 (No response.)

24 CHAIRPERSON HILL: Okay. And then does the ANC
25 have any questions for the Office of Planning?

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1 MR. ECKENWILER: No, Mr. Chair.

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

4 MR. SULLIVAN: No, thank you.

5 CHAIRPERSON HILL: Okay. Is there anyone here
6 wishing to speak in support?

7 (No response.)

8 CHAIRPERSON HILL: Is there anyone here wishing
9 to speak in opposition?

10 (No response.)

11 CHAIRPERSON HILL: What do you -- does anybody
12 need anything?

13 VICE CHAIRPERSON HART: well, I mean, I think that
14 the sun study is the one thing that doesn't -- that the
15 images are really just not clear at all. They are trying to
16 provide us with some information, but I just don't like any
17 of what I'm seeing in -- especially in the summer and winter
18 because summer and winter, you could kind of -- I don't know.

19 You might get more -- some of these shade impacts
20 that I just don't feel like we're seeing really well. I'm
21 just saying that if we -- for me, we cannot rely on the
22 sun/shadow study that we have because there is erroneous
23 information that's in them.

24 CHAIRPERSON HILL: Okay. So you want a --

25 VICE CHAIRPERSON HART: So I'm trying to --

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1 CHAIRPERSON HILL: -- more clarified sun study?

2 VICE CHAIRPERSON HART: Well, I'm trying to make
3 sure that we have -- if we use that as I don't think that
4 there's a sun impact and I'm using the sun study, then I just
5 don't think you can do that because there's really not --

6 CHAIRPERSON HILL: Okay, okay.

7 VICE CHAIRPERSON HART: -- something that you can
8 fall back on --

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: Okay. So Mr. Sullivan, can you
11 provide an updated sun study for us?

12 MR. SULLIVAN: Sure.

13 CHAIRPERSON HILL: Okay. And there was also
14 plans, right? Can you provide whatever the actual plans are?

15 COMMISSIONER TURNBULL: Mr. Chair, I mean, I might
16 be wrong, but I was always assuming that the stamped plans
17 are the plans that would take precedent on this. DCRA
18 stamped plans are the plans that was built. Am I right or
19 am I wrong?

20 VICE CHAIRPERSON HART: Well, they're kind of
21 built that way.

22 COMMISSIONER TURNBULL: Well, then I think if we
23 don't know --

24 VICE CHAIRPERSON HART: Even --

25 COMMISSIONER TURNBULL: -- for sure, then we need

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1 to have some kind of rectification to actually determine what
2 was actually built.

3 VICE CHAIRPERSON HART: And I -- it's -- I can see
4 a minor discrepancy in the plans and what the -- actually
5 what is the photograph of what was shown. In the stamped
6 plans on page 4, there's an elevation for the rear addition.
7 But that elevation is not what was actually -- I mean, it
8 wasn't exactly what was actually built.

9 So I mean, it's just, like, the windows are off
10 and it's just -- I don't know. It's just -- I think the
11 problem that I have is that Mr. Eckenwiler brought up issues
12 about just inconsistencies with plans.

13 And it makes this, like, okay, well, if I think
14 these are inconsistent -- if these are inconsistencies that
15 I can see, what are things that I might miss because I'm not
16 looking at each piece of this.

17 And so it's just I like I having clean plans
18 because then you can kind of say, well, this says this and
19 this is shown in the elevation or shown actually what's been
20 built. But it is just a -- it's just unfortunate, I guess.
21 And I'm not sure --

22 CHAIRPERSON HILL: So I'm just trying clarify.

23 VICE CHAIRPERSON HART: Well, I just don't know --

24 CHAIRPERSON HILL: What do we need? What do you
25 want?

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1 VICE CHAIRPERSON HART: Well, these are stamped
2 plans. So this is what should've been built.

3 COMMISSIONER TURNBULL: That's what I'm assuming.

4 VICE CHAIRPERSON HART: So --

5 COMMISSIONER TURNBULL: I mean, a rational person
6 would assume we've got stamped plans. This is what the
7 builder is going to build. Granted, they're not the best
8 plans.

9 VICE CHAIRPERSON HART: So Mr. Sullivan, do you
10 got any help with this?

11 MR. SULLIVAN: Yeah. I think since we're
12 submitting a corrected shadow study, could I just say we will
13 do our best to clarify the issues that I think are being
14 questioned here on what is built, which plans we're using?
15 I mean, I think it's the plans that are currently the most
16 recent exhibit. But it doesn't hurt to clarify since we --

17 CHAIRPERSON HILL: Mr. Hart and Mr. Turnbull --

18 MR. SULLIVAN: -- have another submission.

19 CHAIRPERSON HILL: -- does that work for you guys?

20 COMMISSIONER TURNBULL: Sure.

21 CHAIRPERSON HILL: Okay.

22 VICE CHAIRPERSON HART: Yeah, and just make sure
23 that you're being consistent with -- Mr. Eckenwiler brought
24 up the actual distance that we're talking about because that
25 was a little off.

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1 I mean, again, while it may be okay in some
2 instances to be, well, it's about this, when you're looking
3 at plans and looking at things that are built, it is helpful
4 to actually know what it is that's being built.

5 So measurements are important. Where windows are
6 and where they are in plans versus where they are in
7 elevations is important. Just so that we understand that
8 when the questions start being raised, then it kind of leads
9 to a -- it's a cascading effect.

10 And so then you start thinking, well, if that's
11 wrong, then what about this? And it's just messy to have so
12 many inconsistencies that it's I'm not exactly sure what we
13 are approving and which set of plans.

14 We'll take this page this and take that page from
15 that, and I don't want to do that. I want to have, okay,
16 these -- this is the set of drawings. This is a set of sun
17 studies and we're good, to understand where all of that is.
18 But right now, it's a little messy and I don't like a little
19 messy. So I would suggest that we -- I would recommend that
20 we have --

21 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
22 understand?

23 MR. SULLIVAN: Understood, yes.

24 CHAIRPERSON HILL: Okay.

25 MR. SULLIVAN: Thank you.

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1 CHAIRPERSON HILL: So okay. Was there anything
2 else that anybody else needed?

3 (No response.)

4 CHAIRPERSON HILL: Okay. So I'm going to go ahead
5 and ask for the submissions, Mr. -- I'm sorry. Mr. Moy, you
6 can help us kind of figure out when the submissions are going
7 to be done. I think we could then have a decision case and
8 give enough opportunity for the ANC to respond to any of the
9 submissions that might happen. Can you give us some dates?

10 MR. MOY: Thank you, Mr. Chairman. So let's --
11 so today is the 15th. If the applicant can submit -- deliver
12 what's being requested within a week, let's say Wednesday,
13 January 22nd and allow the parties, specifically the ANC, to
14 respond another week which would be January 29th. And the
15 Board can make a decision on February 5th.

16 CHAIRPERSON HILL: Commissioner, you look like you
17 want to say something.

18 MR. ECKENWILER: Yes, so just I need to ask a
19 question about the Board's view. When there are new
20 materials submitted, are you going to be looking for a new
21 ANC vote in order to express the ANC's view? Or is that
22 enough? Is that already devolved upon, us as the
23 representatives?

24 CHAIRPERSON HILL: I mean, I think it all depends
25 on what we're trying to do or what we think we need. I don't

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1 think it's going to change anything in terms of your vote,
2 in terms of what we're going to be looking at.

3 So I guess you could just add further comments if
4 you'd like to in any way, shape, or form you wanted to, in
5 terms of submission based upon the submissions we get from
6 the applicant.

7 MR. ECKENWILER: Without having to go back for
8 further formal ANC vote --

9 CHAIRPERSON HILL: Yeah.

10 MR. ECKENWILER: -- the second time around?

11 CHAIRPERSON HILL: Yeah.

12 MR. ECKENWILER: Yeah. Just my -- go ahead.

13 MR. KELTY: And we just ask that you ensure that
14 the documents you receive from the applicant are signed and
15 sealed by a licensed District of Columbia architect. The
16 individual who was represented as the architect in this case
17 has --

18 CHAIRPERSON HILL: I got you. I got you.

19 MR. KELTY: -- quite a history.

20 CHAIRPERSON HILL: Mr. Sullivan, is that something
21 that your client can do?

22 MR. SULLIVAN: Yes.

23 CHAIRPERSON HILL: Okay. All right. So we'll go
24 ahead and do that. And then Mr. Moy, what date did you say?

25 MR. MOY: Applicant to file by January 22nd, and,

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1 of course, the applicant knows to serve all the parties
2 directly as well. ANC and other parties can respond by
3 January 29th. And the Board can set this for decision on
4 February the 5th.

5 CHAIRPERSON HILL: Mr. Sullivan, you look like you
6 want to say something.

7 MR. SULLIVAN: Yes, I know this only mainly
8 impacts the applicant. But he would like more time to get
9 that right and thinks he may need at least two weeks. So I
10 think that --

11 CHAIRPERSON HILL: Okay, sure.

12 MR. SULLIVAN: -- the 29th would be a better
13 submission.

14 (Simultaneous speaking.)

15 MR. SULLIVAN: Or maybe the 31st, the Friday.

16 CHAIRPERSON HILL: Sure. I mean, that's just
17 going to push back the hearing date.

18 MR. SULLIVAN: Right.

19 CHAIRPERSON HILL: The decision date, that is.

20 MR. SULLIVAN: Yeah, right.

21 CHAIRPERSON HILL: So then Mr. Moy, could you try
22 to work with Mr. Sullivan right now again?

23 MR. MOY: Okay. If I add another week, so the
24 applicant would file by January 29th. That's two weeks.
25 Parties to respond by February the 5th, right, 2-5. And

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1 decision that following week which would be February the 12th
2 which, by the way, is when Mr. Turnbull is going to be here.

3 CHAIRPERSON HILL: Okay, good. Well, that's fate.
4 Let's see. Okay. All right. Well, just my final comments
5 again. Just Commissioner, again, like, what is it?

6 I'm going to be looking at what the difference is
7 between what -- and this is how I always do it. So matter
8 of right versus what it is as it goes to regulations. That's
9 my opinion and that's how I kind of look at stuff, right?
10 And so then -- and also the special exception criteria.

11 And I'm just kind of making a comment. I'm not
12 saying -- I mean, we haven't had the final plans and we
13 haven't seen how everything goes. But I can't understand how
14 the neighbor would also be, like, I don't want to go through
15 construction again.

16 And so I also can appreciate -- just I don't know
17 why I have to respond. I'm just kind of mentioning, like,
18 if you live next door and you were done, you'd be, like, I
19 don't want to start it again for three feet.

20 And so -- but yes, I understand your ANC's
21 position, and I don't disagree with it. That coming in here
22 after the fact to get permission is not something that the
23 ANC would want to approve. So that's all with that as I go
24 to lunch.

25 Okay. So we'll see you guys the next time, and

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1 we're going to go to lunch. So 2:45 is what I'm saying.
2 Thank you.

3 (Whereupon, the above-entitled matter went off the
4 record at 1:56 p.m. and resumed at 2:58 p.m.)

5 CHAIRPERSON HILL: All right. Mr. Moy, let's go
6 ahead and get started. I know we're waiting on one of our
7 Board members, but we'll see how this goes a little bit.

8 MR. MOY: Thank you, Mr. Chairman. The Board is
9 back in session and the time is at or about 2:55.

10 So I believe according to the agenda, we are at
11 Case Application No. 20136 of Christopher Hall, captioned and
12 advertised for a special exception under Subtitle E, Section
13 205.5 and 5201 from the rear addition requirements, Subtitle
14 E, Section 205.4, to construct a rear one-story and basement
15 addition to an existing two-story principal dwelling unit,
16 RF-1 Zone. This is at 3549 Holmead Place. That's H-O-L-M-E-
17 A-D, Place, Northwest, Square 2828, Lot 130.

18 CHAIRPERSON HILL: Okay. I just realized we still
19 have ten cases. Okay? So I heard some laughter as I came
20 back from lunch. Let's keep that in mind, okay, as we kind
21 of move through this day. All right. Could you please
22 introduce yourselves for the record from my right to left?

23 MR. CLOCK: Sure. Jason Clock, Commissioner, ANC
24 1A12.

25 MS. DAVIS: Beth Davis. I work with the

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1 architect, and I'm here on behalf of the homeowner.

2 CHAIRPERSON HILL: Okay. So Ms. Davis, I assume
3 you will be presenting to us.

4 MS. DAVIS: Yes, sir.

5 CHAIRPERSON HILL: I got to say and I'm going to
6 do my best because I'm really going to try to move this
7 along. I don't really have a lot of questions. Okay? And
8 I think this is pretty straightforward. I'm a little
9 surprised, Commissioner, that you're -- well, I shouldn't say
10 surprised. You are here, and your ANC was in support,
11 correct?

12 (No response.)

13 CHAIRPERSON HILL: Okay. Please say that on the
14 record.

15 MR. CLOCK: That's correct.

16 CHAIRPERSON HILL: Okay, great. And so I don't
17 really have a lot of questions. I mean, there was the whole
18 thing about I see that it's that first floor that you guys
19 seem to be matching, correct?

20 MS. DAVIS: Correct.

21 CHAIRPERSON HILL: And so -- unless does the Board
22 have any questions of the applicant?

23 (No response.)

24 CHAIRPERSON HILL: Okay. I'm turning to the
25 Office of Planning.

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1 MR. KIRSCHENBAUM: Jonathan Kirschenbaum for the
2 Office of Planning. We recommend approval and rests on the
3 record. Please let me know if you have any further
4 questions.

5 CHAIRPERSON HILL: Does the Board have any
6 questions for the Office of Planning?

7 (No response.)

8 CHAIRPERSON HILL: Does the applicant have any
9 questions for the Office of Planning?

10 MS. DAVIS: No.

11 CHAIRPERSON HILL: Does the ANC have any questions
12 for the Office of Planning?

13 MR. CLOCK: No.

14 CHAIRPERSON HILL: Is there anybody here wishing
15 to speak in support??

16 (No response.)

17 CHAIRPERSON HILL: Is there anyone here wishing
18 to speak in opposition?

19 (No response.)

20 CHAIRPERSON HILL: Is there anything you'd like
21 to add at the end?

22 MS. DAVIS: No, sir.

23 CHAIRPERSON HILL: All right. ANC?

24 MR. CLOCK: No, thank you.

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

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1 record. Is the Board ready to deliberate? Okay. This is
2 going to be the fastest hearing I've ever had. So I actually
3 do think it was straightforward and that's why. I mean,
4 there really wasn't much to it.

5 I do think that although when we do have this kind
6 of addition, there tends to be a lot of questions. But
7 because it's the one matching that basement level, I didn't
8 think there was a lot of problems -- or not problems,
9 questions about it. The ANC is in support. The Office of
10 Planning analysis, I believe, is accurate and also DDOT. Is
11 there anything else anyone would like to add?

12 (No response.)

13 CHAIRPERSON HILL: I'm going to make a motion to
14 approve Application No. 20136 as captioned and read by the
15 Secretary and ask for a second.

16 VICE CHAIRPERSON HART: Second.

17 CHAIRPERSON HILL: Motion made and seconded. All
18 those in favor, say aye.

19 (Chorus of aye.)

20 CHAIRPERSON HILL: All those opposed?

21 (No response.)

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as 3 to 0
24 to 2, and this is on the motion of Chairman Hill to approve
25 the application for the relief requested. Seconded the

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1 motion is Vice Chair Hart. Also in support is Zoning
2 Commissioner Michael Turnbull with two members not present.
3 The motion carries, sir.

4 CHAIRPERSON HILL: Okay, great. Thanks, Mr. Moy.
5 Commissioner, are you here for something else?

6 MR. CLOCK: Yes.

7 CHAIRPERSON HILL: Okay, good. I'm glad you're
8 not wasting your time on that one. Okay. All right. Okay.
9 I'm going down this order, Mr. Moy. We did postpone the
10 Glassman, right? I mean, 20117 got postponed?

11 MR. MOY: Yes. Do you want to skip that one and
12 move to the next one or the next one after that?

13 CHAIRPERSON HILL: I think I just heard the -- our
14 Board member.

15 MR. MOY: I did.

16 (Pause.)

17 MR. MOY: Okay. So if we can have parties to the
18 table. This is to the Case Application No. 19819A of
19 Southern Hills LP. This is a request for a modification of
20 significance to the approved plans, to demolish the existing
21 seven building apartment complex and to construct six
22 apartment houses with a total of 349 residential units, and
23 new community service center, RA-1 Zone at 4201, 4209, 4219,
24 4333, 4337, and 4347 4th Street, Southeast and 304 Livingston
25 Terrace, Southeast, Square 6167, Lots 45, 46, 47, 48, 49, 50,

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1 and 51.

2 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
3 Could you please introduce yourselves for the record from my
4 right to left.

5 MR. BINETTE: I'm Michael Binette with the
6 architectural team.

7 MS. MCHALE: Aimee McHale from Winn Development.

8 MR. FERRIS: Laurence Ferris from law firm of
9 Goulston Storrs, land use counsel for the applicant.

10 CHAIRPERSON HILL: All right. Mr. Ferris, let's
11 see. There was -- I guess you're representing to us, correct?

12 MR. FERRIS: Yes.

13 CHAIRPERSON HILL: Oh, I'm sorry. Someone else
14 just joined the table. If you could please introduce
15 yourself.

16 MS. SUMERS: Barbara Sumers, resident of Southern
17 Hills apartment complex.

18 CHAIRPERSON HILL: Okay. And ma'am, you're here
19 as a witness for the community?

20 MS. SUMERS: Yes.

21 CHAIRPERSON HILL: Okay. Are you here speaking
22 as a person of public record?

23 MS. SUMERS: Yes.

24 CHAIRPERSON HILL: Okay. So there will be a time
25 for that a little bit later on in the hearing.

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1 MS. SUMERS: Okay.

2 CHAIRPERSON HILL: And so when we speak about
3 support and opposition, are you here for support or
4 opposition?

5 MS. SUMERS: Yes.

6 CHAIRPERSON HILL: Okay. I mean, I'm sorry. Are
7 you going to provide testimony in opposition?

8 MS. SUMERS: I am.

9 CHAIRPERSON HILL: Okay. Then --

10 MS. SUMERS: No, I'm not.

11 CHAIRPERSON HILL: Oh, in support? Okay, okay.
12 That's all right. Well, believe me. I'm happy to hear that
13 one too. So if --

14 MS. SUMERS: Well, this is the first time I've
15 done this.

16 CHAIRPERSON HILL: Okay.

17 MS. SUMERS: So I'm kind of new to this.

18 CHAIRPERSON HILL: Okay. Well, I'm sorry you've
19 had to be here the whole day then.

20 MS. SUMERS: That's all right.

21 CHAIRPERSON HILL: So if you just can wait. Just
22 go ahead and --

23 MS. SUMERS: Patience is a virtue.

24 CHAIRPERSON HILL: Go ahead and -- if you could
25 just go ahead and back up there and we'll call you when it's

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1 public testimony time. Thank you so much.

2 Mr. Ferris, you're presenting?

3 MR. FERRIS: Correct.

4 CHAIRPERSON HILL: Okay. So there seem to be a
5 couple of preliminary matters. Did the affidavit of
6 maintenance come in?

7 MR. FERRIS: I believe so. It should've been
8 filed in the record already.

9 MR. MOY: That's under Exhibit 32, Mr. Chairman.

10 CHAIRPERSON HILL: Okay, great. Thank you. Got
11 that. Then there was some expert status that you had some
12 people. Is that correct?

13 MR. FERRIS: Correct.

14 CHAIRPERSON HILL: Okay. And who is it that
15 you're asking expert status for?

16 MR. FERRIS: Mr. Mike Binette as an expert in
17 architecture, Sheila Nale as an expert in civil engineering,
18 and Dan VanPelt as an expert in traffic engineering.

19 CHAIRPERSON HILL: Okay. I thought Mr. VanPelt
20 is already -- oh, okay. No, but I was saying, is there
21 anyone we need to approve for expert status?

22 MR. FERRIS: They were all experts the last time
23 when the BZA reviewed this case.

24 CHAIRPERSON HILL: Okay, great. All right. Then
25 I didn't understand. So I'm looking at my notes. All right.

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1 So why don't you go ahead and kind of walk us through a
2 little bit very briefly whatever the modifications are that
3 you're trying to achieve.

4 And I'm going to put five minutes on the clock so
5 I know where we are. And you can begin whenever you like.
6 And if the Board has questions, we can get to them. Okay?

7 Actually, the only question I did have was there
8 was the support of 8D. They mentioned kind of adoption of
9 community benefits agreement. So maybe if you could speak
10 a little bit to that. Okay? Okay. Thank you.

11 MR. FERRIS: Good morning, Chair Hill. Or good
12 afternoon, Chair Hill and members of the Board. We're here
13 today for a modification of significance, the redevelopment
14 of the Southern Hills apartments approved by the Board
15 originally in September 2018.

16 The property is roughly a nine-acre site currently
17 improved with seven multifamily buildings with approximately
18 255 units. The Board previously approved a redevelopment
19 that would provide a 100 percent replacement of the existing
20 255 units as well as a 25,000 square foot community center.

21 And the applicant has now revised the project in
22 response to feedback received from DHCD, specifically to
23 increase the number of units on the site. The proposal we
24 have today has a total of 349 units along with the originally
25 proposed community center.

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1 The Board granted four areas of relief in 2018,
2 and we are seeking re-approval of the same areas,
3 specifically special exception under Subtitle U, Section 421
4 for approval of a new residential development in the RA-1
5 zone, special exception under Subtitle U, Section 320.1(b)
6 for approval of a community center.

7 Special exception under Subtitle C, Section 305
8 to allow multiple buildings on a single record lot utilizing
9 theoretical lots, and an area variance from the maximum
10 height of 40 feet and three stories permitted under Subtitle
11 F, Section 303.1 for several of the multifamily buildings due
12 to the unique topography of the site, specifically the
13 significant change in grade from the street level.

14 The relief again is the same as the Board approved
15 in 2018. As Mr. Binette will discuss briefly, due to the
16 changes in the site plan and replacement of row home units
17 with additional multifamily, our request for height relief
18 has been updated based on the new plans. But our proposed
19 heights are within the same range that the Board approved in
20 2018.

21 With me today are Aimee McHale of Winn Development
22 who will give you some background on the revised project and
23 our outreach with the Southern Hills residents and the
24 community, and Mike Binette with the architectural team who
25 will walk us through the updated plans. Also available to

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1 answer questions are Sheila Nale, the civil engineer for the
2 project, and Dan VanPelt, our traffic consultant.

3 Before we dive into our presentation, I will just
4 note that we do have a report in support from ANC 8D at
5 Exhibit 26 of the record as well as reports in support from
6 the Office of Planning and DDOT. And with that, I'll hand
7 things over to Aimee McHale.

8 MS. MCHALE: I'm going to fly through a lot of
9 these slides because we've --

10 CHAIRPERSON HILL: Yeah. That's okay. Sure,
11 yeah.

12 MS. MCHALE: -- been here a long time. So maybe
13 since Mike is going to be talking a lot about the changes in
14 the plan, we can just go -- we'll start at site background.

15 CHAIRPERSON HILL: You know what? Actually, let's
16 just get to the -- let's get to what we're here for in terms
17 of the modification of significance. So what are the changes
18 in the plans? And I'm sorry. I'm just cutting through stuff
19 as you've already seen.

20 MS. MCHALE: Do it. So I think we're at 12.

21 CHAIRPERSON HILL: Right. I'm at 12 now.

22 MR. BINETTE: So what you see up on the screen
23 before you are the differences from the previously approved
24 phase to the left and the current site plan that are before
25 you here today.

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1 The thrust of the change is the increase -- the
2 genesis of which was the DHCD looking for added density and
3 creating more of a mixed income community within the overall
4 development.

5 We have gone from a 255 unit development, a one-
6 for-one replacement again and gone up to 349 total units.
7 That was done really by getting rid of the town homes and
8 putting those within the multifamily buildings.

9 Part of the reason that we're asking -- still
10 asking for the height, those issues remain the same which
11 we'll show you in a little bit more detail in a second. The
12 idea of the town homes was to incorporate family units with
13 direct entries and really get eyes on the street.

14 CHAIRPERSON HILL: Can you just show me where
15 those changes are?

16 MR. FERRIS: Changes to -- from earlier?

17 CHAIRPERSON HILL: From the original -- the
18 modification.

19 MR. FERRIS: Sure. The height?

20 MR. BINETTE: So the town homes are to the top
21 left of the -- if you look at the left-hand site plan, the
22 thinner buildings along the left.

23 CHAIRPERSON HILL: I see. Thank you.

24 MR. BINETTE: And those are, again, what you see
25 now, the larger buildings. So again, this property is

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1 situated on the -- so those town homes, in order to
2 accomplish the best family environment, direct entry units
3 have now just simply been imposed into the midrise buildings,
4 the important thing being the idea of this property which now
5 the seven existing buildings are situated on top of the hill.

6 So they're really removed from the street and
7 they're up above varying from 10 to 30 feet above the
8 sidewalk. So it's very disengaged from the community.
9 What's important here is on either side of this development
10 between those apartment properties that Winn also manages and
11 this property, there are 1,000 residents with 600 children.

12 So being able to reengage this or being able to
13 engage this development with those -- with all those families
14 we found is critical and we believe was supported by Office
15 of Planning in their review.

16 To get to the crux of the height variance that we
17 are still seeking, I wanted to point out that we have reduced
18 the extent of the variance that we're looking at in most of
19 the buildings. But the bottom line is the -- I'm sorry.
20 Could you just go back to one example of the existing and
21 new?

22 You can see the topography, the differential that
23 we're talking about from the public sidewalk up on the hill.
24 The site, again, to reiterate, is very isolated from the rest
25 of the community.

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1 The purpose and the reason why we need to add
2 height is not to really make the buildings taller. It's to
3 drop them so that they meet closer to the sidewalk. So now
4 with these direct entries which are in this next view, what
5 happens, we're now pulling the buildings. We're orienting
6 them parallel to the street and we're engaging the street
7 again with those direct entries.

8 So the building hasn't really gotten taller from
9 its top point. It's gotten lower from the lower point and
10 from the building height measuring point which is all lowered
11 from -- these buildings are actually -- the roof lines of
12 these buildings are actually a little lower than the ones
13 that exist today.

14 COMMISSIONER TURNBULL: Is that building FRH?

15 MR. BINETTE: That is Building A.

16 COMMISSIONER TURNBULL: Oh, that's A? That's A?

17 MR. BINETTE: That's A, right, of the northern
18 side of the property.

19 COMMISSIONER TURNBULL: How do you meet the
20 variance test for Buildings F and H for the height?

21 MR. BINETTE: Well, we believe the test is the
22 same for all the -- the test for the variance we believe is
23 the same. And it's resulted in this unique topography and
24 is that differential to the existing topography.

25 COMMISSIONER TURNBULL: And you're saying you've

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1 actually lowered them, even on F and H?

2 MR. BINETTE: Yes, we've actually lowered. In
3 every case, the relief that we have sought is reduced from
4 what had previously been submitted and approved.

5 COMMISSIONER TURNBULL: Okay. All right. Thank
6 you.

7 MR. BINETTE: I can review those if you like.

8 MEMBER JOHN: I have a question. So the buildings
9 are the same height. You've just moved them lower, closer
10 to the street. Am I getting that right?

11 MR. BINETTE: Yes, the buildings -- and I should
12 add, maybe clarify this a little bit, is the buildings are
13 four stories along the perimeter, along the street. Up on
14 the high part of the property, they still remain three
15 stories.

16 So a building itself has a step in it. So the
17 front of that same building, half of it's at four stories,
18 again, with a basement level basically. And the top three
19 fours match the higher grade internal to the site which is
20 still high. It's kind of, again, a crest of a hill.

21 MEMBER JOHN: And so to follow up on Mr.
22 Turnbull's question, can you show us F and H and why there's
23 a need for a variance for those two buildings?

24 MR. BINETTE: Certainly. F is the proposed 25,000
25 foot community room -- community building, excuse me, where

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1 we anticipate providing resident services and amenities, not
2 just for our property but for the overall community. There
3 is today a 17 foot grade difference from the sidewalk at the
4 entrance that you see before you within 30 feet of the site.
5 It goes up about 17 feet.

6 So what we've done again is a couple of things
7 that we feel is particularly important for the clubhouse is
8 bring out to the street on Livingston Terrace where it
9 becomes more of a community center for the community at
10 large.

11 So that building needs higher floor-to-floor
12 heights on the two stories that it is. But the variance that
13 we're requesting is really again because the first floor
14 drops 17 feet from the first floor down to the sidewalk on
15 Livingston Terrace. So what we're doing is really nestling
16 all these buildings into the hill.

17 CHAIRPERSON HILL: Okay. All right. Does anybody
18 have any questions for the applicant? Okay. I'm turning to
19 the Office of Planning.

20 MS. ELLIOT: Thank you, Mr. Chairman. Brandice
21 Elliot representing the Office of Planning. The Office of
22 Planning is recommending approval of the revised relief --
23 of the modified relief for the variance and as well as the
24 special exception relief that's been requested.

25 In terms of the variance, one of the things that

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1 we did discuss during the previous case was the fact that
2 this property is shaped like a peninsula. That's pretty
3 accurate.

4 It's surrounded by streets on most of -- along
5 most of the property. And there's a pretty consistent grade
6 change between 10 and 30 feet above the street on all of that
7 property.

8 And so the maximum height allowance in this zone
9 is 40 feet and three stories. And the applicant is proposing
10 to go as high as 48 feet with the current proposal. The
11 previous proposal actually approved 49 feet, so they're a
12 little bit under what was previously approved. But it's
13 still within that 10 to 30 feet that we -- that's been
14 documented along the street frontage. So I just wanted to
15 point that out.

16 But otherwise, I'll stand on the record, and I'm
17 happy to answer any questions you have.

18 CHAIRPERSON HILL: All right. Does anybody have
19 a question for the Office of Planning?

20 (No response.)

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

23 MR. FERRIS: No questions.

24 CHAIRPERSON HILL: Is there anyone here wishing
25 to speak in support of the application?

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1 MS. SUMERS: Hello.

2 CHAIRPERSON HILL: Hello.

3 MS. SUMERS: Barbara C. Sumers.

4 CHAIRPERSON HILL: Barbara Sumers? Okay.

5 MS. SUMERS: Yes.

6 CHAIRPERSON HILL: Ms. Sumers. Okay, Ms. Sumers.

7 So as a member -- well, first of all, welcome.

8 MS. SUMERS: Thank you.

9 CHAIRPERSON HILL: And as a member of the audience
10 -- I'm sorry, as a member of the public, you'll have three
11 minutes to give your testimony. There's a clock on either
12 side there and right in front of you. And you can begin
13 whenever you like.

14 MS. SUMERS: I would just like to say that I've
15 been in this property, Southern Hills complex, all of my life
16 -- pretty much all of my life. And to be a part of this
17 redevelopment is an honor to me and a pleasure to be able to
18 speak on behalf of Southern Hills apartments and ask that you
19 guys approve the zoning -- pass the zoning -- you know what
20 I'm trying to say.

21 CHAIRPERSON HILL: Sure. No, you're doing a great
22 job. Yeah.

23 MS. SUMERS: All right. Kind of stuck on stupid
24 right now.

25 CHAIRPERSON HILL: No, that's all right. I'm

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1 there all day.

2 MS. SUMERS: Okay. That's all I have to say.
3 Thank you.

4 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
5 Sumers. Does the Board have any questions for Ms. Sumers?

6 (No response.)

7 CHAIRPERSON HILL: Okay. Well, Ms. Sumers, again,
8 thank you so much for coming down, and thank you for
9 providing your testimony for your neighborhood.

10 MS. SUMERS: Right.

11 CHAIRPERSON HILL: Okay?

12 MS. SUMERS: Okay.

13 CHAIRPERSON HILL: All right. Thank you.

14 MS. SUMERS: Thank you.

15 CHAIRPERSON HILL: Let's see. Is there anyone
16 here wishing to speak in opposition?

17 (No response.)

18 CHAIRPERSON HILL: Okay. Well, you are very lucky
19 that somebody comes down, spends their whole time down here
20 to provide their testimony for your project. Okay. So do
21 you guys have any questions or comments in conclusion?

22 MR. FERRIS: I would just clarify. I'm not sure
23 if it was understand. Ms. Sumers is here on behalf of the
24 Southern Hills Tenant Association, not just on her individual
25 behalf.

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1 CHAIRPERSON HILL: Oh, okay. I'm sorry. That was
2 a little bit unclear. So Ms. Summers, well, thank you for
3 coming down for your association and on behalf of the
4 association. And again, they're fortunate to have your
5 support. Okay. All right. Okay. Anything else?

6 (No response.)

7 CHAIRPERSON HILL: Okay. All right. Go ahead and
8 close the record. Is the Board ready to deliberate? Okay.
9 I didn't have any issue -- oh, actually, yeah, I didn't have
10 any issues. I had -- some of the questions that I had were
11 answered.

12 And then also I would agree with the analysis that
13 was provided by the Office of Planning in terms of this
14 modification of significance. I'm going to go ahead and vote
15 to approve. I'm glad that, again, the ANC 8D is in support
16 as well as DDOT. And I do believe that the applicant has met
17 their burden of proof. Is there anything the Board wants to
18 add?

19 (No response.)

20 CHAIRPERSON HILL: Okay. Make a motion to approve
21 Application No. 19819A as captioned and read by the Secretary
22 and ask for a second.

23 MEMBER JOHN: Second.

24 CHAIRPERSON HILL: Motion made and seconded. All
25 those in favor, say aye.

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1 (Chorus of aye.)

2 CHAIRPERSON HILL: All those opposed?

3 (No response.)

4 CHAIRPERSON HILL: Motion passes, Mr. Moy.

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

10 CHAIRPERSON HILL: All right. Great. Thank you,
11 Mr. Moy. Thank you, gentlemen.

12 MR. BINETTE: Thank you.

13 CHAIRPERSON HILL: Ma'am, thank you.

14 MR. MOY: I believe the next case application
15 before the Board is No. 18744A of Patterson SPE LLC. Again,
16 this is a request for modification of significance to the
17 relief approved by BZA Order No. 18744 to include a special
18 exception under the use permissions, Subtitle U, Section
19 504.1(f), to permit the conversion of 31 units to a lodging
20 use in the MU-15 Zone at premises 15 Dupont Circle,
21 Northwest, Square 136, Lot 34.

22 CHAIRPERSON HILL: Okay. Could you please
23 introduce yourself for the record from my right to left?

24 MS. THOMPSON: Amy Thompson, expert witness,
25 planning.

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1 MR. SAUL: Frank Saul for the owner.

2 MR. EPTING: I'm John Epting with Goulston &
3 Storrs.

4 MS. LOGAN: Jen Logan with Goulston & Storrs.

5 CHAIRPERSON HILL: Could you say your last name
6 again for me? I'm sorry.

7 MS. LOGAN: Logan, L-O-G-A-N.

8 CHAIRPERSON HILL: Okay. Who's going to be
9 presenting to us today?

10 MR. EPTING: I am.

11 CHAIRPERSON HILL: Hi, Mr. Epstein. It was
12 Epstein, correct?

13 MR. EPTING: Epting.

14 CHAIRPERSON HILL: Can you say it again?

15 MR. EPTING: Epting.

16 CHAIRPERSON HILL: Epting. And I know you're
17 before us all the time, and so -- okay. Thank you. Okay.
18 That's right. Mr. Epting. If you want to go ahead and kind
19 of walk us through the modification and-- Okay. That's
20 right.

21 So actually, I'm just going to kind of highlight
22 a couple of things. The -- if you want to kind of walk us
23 through the application. I see what you guys are doing in
24 terms of that building there.

25 And I suppose one question that I had is kind of

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1 ANC 2B and whether or not the outreach has been done or what
2 kind of outreach you had in terms of the -- outreach there
3 to them. You also -- I guess there's a preliminary matter
4 about someone being added as an expert status. Is that
5 correct?

6 MR. EPTING: Yes, so Ms. Thompson is here. We've
7 submitted her resume. She's been an expert witness for the
8 Zoning Commission before but not before the BZA.

9 CHAIRPERSON HILL: Okay. Ms. Thompson, can you
10 do me a favor?

11 MS. THOMPSON: Yes.

12 CHAIRPERSON HILL: I'm going to pull up your
13 resume again.

14 MS. THOMPSON: Sure.

15 CHAIRPERSON HILL: But can you just tell us a
16 little bit about yourself?

17 MS. THOMPSON: Sure. I am a certified planner
18 from the American Planning Association. I have been working
19 in D.C. as a planner for about 20 years. I currently work
20 for the architecture firm of Perkins and Will, and I've been
21 working planning in the city basically my whole career, so --

22 CHAIRPERSON HILL: What's the first thing that you
23 said?

24 MS. THOMPSON: That I'm a certified planner --

25 CHAIRPERSON HILL: With?

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1 MS. THOMPSON: -- with the American Planning
2 Association.

3 CHAIRPERSON HILL: American Planning Association.

4 COMMISSIONER TURNBULL: AICP.

5 MS. THOMPSON: Yes, the same as Mr. Hart.

6 CHAIRPERSON HILL: This might be my next career,
7 right? I can do it. American Planning Association. Okay.
8 Let's see.

9 COMMISSIONER TURNBULL: The most important thing
10 is she's AICP.

11 CHAIRPERSON HILL: Ok, I don't think I can do that
12 one.

13 COMMISSIONER TURNBULL: And she's a lead, so --

14 CHAIRPERSON HILL: Okay. All right. Well, I
15 don't have any problem with you being accepted as an expert.
16 Does the Board have any issues?

17 (No response.)

18 CHAIRPERSON HILL: Okay. All right. Well, there
19 you go. All right. So back to you, Mr. Epting. And that's
20 it. I'm going to let you begin whenever you like. And
21 again, my little comment was about the ANC and kind of your
22 outreach efforts with them. And again, I guess you can tell
23 us about the -- I mean, I love the building. I know the
24 building very well. I mean, many people do. But go ahead.
25 I'm sorry.

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1 MR. EPTING: Well, we love the building too.
2 That's one reason we're here. So we're asking for a
3 modification of signification from BZA Order 18744 for a
4 special exception to approve 31 lodging units within the
5 building. We're MU-15, so the lodging units requires special
6 exception approval.

7 In 2014, we renovated the building. We came to
8 the BZA for -- basically, for no parking and some other
9 relief. We turned it into a 92 unit apartment building. All
10 the units are furnished with linen service, everything. So
11 it operates much like a hotel already.

12 For people who come to the city for short term or
13 looking for alternatives to, like, the classic one-year
14 lease, pay your one year up front. So we're serving sort of
15 an alternative need to a traditional apartment building. But
16 it's always been people for shorter term stays.

17 After two years of operating, we found there's an
18 increasing demand for shorter term rentals. As you guys
19 understand, an apartment house is a 30-day lease or more.
20 There's a tremendous demand, at least in this location in
21 Dupont Circle, for shorter term stays.

22 And we had a lot of interest early on from
23 basically friends and families who would ask the property
24 owner, can my friend stay for less than a couple days,
25 whatever? So we're trying to figure out a way to accommodate

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1 that.

2 Since last April, we began meeting with the zoning
3 administrator and then the Office of Planning to come up with
4 the exact mix of units. So right now, we're proposing 65
5 percent of the units remain residential. That includes the
6 seven IZ units.

7 And we worked with Office of Planning to come out
8 with a layout which I think is Exhibit 4 of our exhibits.
9 All the market rate units and all the IZ units are in the
10 tower, and Ms. Logan is showing them now.

11 The lodging units are only in the cellar in the
12 tower and in the mansion. So there's sort of a demarcation
13 because the unit mix with the resi only in the tower and the
14 lodging in the mansion and the cellar.

15 There's no change to the interior. No change to
16 the exterior. No change to the rooms. So the building stays
17 exactly like it does. And this will help us especially make
18 the financials of the building better.

19 We do have ANC 2B support. Mr. Saul and I met
20 with the Commissioners. And December 17th, we had a talk to
21 them. We went to the Planning and Zoning Commission meeting
22 and we went to the ANC meeting.

23 There is a condition which we've agreed to for a
24 housing payment of 65,000 dollars which we agree with. I
25 think the ANC support is actually very good. It sort of

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1 summarizes all the issues we talked about.

2 And that's all I have. Frank is here to answer
3 questions if you have questions for him.

4 CHAIRPERSON HILL: Okay. Just out of curiosity,
5 why did two -- two people voted against it at the ANC?

6 MR. EPTING: Yeah. I mean --

7 CHAIRPERSON HILL: I was just curious.

8 MR. EPTING: -- we had complete support of the
9 planning committee. Dupont Circle is a diverse group.
10 People have different opinions.

11 CHAIRPERSON HILL: Sure. They got outvoted. I'm
12 just curious. What were their opinions?

13 MR. EPTING: I think there had been some concern
14 about conversion of this building to lodging. I think Dupont
15 Circle is seeing a lot of lodging uses there.

16 CHAIRPERSON HILL: Okay. So they're more
17 concerned about the lodging?

18 MR. EPTING: Yes.

19 CHAIRPERSON HILL: Okay. And just as a side note
20 kind of out of curiosity, were you guys -- did it get branded
21 as something? I don't remember it ever being branded as
22 anything, was it?

23 MR. EPTING: Well, it's called the Ampeer.

24 CHAIRPERSON HILL: Okay. But I mean, there's not
25 a lot of signage or anything.

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1 MR. EPTING: There's virtually no signage.

2 CHAIRPERSON HILL: Yeah.

3 MR. EPTING: And as we noted to OP, there will be
4 no new signage.

5 CHAIRPERSON HILL: Is that the same way that
6 you're going to do it if it's moved over to lodging?

7 MR. EPTING: No changes.

8 CHAIRPERSON HILL: No changes? Interesting.
9 Okay. All right. Does the Board have any questions of the
10 applicant?

11 COMMISSIONER TURNBULL: I just had one. Is there
12 -- in changing over some of those to lodging, there's no
13 effect on the current IZ proportions in the building, right?

14 MR. EPTING: So there were seven IZ units before
15 which was triggered because --

16 (Simultaneous speaking.)

17 COMMISSIONER TURNBULL: Right.

18 MR. EPTING: The seven units are staying. There's
19 no change in those.

20 COMMISSIONER TURNBULL: No change? Okay, great.

21 MR. EPTING: And again, that's one of the issues
22 we worked out with the zoning administrator because we were
23 very, you know, concerned about that. And that's one reason
24 we left the market units in the tower. So that the IZ units
25 and the market units are together.

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1 COMMISSIONER TURNBULL: Okay. Thank you.

2 CHAIRPERSON HILL: So in terms of the DDOT report
3 and their conditions, are you aware of that on page 2 of the
4 DDOT report, the applicant TDM plan to accommodate the
5 lodging use? Can you speak to that a little bit?

6 MR. EPTING: Yeah. We reviewed their report, and
7 we told them that we agree with all their conditions.

8 CHAIRPERSON HILL: Okay.

9 MR. EPTING: I mean, DDOT thinks there's going to
10 be more use here, you know, more people per day. I mean, I'm
11 not sure if that's true or not, but we agreed.

12 CHAIRPERSON HILL: Okay, right. You agree to
13 their conditions. I'm going to turn to the Office of
14 Planning.

15 MR. JESSICK: Thank you, Mr. Chairman and members
16 of the Board. My name is Matt Jessick. The Office of
17 Planning can rest on the record in support of the
18 application, but I can take any questions. Thank you.

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

21 (No response.)

22 CHAIRPERSON HILL: Okay. And the conditions again
23 are right in DDOT's report in Exhibit 39. Yeah, 39. Okay.
24 Does the applicant have any questions for the Office of
25 Planning?

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1 MR. EPTING: No, sir.

2 CHAIRPERSON HILL: Is there anybody here wishing
3 to speak in support?

4 (No response.)

5 CHAIRPERSON HILL: Is there anyone here wishing
6 to speak in opposition? Come forward, please, sir. Maybe
7 I'll put you over there on that side if you don't mind. And
8 did you get sworn in earlier? Okay. All right. Let's see.
9 So if you wouldn't mind standing. Get sworn in by the
10 Secretary here to my left. And if there's anybody else who
11 missed getting sworn in, if you could please stand and take
12 the oath administered by the Secretary to my left.

13 MR. MOY: Good afternoon.

14 (Witnesses sworn.)

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

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

18 MR. DELLEDONNE: My name is Nick DelleDonne, and
19 I am the president of a civic association in the Dupont
20 Circle area called Dupont East Civic Action Association.

21 CHAIRPERSON HILL: Okay. But Mr. DelleDonne,
22 you're here representing yourself?

23 MR. DELLEDONNE: Yes, I am, as a matter of fact.

24 CHAIRPERSON HILL: Okay. I ask you that because
25 if you were here representing your association, you would

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1 have needed to provided us a letter --

2 MR. DELLEDONNE: Yes.

3 CHAIRPERSON HILL: -- saying that you're doing
4 that. So okay. So you'll have three minutes to give your
5 public testimony, and you can begin whenever you like.

6 MR. DELLEDONNE: My remarks are impromptu because
7 you've raised the question, why did two of the Commissioners
8 vote against the proposition here? And since I attended the
9 meeting, I have some knowledge of that and I thought I would
10 fill you in on it.

11 There was some concern among the Commissioners who
12 opposed it that there is an urgent concern for housing in
13 Washington, D.C. It's a controversial matter. And here we
14 have housing -- legitimate housing being converted into
15 lodging. So, and that was the germ and the basis for some
16 opposition.

17 Another question that was raised is that it seems
18 like, and that it might present a bad precedent. There was
19 some concern too about actually receiving cash in exchange
20 for approval of the proposition. The 50,000 dollars
21 initially was offered because the company realized that --
22 well, I'll let them speak for themselves.

23 But in any case, during the discussion, one of the
24 Commissioners said that when you consider how much money they
25 would be receiving, the 50,000 dollars would be recouped in

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1 about 50 days. But that was an estimate and a guess since
2 the Commission had not really asked for any financial data
3 to support or to evaluate whether this was a good idea or
4 not. And a second Commissioner said, well, let's raise it
5 to 65. And that's what they ended up with.

6 So the Commission did approve it, and there was
7 some opposition to it. And that is what I reported this
8 morning -- this afternoon.

9 CHAIRPERSON HILL: Okay, Mr. DelleDonne. Well,
10 thank you. That's interesting. I mean, there were some
11 things that I think we as the Board would've kind of gotten
12 to in terms of the discussion with the conditions because we
13 do tend to think about quite clearly whenever there's dollars
14 involved, no matter what they tend to be going towards.

15 But I was a little unclear. Are you here speaking
16 in support or opposition for yourself? Or are you just kind
17 of, like, providing some testimony as to what happened at the
18 ANC meeting?

19 MR. DELLEDONNE: I'm here for another case, and
20 I wanted to respond to your question.

21 CHAIRPERSON HILL: Oh, okay. All right. Great.
22 Okay. That's good. All right. So Mr. DelleDonne, thank you
23 so much.

24 MR. DELLEDONNE: Thank you.

25 CHAIRPERSON HILL: And then let's see. So it's

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1 back to the applicant. Did I ask if there's anyone here
2 wishing to speak in support?

3 (No response.)

4 CHAIRPERSON HILL: Okay. So the ANC -- I'm trying
5 to figure out. There was a couple of conditions, right?
6 There's the DDOT conditions, right? So you guys are all in
7 favor of the DDOT conditions that were in Exhibit 39 or you
8 didn't have any issues with those.

9 The conditions that the ANC had put forward, I was
10 a little confused with that. And I'll let my Board members
11 talk as well. Like, was there -- I mean, the specificity
12 about the 65,000 to the Housing Protection Trust Fund, was
13 that just as a proffer? I mean, that's not something that
14 you guys had to do.

15 MR. EPTING: So it came later in discussions with
16 the ANC. So we believe we meet the special exception
17 standard. So we've outlined what we did. But we did talk
18 to the ANC. There is concern in this ANC about Airbnbs and
19 about other shorter term uses.

20 So even though we believe we met the standards,
21 we also want to be good neighbors. We've been there for a
22 couple years. We decided that sort of a good proffer that
23 we would be good neighbors and offer funds for the Housing
24 Trust Fund.

25 We do see that it makes some sense since we are

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1 converting some resi to lodging, that that is going to come
2 to a one-to-one sort of thing. But it was more of us working
3 with the ANC.

4 CHAIRPERSON HILL: No, I appreciate that, Mr.
5 Epting. And so I guess what in the past -- and I'm looking
6 to my fellow Board members.

7 I mean, we have tended not to put those things in
8 as conditions, rather than let the property owner or the
9 applicant work with the ANC in order to -- you know, I mean,
10 if you've already done it. It's in good faith. It's a
11 proffer that you're going forward with, I'm sure you will go
12 ahead and do that.

13 But it's not something that we as a Board like to
14 get involved in, in terms of it does seem like it's, you know
15 -- oh, my God. It does seem like a quid pro quo sort of
16 thing. But that's what we kind of like to get away from.

17 But in any case, I mean, does the Board have any
18 other thoughts on that again?

19 VICE CHAIRPERSON HART: Are we --

20 CHAIRPERSON HILL: I'm just talking about the
21 condition, about the 65,000.

22 VICE CHAIRPERSON HART: Yeah. I mean, I don't see
23 that as something -- that's not something that we typically
24 will add or include in our conditions, partially because it
25 gets down to the, you know, how do you, you know, enforce

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1 that and how is that connected necessarily into this? So it
2 makes it a little bit -- I'd like to try to focus and make
3 sure that we have the conditions that are pertinent and
4 relevant to the relief that's being requested.

5 MR. EPTING: And that's our understanding too,
6 that it would not necessarily be a condition of the BZA
7 order. And we're fine with that. But we have --

8 CHAIRPERSON HILL: No, I just didn't understand
9 in terms of I'm looking, reading through the report. So you
10 didn't -- and now I don't know if you can just provide some
11 testimony to it. Mr. Epting, did you go to the ANC meeting?

12 MR. EPTING: I did not go to the ANC meeting. I
13 was away. I went to the planning meeting.

14 CHAIRPERSON HILL: I was going to ask you if
15 somebody --

16 MR. EPTING: Mr. Saul was there.

17 CHAIRPERSON HILL: -- was there. I was trying to
18 ask whether or not you think that that 65k was conditional
19 as to whether or not they were going to be in approval or not
20 of the project.

21 MR. EPTING: It was only a condition of the ANC
22 support.

23 CHAIRPERSON HILL: Okay. All right. Okay. But
24 that would be something that would be still, I think, between
25 you and the ANC, and --

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1 MR. EPTING: That would be fine with us.

2 CHAIRPERSON HILL: Okay. All right. Does the
3 Board have any questions for the applicant?

4 (No response.)

5 CHAIRPERSON HILL: Okay. Mr. Epting, is there
6 anything you'd like to add at the end?

7 MR. EPTING: Sir, I think we meet the standards,
8 and we ask for your approval. Thank you.

9 CHAIRPERSON HILL: Okay, great. I'm going to
10 close the record. Would someone else like to deliberate?

11 MEMBER JOHN: So Mr. Chairman, I thought the
12 application was fairly straightforward. And there's no new
13 relief being requested or the relief is not substantially
14 different from what was granted before. And based on the
15 recommendation of the Office of Planning, I can support the
16 application.

17 I am uncomfortable with the notion that the
18 applicant would need to pay the ANC for support because I
19 think it sets a bad precedent. However, the parties have
20 agreed to it, and it's not something that I -- not the
21 parties. The applicant and the ANC have agreed to it, and
22 it's not something we would include in the order.

23 But I think that the applicant meets the criteria
24 for modification of significance to add lodging. And so on
25 the basis of the record, I would support the application.

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1 VICE CHAIRPERSON HART: Yeah, I would agree with
2 Board Member John. I, you know would second that, you know,
3 the Office of Planning is in support. The ANC is in support
4 and that conditioned on the payment to the Housing Trust
5 Fund.

6 I also agree that I do not want to include that
7 condition. And I just don't really think that we have that
8 jurisdiction to be able to impose that payment. Or I don't
9 know. It just doesn't seem, like, appropriate for this.

10 But I would be in support of the application, and
11 that's it.

12 COMMISSIONER TURNBULL: I would agree with the
13 other members of the Board. I mean, I think it's enough to
14 say that in the record there'll be reference to the ANC's
15 approval and the resolution and the terms of that resolution.

16 And I don't know whether we reference the
17 resolution being approved or not in the order. But it's on
18 the record that it had been approved. So I'm satisfied, and
19 I would be in favor of voting on this.

20 CHAIRPERSON HILL: Okay. I don't have anything
21 to add. I will agree with my colleagues and their
22 assessment. I'm going to make a motion to approve
23 Application No. 18744A as captioned and read by the
24 Secretary, including the conditions that DDOT has put forward
25 in Exhibit 39 and ask for a second.

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1 COMMISSIONER TURNBULL: Second.

2 CHAIRPERSON HILL: Motion made and seconded. All
3 those in favor, say aye.

4 (Chorus of aye.)

5 CHAIRPERSON HILL: All those opposed?

6 (No response.)

7 CHAIRPERSON HILL: The motion passes, Mr. Moy.

8 MR. MOY: Staff would record the vote as 4 to 0
9 to 1. And that's on the motion of Chairman Hill to approve
10 the application for the relief being requested. Seconded the
11 motion is Zoning Commissioner Michael Turnbull. Also in
12 support, Ms. John, Vice Chair Hart. No other members.

13 CHAIRPERSON HILL: Okay, great. Thank you. Yes,
14 thank you all very much.

15 (Pause.)

16 CHAIRPERSON HILL: Okay. So Mr. Moy, I think that
17 we, the Board, neglected to add some conditions that I know
18 that we had been speaking of or looking into the record. And
19 it was on one of the cases that took place already. So I'm
20 a little unclear as to how to proceed.

21 I suppose that we could reopen -- and this was the
22 modification of significance in Application 19819A of
23 Southern Hills LP. And it was the apartment house, and there
24 were some DDOT conditions that we had neglected to kind of
25 speak through. And since I think they were pretty

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1 straightforward, that's the way I think it kind of skipped
2 through my thought process. So I suppose we could recall
3 that case.

4 MR. MOY: Yes, with OAG's support. My sense is
5 that you would rescind your earlier vote to restate your
6 motion. And I'm assuming you're restating your motion to
7 include the conditions.

8 CHAIRPERSON HILL: Okay. So --

9 MR. MOY: So that way --

10 CHAIRPERSON HILL: -- if the Board -- yeah. No,
11 I'm just going to do that. So I'm going to go ahead and make
12 a motion to rescind our vote on Application No. 198 -- sorry,
13 19819A and ask for a second.

14 VICE CHAIRPERSON HART: Second.

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

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed?

19 (No response.)

20 CHAIRPERSON HILL: All right. So that motion
21 passes. So now, Mr. Moy, I'd like to reopen the Case
22 Application No. 19819A in order to deliberate. And if the
23 Board has any issues with that, please let me know. And as
24 I said, we did go through the hearing, and I do believe that
25 we deliberated and were comfortable with our approval of the

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1 application.

2 The area that was neglected was DDOT's conditions,
3 and those conditions actually were relatively significant in
4 that there was a long list of them with a TDM management plan
5 in Exhibit 29.

6 So I've had an opportunity even -- I had an
7 opportunity before the case to look at all of the conditions
8 and I was comfortable with those. And so I would go ahead
9 and make a motion again and a recommendation to include those
10 conditions.

11 And since the Board is able to put conditions
12 forward regardless of whether the applicant agrees to it or
13 not, I believe, you know, that we'd be comfortable doing --
14 I'd be comfortable doing this.

15 And so would the Board be in agreement with the
16 conditions that DDOT has put forward? Okay. I see everyone
17 nodding in agreement. So I'm going to go ahead and make a
18 motion then to approve Application No. 19819A as captioned
19 and read by the Secretary, including the DDOT conditions in
20 Exhibit 29 and ask for a second.

21 VICE CHAIRPERSON HART: Second.

22 CHAIRPERSON HILL: Motion made and seconded. All
23 those in favor, say aye.

24 (Chorus of aye.)

25 CHAIRPERSON HILL: All those opposed?

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1 (No response.)

2 CHAIRPERSON HILL: The motion passes, Mr. Moy.

3 MR. MOY: Staff would record the vote as 4 to 0
4 to 1 on the motion of Chairman Hill to approve the
5 application for the relief along with the conditions as shown
6 in Exhibit No. 29 of the DDOT report. Seconded the motion
7 is Vice Chair Hart. Also in support, Ms. John and Zoning
8 Commissioner Michael Turnbull. No other members present.

9 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
10 Moy. Now we can move on to our next case when you get an
11 opportunity.

12 MR. MOY: Okay. So that would be -- looking at
13 the applicants at the table, I know that they've been
14 waiting.

15 This is Case Application No. 20165 of Andrew
16 Dunnaville. This is a request for a special exception under
17 Subtitle D, Section 1206.4 and 5201 from the rear addition
18 requirements, Subtitle D, Section 1206.3, to construct a two-
19 story rear addition to an existing, attached principal
20 dwelling unit, R-20 Zone. This is at 3626 T Street,
21 Northwest, Square 1306, Lot 46.

22 CHAIRPERSON HILL: Okay. If you could please
23 introduce yourselves for the record. You need to push the
24 button there.

25 MR. DUNNAVILLE: My name is Andrew Dunnaville, and

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1 this is my wife, Massa. And we are the homeowners at 3626
2 T Street, Northwest.

3 CHAIRPERSON HILL: Okay. Could you introduce
4 yourself also for the record?

5 MS. DUNNAVILLE: Yeah. This is Massa Dunnaville.
6 I'm the co-owner of 3626 T Street.

7 CHAIRPERSON HILL: Were you the applicants that
8 were having childcare issues that you had to go somewhere?
9 Okay.

10 MR. DUNNAVILLE: Yes, sir.

11 CHAIRPERSON HILL: Okay. Well, I'm glad -- I get
12 to share with you for 30 seconds. Your faces are so bright
13 and, like, you're, like, awake and happy. And so, like, you
14 know, I think that's great. I can always tell who's not a
15 zoning attorney or who's not this -- this is, like -- this
16 is your home. You're excited about it. That's great.

17 MR. DUNNAVILLE: This is our home.

18 CHAIRPERSON HILL: Okay.

19 MR. DUNNAVILLE: I just had an espresso, so I'm
20 ready to go.

21 CHAIRPERSON HILL: Okay. Well, still -- you still
22 don't look bitter. So that's a whole other thing.

23 MR. DUNNAVILLE: We'll see by the end of the
24 afternoon, right?

25 CHAIRPERSON HILL: Oh, no. I hope -- yeah, I hope

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1 not for you.

2 MR. DUNNAVILLE: Okay.

3 CHAIRPERSON HILL: All right. So Mr. Dunnaville,
4 why don't you go ahead and walk us through what you are
5 trying to do.

6 MR. DUNNAVILLE: Yeah.

7 CHAIRPERSON HILL: Sure, okay. And then I'm just
8 going to put ten minutes on the clock, Mr. Moy, so I know
9 where we are. And you can go ahead and get started whenever
10 you like.

11 MR. DUNNAVILLE: Okay. Thank you. Well, we live
12 at 3626 T Street, and our house is about 100 years old. And
13 it definitely needs some renovations. We've lived in the
14 house for four years. We love Burleith. We love living in
15 D.C.

16 The problem is, is that our house is only 1,044
17 square feet. Now we've got a pretty large family of five of
18 us living in this small house with ages ranging from 6 to 75.
19 So clearly, we need more space.

20 Out of respect for our neighbors' privacy and also
21 the history of Burleith, we don't want to do a third story
22 pop-up or make any changes in the facade. So that's why we'd
23 like to go back 20 feet.

24 And essentially, we're asking for 20 feet because
25 our neighbor next door also did a 20 foot addition. And they

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1 did a three-story addition including a rear deck and a roof
2 deck.

3 We're going to be putting the house right next to
4 our neighbor. This is our adjacent neighbor. So therefore,
5 our design is not going to block any of the light or air on
6 our neighbors.

7 Both of our adjacent neighbors did not object to
8 the project. Actually, they were very encouraging. ANC
9 voted unanimously for the project. Planning and DDOT were
10 also supportive.

11 And as I said before, we definitely need the
12 space. You know, we're not developers. We're homeowners,
13 and we want to stay in our neighborhood. And we don't want
14 to spend millions and millions of dollars for new
15 construction.

16 You're very well -- the special exception
17 requirements, I'm not going to go through them verbatim.
18 Obviously, I know time is of the essence, and I respect your
19 time. So I just wanted to really discuss what the spirit of
20 the exceptions are.

21 Essentially, light and air available to
22 neighboring properties shall not be unduly affected. And we
23 need to respect our neighbors' privacy and enjoyment. And
24 I think based on this design, that's exactly what we do.
25 Also, we should not visually intrude upon the character,

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1 scale, and patterns along the street frontage. And as I said
2 before, we're not changing our facade.

3 Here's a look at what we plan to do with regards
4 to our proposed layout. And as you can see, you know, you
5 can see the addition on the layout. As you can see, the roof
6 line is staying the same, and we're not doing a pop-up.

7 With regards to lot occupancy, even with the
8 addition, with a deck, we're still going to be in compliance.
9 We're going to still be less than 60 percent lot occupancy
10 with this plan. So we don't have any concerns with regards
11 to that, and we hope that you don't as well. We also want
12 to preserve our front and back yards and green space.

13 Here's just another diagram with regards to lot
14 occupancy. As you can see, we're blessed with a rather large
15 lot. So that does give us that option and opportunity.
16 Also, if you can look over on what's my left at 3628 T
17 Street, that kind of gives you some kind of impression as far
18 as how far back our neighbors have already gone.

19 Once again, this is just the proposed layout with
20 a roof. We're keeping the existing A-line roof. So we
21 thought that would be a nice touch just to add symmetry for
22 the neighborhood.

23 And with regards to the shadow studies, as the
24 sketches that I'm about to show you indicate, we don't
25 anticipate impacting the shadow of our neighbors. Our

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1 neighbors to the west, 3628 T Street, they have a 20 foot
2 three-story addition as I said before. So we're not going
3 to impact their light.

4 Our neighbors to the east on 3624 T Street, they
5 shouldn't be impacted either. Most of the exposure is coming
6 from the west. And as I said before, our -- as you can see
7 in the next slide, our house is going to be shorter than our
8 neighbor's existing structure.

9 I've shown you the summer solstice, the winter
10 solstice, and also the equinox in June. And as you can see,
11 we're not going to be impacting their light in any way.

12 CHAIRPERSON HILL: Okay, Mr. Dunnaville?

13 MR. DUNNAVILLE: Yes?

14 CHAIRPERSON HILL: I'm sorry. I've looked through
15 the record and there was just some additional things that I
16 was looking for that I do see.

17 MR. DUNNAVILLE: Okay.

18 CHAIRPERSON HILL: I don't have a lot of specific
19 questions for you at this time.

20 MR. DUNNAVILLE: Okay.

21 CHAIRPERSON HILL: So I'm just going to kind of
22 move forward through this. Does the Board have any questions
23 that they have of the applicant?

24 (No response.)

25 CHAIRPERSON HILL: Okay. I'm going to turn to the

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1 Office of Planning.

2 MR. KIRSCHENBAUM: Good afternoon, Chair Hill and
3 members of the Board. Jonathan Kirschenbaum from the Office
4 of Planning. We recommend approval, and we rest on our
5 supplemental staff report that was filed yesterday. Please
6 let me know if you have any further questions. Thank you.

7 CHAIRPERSON HILL: Okay, great. Does the
8 applicant have any questions for the Office of Planning?

9 MR. DUNNAVILLE: No, sir.

10 CHAIRPERSON HILL: Okay. Is there anyone here
11 wishing to speak in support?

12 (No response.)

13 CHAIRPERSON HILL: Is there anyone here wishing
14 to speaking in opposition?

15 (No response.)

16 CHAIRPERSON HILL: Okay. Mr. Dunnaville, were you
17 here at the very beginning of the day?

18 MR. DUNNAVILLE: Yes.

19 CHAIRPERSON HILL: Okay. All right. Okay. All
20 right. So let's see. Well, I just noticed where you're
21 living and where your ANC is and all that. I'm not asking
22 for your question or comment. I was just curious if you were
23 here at the beginning of the day. All right. Does anybody
24 have any final questions for the applicant?

25 (No response.)

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1 CHAIRPERSON HILL: Okay. Is there anything you'd
2 like to add at the end?

3 MR. DUNNAVILLE: No, sir. Other than we respect
4 your time and hope that we have a fair adjudication in this
5 process. Thank you.

6 CHAIRPERSON HILL: Okay, great. You'll definitely
7 get a fair one. All right. Let's see. I'm going to close
8 the record. Is the Board ready to deliberate? Okay. I
9 thought it was relatively straightforward.

10 I mean, I do think that that it is sensitive of
11 the applicant to not do a third story addition and also
12 trying to accommodate the needs of their family. I do and
13 would agree with the analysis that was provided by the Office
14 of Planning.

15 I'm glad to see that the ANC was in support of
16 this and is pleased by the design and also that DDOT had no
17 objections. And beyond that, I do believe that they meet the
18 standard and criteria for the special exception in order for
19 us to grant the application. Is there anything else anyone
20 would like to add?

21 (No response.)

22 CHAIRPERSON HILL: Going to go and make a motion
23 to approve Application No. 20165 as captioned and read by the
24 Secretary and ask for a second.

25 VICE CHAIRPERSON HART: Second.

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1 CHAIRPERSON HILL: Motion made and seconded. All
2 those in favor, say aye.

3 (Chorus of aye.)

4 CHAIRPERSON HILL: All those opposed?

5 (No response.)

6 CHAIRPERSON HILL: The motion passes, Mr. Moy.

7 MR. MOY: Staff would record the vote as 4 to 0
8 to 1, and this is on the motion of Chairman Hill to approve
9 the application for the relief requested. Seconded the
10 motion is Vice Chair Hart. Also in support, Ms. John and
11 Zoning Commissioner Michael Turnbull. No other members
12 present.

13 CHAIRPERSON HILL: Okay, great. Thank you. Thank
14 you all very much.

15 MR. DUNNAVILLE: All right. Thank you.

16 CHAIRPERSON HILL: Have a nice afternoon.

17 MR. DUNNAVILLE: Thanks.

18 CHAIRPERSON HILL: Oh, and also, can we make sure
19 you get the witness cards to the -- Mr. and Mrs. Dunnaville,
20 make sure you get the witness cards to the transcriber over
21 there to the right. Okay.

22 MR. MOY: The next application before the Board
23 is Application No. 20176 of M Street Five, LLC, captioned and
24 advertised for a special exception under the penthouse use
25 provisions of Subtitle C, 1500.3(c). This would construct

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1 a roof deck for a bar and restaurant use above an existing
2 attached building, MU-4 Zone. This is at 3219 through 3221
3 M Street, Northwest, Square 1207, Lot 114.

4 And let's see. If we can look to see whether or
5 not the affidavit of posting may be a bit untimely, about two
6 or three days.

7 CHAIRPERSON HILL: All right. So let's, I guess
8 -- I mean, peg that there's a preliminary matter here in
9 terms of the affidavit of posting. Do you guys know why you
10 were late with the affidavit of posting? You need to push
11 the button. Oh, actually, let me start this first. I'm
12 sorry. Could you please introduce yourselves for the record
13 from my right to left or left to right? It doesn't matter.

14 MS. BABIN: I'm Stefanie Babin with M Street Five
15 and Neighborhood Restaurant Group, that represents the
16 restaurant. And if I -- I might've made an error on my
17 affidavit. It did it very quickly yesterday. We were posted
18 well in advance of the 15 day requirement.

19 CHAIRPERSON HILL: Okay. Could you spell your
20 last name for me?

21 MS. BABIN: B-A-B-I-N. I'd be happy to resubmit
22 it.

23 CHAIRPERSON HILL: Well, it's just that we will
24 have to provide a waiver for you in terms of the timeliness.
25 And we'll decide whether that happens in a second. Sir?

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1 MR. GORDON: My name is George Gordon, Gordon
2 Architects.

3 CHAIRPERSON HILL: Okay, great. Mr. Gordon, are
4 you going to be presenting to us?

5 MR. GORDON: Yes, I am.

6 CHAIRPERSON HILL: Okay. So in terms of the
7 waiver, I guess, Ms. Babin, you're saying that you did post
8 in a timely manner?

9 MS. BABIN: Yes.

10 CHAIRPERSON HILL: Okay. And so I didn't see,
11 though, -- did you guys get a response yet from the ANC?

12 MS. BABIN: Yes, we --

13 CHAIRPERSON HILL: Okay. I see it right there.
14 Okay. Oh, no. Maybe not. Can you tell me that again,
15 please?

16 MS. BABIN: We appeared before the ANC last week
17 and they voted to support the application.

18 CHAIRPERSON HILL: Okay. Give me one second.
19 Okay. Were you guys sworn in earlier?

20 MS. BABIN: Yes, we were.

21 CHAIRPERSON HILL: Okay. Were you here at the
22 beginning of the day?

23 MS. BABIN: We have been and hopefully don't look
24 bitter.

25 CHAIRPERSON HILL: You have? No, no, no, no, no.

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1 I'm just saying there's a lot of stuff going on this day
2 around -- there's a lot of stuff going around each other
3 today which is a lot of people are very close to the
4 applications that are going on today. So I don't want
5 anyone's opinion. I was just curious as to whether or not
6 you had been there.

7 So okay. I don't have any problem with waiving
8 the timeliness. I believe that they have spoken to the ANC.
9 It seems as though they have posted the testimonies, that
10 they have posted in a timely manner. So I don't have a
11 problem with the waiver. Does the Board have any problem
12 with that?

13 (No response.)

14 CHAIRPERSON HILL: Okay. All right. So we'll go
15 ahead and allow the affidavit of maintenance to be in -- put
16 in somewhat late. I guess, actually, Mr. Gordon, I don't
17 really have a lot of questions for you. I guess I think it's
18 a pretty straightforward application and also design. I
19 mean, I had more questions kind of for the Office of
20 Planning.

21 It is, you know -- I mean, we're all -- I mean,
22 I'm quite familiar with M Street and where you guys are and
23 everything. And so I had more kind of a question with the
24 Office of Planning in terms of the penthouse setback, if
25 there's anything kind of like that.

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1 But if you just wouldn't mind, Mr. Gordon, just
2 briefly going over what you're trying to do. And we'll see
3 if the Board had any questions for you.

4 MR. GORDON: Okay. The --

5 CHAIRPERSON HILL: You need to push the button.

6 MR. GORDON: The purpose of the project is to
7 provide an outdoor dining space for the restaurant Sovereign.
8 And the restaurant itself is this little block that's toward
9 the back of our 3D drawing.

10 The deck occupies part of this existing roof on
11 the two-story building which houses a barber. We have
12 appeared in front of the Old Georgetown Board a few times,
13 have design concept approval. It's been passed, the Historic
14 Preservation Office. We have setback off of M Street, the
15 required distance for non-visibility from public space off
16 of M Street.

17 The only issues that OGB talked about with us is
18 the visibility factor and then a little bit of buffering
19 around neighboring property lines. And that's the purpose
20 of our wall to the west.

21 And we feel that our view is blocked very
22 substantially from Prospect Street by the presence of the
23 Sovereign mass. This is the second story of their
24 restaurant. And that pretty much sums up the design of the
25 roof deck.

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1 CHAIRPERSON HILL: Okay. I'm going to interrupt
2 you. I'm sorry. How do you guys get up -- I didn't
3 understand where the entrance was to Sovereign.

4 MR. GORDON: That's a very interesting point
5 because the address of this property is actually -- is on M
6 Street where -- this is maybe not the best drawing. Okay.
7 So the address with DCRA is 3219-21 M Street. But the actual
8 entrance to the restaurant you'll see in this photograph is
9 down the alley off of Wisconsin Avenue.

10 This is the Old Weavers hardware store, the old
11 National Bank of Washington building. So this street address
12 is 1206 Wisconsin Avenue.

13 CHAIRPERSON HILL: And Champion's used to be
14 there, yeah. Champion's is gone.

15 MR. GORDON: I wouldn't know myself.

16 CHAIRPERSON HILL: Long time ago. Not many people
17 would. Now it's something else. I forget what it is now.

18 MS. BABIN: Sovereign.

19 CHAIRPERSON HILL: Oh, now it's Sovereign?

20 MS. BABIN: Yeah. There was Blue Gin in between.

21 CHAIRPERSON HILL: Oh, yeah. That's right. Okay.
22 All right. Sorry. I'm dreaming of a drink. Okay. The --
23 right. So that's where the entrance is. Okay. Does the
24 Board have any questions for the applicant?

25 VICE CHAIRPERSON HART: I do.

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1 CHAIRPERSON HILL: You need to turn your mic on.

2 VICE CHAIRPERSON HART: Thank you for reminding
3 me. I need to turn the mic on to be heard.

4 So Mr. Gordon, I'm trying to understand the ANC
5 report that we received. They really didn't vote to -- they
6 voted, but they voted just to say that they -- I mean, they
7 didn't say, we vote to approve this.

8 They said that they voted to -- sorry I'm, like,
9 getting the actual -- they said they adopted the following
10 resolution by a vote of 8 to 0 with regard to the above-
11 referenced matter. And then it says that they believe the
12 roof deck will be of relatively low impact on the
13 neighborhood due to reasons provided by the applicants.

14 However, the ANC does ask the BZA to learn more
15 about any sound related issues that may arise, you know due
16 to this, you know, roof deck. But again, they didn't vote
17 in favor or against. They just kind of voted for this
18 particular resolution which is -- I guess it's a -- I don't
19 want to say weakly. But it's not a strong endorsement. It's
20 just kind of saying, we acknowledge this thing is going on.

21 So I'm trying to understand what sound related
22 issues that might -- that how you're going to deal with that.
23 And if you could just expound on that a little bit.

24 MR. GORDON: Sure. We addressed these issues at
25 the ANC. One of the things that we feel helps substantially

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1 in mitigating any sound issues is the fact that we are
2 nestled in here between two taller buildings. We are a
3 substantial distance from any residential uses.

4 VICE CHAIRPERSON HART: Do you know what that
5 distance is?

6 MR. GORDON: Well --

7 VICE CHAIRPERSON HART: I don't know if you had
8 a larger -- that's helpful?

9 MR. GORDON: Not immediately. But we have these
10 rooftop views that show this is the area with the roof deck.
11 These are the taller buildings. Their only residential use
12 is this upper story on Georgetown Park which is condominiums.
13 And we received no feedback from the condominium association.

14 We've been at public hearings for quite a while
15 on this project. So I mean, anyone who was concerned
16 certainly knew well in advance that this was coming.

17 VICE CHAIRPERSON HART: I was more just trying to
18 understand because the ANC had referenced us --

19 MR. GORDON: Right.

20 VICE CHAIRPERSON HART: -- in this issue, you
21 know, about the sound.

22 MR. GREEN: We had one neighbor who was in this
23 building up here who had a question for their ANC
24 Commissioner about whether the ANC had considered noise that
25 may be generated from the roof deck.

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1 This has been brought up a number of times. I
2 mean, whenever you're talking about outdoor dining or, you
3 know, an establishment that is open to the public, people
4 talk about noise. We feel that, you know, we are in the
5 heart of Georgetown on M Street with 24-hour bus traffic, the
6 just sort of white noise of the urban fabric is just --

7 VICE CHAIRPERSON HART: And that's fine. I just
8 had one follow-up question. Do you think that -- are you
9 proposing any amplified music? Will you have speakers, you
10 know, for, you know, just music to be piped into this area?

11 MS. BABIN: There will be background music, but
12 it will not be audible at the property line.

13 VICE CHAIRPERSON HART: How do you know that?

14 MS. BABIN: Well, because we do this a lot. And
15 so we actually -- I didn't really get a chance to introduce
16 myself.

17 VICE CHAIRPERSON HART: Okay.

18 MS. BABIN: We're with the Neighborhood Restaurant
19 Group, and we have Iron Gate, Hazel, The Partisan. And most
20 of our restaurants have an outdoor component. So we've kind
21 of learned -- particularly in Iron Gate who's surrounded by
22 residential and noise sensitive neighbors, we've really
23 learned how to control the volume so as to minimally impact
24 the neighborhood.

25 So I would say nothing more than experience. But

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1 -- and to speak to Mr. Gordon's point about the person who
2 raised it with us was a developer. And I think it wasn't an
3 actual resident.

4 VICE CHAIRPERSON HART: They have ears too.

5 MS. BABIN: They do.

6 VICE CHAIRPERSON HART: They have ears too.

7 MS. BABIN: Yeah.

8 VICE CHAIRPERSON HART: I'm kidding. That's fine.
9 So I understand that. What I was more concerned about is --
10 and again, this is a little bit more of experience is I go
11 to restaurants. There's always kind of -- I almost feel like
12 the music sometimes gets louder to drown out some of the
13 conversation. And so I'm just trying to understand if --

14 MS. BABIN: Right.

15 VICE CHAIRPERSON HART: -- you're, you know,
16 playing it so that you can kind of hear, hear it or playing
17 it for atmosphere.

18 MS. BABIN: I completely understand, and it's a
19 constant topic, that and lighting, having the lights too
20 bright. And we're really careful not to have the music
21 actually be louder than the conversation because then people
22 get aggravated and feel like, you know, there's too much
23 noise to me.

24 To point out on the application, there is not a
25 bar in the traditional sense in that there will not be a

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1 bartender serving drinks. So the atmosphere and the ambience
2 is really about table service and regular diners.

3 So if you think about what Champion's was and what
4 Blue Gin were, they were really true taverns. And Sovereign
5 is a pretty well established restaurant with, you know,
6 upscale service and all the accompaniments of it.

7 VICE CHAIRPERSON HART: Thank you.

8 CHAIRPERSON HILL: If I might add as far as that
9 goes, I mean, the -- I mean, I'm just familiar with that area
10 there, whatever. And that particular patio is set back quite
11 a ways from what's going on in that entrance back in that
12 back alley. You know, it's really not -- you wouldn't even
13 know that that thing is up there, I would think.

14 And so -- and I can appreciate what Commissioner
15 -- what Vice Chair Hart is bringing up in terms of, like,
16 some of the things that the ANC had mentioned. But it seemed
17 as though these are things that you guys are going to try to
18 mitigate and also work with the ANC, I assume, in terms of
19 if there is any issues coming on.

20 I can see that wall that you put forth on the west
21 side there. And so those things are things that you are
22 aware of, correct?

23 MS. BABIN: Correct.

24 CHAIRPERSON HILL: Okay. All right. Does anyone
25 have any more questions?

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1 COMMISSIONER TURNBULL: Yeah.

2 CHAIRPERSON HILL: Okay, sure.

3 COMMISSIONER TURNBULL: You mentioned you had gone
4 before OGB and you got concept approval. Is there anything
5 in the record that reflects that? Did you submit something?

6 MR. GORDON: I believe it is in the record. We
7 have the OGB concept approval letter --

8 COMMISSIONER TURNBULL: Okay.

9 MR. GORDON: -- the package.

10 COMMISSIONER TURNBULL: I didn't see it, but maybe
11 it's there. You're not asking for any rooftop or mechanical
12 setback relief, so I'm assuming you've met all the
13 regulations up on the penthouse?

14 MR. GORDON: Yes.

15 COMMISSIONER TURNBULL: Okay.

16 MR. GORDON: We think we have. We have a
17 response. We're filed in project docs. And we have a
18 response from the zoning reviewer saying exactly why we're
19 here, that we need to go to BZA for a special exception for
20 a rooftop deck for a place of assembly.

21 COMMISSIONER TURNBULL: Okay. No other relief
22 then? Okay. Thank you.

23 VICE CHAIRPERSON HART: Commissioner Turnbull, it
24 looks like -- and I think, Mr. Gordon, there is an -- one of
25 the exhibits, I'm trying to think what exhibit this is now.

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1 Exhibit 8, you do reference having gone to OGB. But -- and
2 you say that it's attached, but there's no attachment. And
3 I think that that may be where some of the confusion is, is
4 that --

5 MR. GORDON: Okay.

6 VICE CHAIRPERSON HART: -- it's something that is
7 mentioned so we are aware of that but not an actual document.
8 And this is, again, I noticed this earlier. And I was
9 thinking, where is this? So I was wondering if --

10 MR. GORDON: Should I upload that?

11 VICE CHAIRPERSON HART: If you could, that would
12 be helpful.

13 MS. BABIN: And to clarify, we've been before OGB
14 three times and received pretty widespread support every
15 time.

16 COMMISSIONER TURNBULL: I think as the Vice Chair
17 was saying, if you could just upload those documents, that'd
18 be great.

19 MR. GORDON: We'll do it tomorrow.

20 MS. BABIN: Vice Chair Hart, just wanted to point
21 out in the record, it's actually at Exhibit 10.

22 CHAIRPERSON HILL: Okay. I'm going to turn to the
23 Office of Planning.

24 MS. MYERS: Good afternoon. Crystal Myers with
25 the Office of Planning. The Office of Planning is

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

3 But I will add, I know there was the question
4 about the penthouse setback relief that we noted. We just
5 weren't clear if they were complying with all of the setback
6 requirements. It just wasn't clear to us on that. We're not
7 saying that they are or they are not. We're just saying that
8 they should confirm that they are not.

9 They're not asking for relief from it, so we
10 didn't review it for a setback relief. We just wanted to
11 just make a note to the applicant to just double check that.

12 CHAIRPERSON HILL: And you understand that,
13 correct?

14 MS. MYERS: With that, we conclude.

15 MS. BABIN: Yes.

16 MR. GORDON: Yes, we do.

17 CHAIRPERSON HILL: Thank you. Sorry. Just
18 because it's taped. Okay. Does the Board have any questions
19 for the Office of Planning?

20 (No response.)

21 CHAIRPERSON HILL: Is there anyone here wishing
22 to speak -- I'm sorry. Does the applicant have any questions
23 for the Office of Planning?

24 MS. BABIN: No.

25 CHAIRPERSON HILL: Is there anyone here wishing

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1 to speak in support?

2 (No response.)

3 CHAIRPERSON HILL: Is there anyone here wishing
4 to speak in opposition?

5 (No response.)

6 CHAIRPERSON HILL: Ms. Babin, have you been around
7 here in D.C. quite a while?

8 MS. BABIN: Twenty-two years.

9 CHAIRPERSON HILL: Right, because Champion's is
10 way back.

11 MS. BABIN: Yeah, way back.

12 CHAIRPERSON HILL: Right, yeah. I mean, like,
13 Champion's -- like, when you said, Champion's, I was, like,
14 oh, yeah, Champion's.

15 MS. BABIN: George and I were discussing 75 cent
16 longnecks, so we --

17 CHAIRPERSON HILL: I've been over there. I have
18 been to your place actually. I have been to your place now
19 that I think about it. I mean, it's just so dark, you know.

20 MS. BABIN: That's really the issue.

21 CHAIRPERSON HILL: That's the thing. It's great
22 for the winter.

23 MS. BABIN: The sales are much higher.

24 CHAIRPERSON HILL: Right. Now you got a little
25 summer space out there. Right. Okay. So let's see. Is

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1 there anything you'd like to add at the end?

2 MS. BABIN: No, thank you.

3 CHAIRPERSON HILL: Okay. All right. I'll go
4 ahead and close the record. Is the Board ready to
5 deliberate? Okay. I can begin. I thought that -- I thought
6 it was -- I mean, I'm just lucky because I know the area.
7 So I mean, I can see the deck and what's going on and I don't
8 think it's going to have any issues. And I do think that
9 they meet the criteria for us to grant the relief requested.

10 I did have a couple of questions about that ANC
11 report, as you all did as well. But I do believe that
12 they're going to work with the ANC in terms of any kind of
13 sound mitigation, although I do believe that it is really set
14 far back in that little pocket there.

15 And so I am going to be voting to approve. Is
16 there anything else anyone else would like to add?

17 VICE CHAIRPERSON HART: Only that I would be
18 voting to approve as well. And I'll just note that because
19 we do have the OGB -- the Old Georgetown Board letter in
20 Exhibit 10, we don't need to have that resubmitted.

21 So it just was -- I was thinking that it would be
22 a different title on it. And I appreciate the OAG letting
23 us know where that is. But I will be in support of the
24 application for the reasons that you stated.

25 CHAIRPERSON HILL: Okay. I'm going to make a

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1 motion to approve Application No. 20176 as captioned and read
2 by the Secretary and ask for a second.

3 VICE CHAIRPERSON HART: Second.

4 CHAIRPERSON HILL: Motion made and seconded. All
5 those in favor, say aye.

6 (Chorus of aye.)

7 CHAIRPERSON HILL: All those opposed?

8 (No response.)

9 CHAIRPERSON HILL: The motion passes, Mr. Moy.

10 MR. MOY: Staff would record the vote as 4 to 0
11 to 1. This is on the motion of Chairman Hill to approve the
12 application for the relief requested. Seconded the motion
13 is Vice Chair Hart. Also in support, Ms. John and Zoning
14 Commissioner Michael Turnbull. No other members present.

15 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
16 Thank you all very much.

17 MS. BABIN: Thank you very much.

18 MR. GORDON: Thank you.

19 CHAIRPERSON HILL: You guys, I'm sorry. We got
20 to take a quick five-minute break just to kind of stretch.
21 So everybody please stretch, do your calisthenics.

22 (Whereupon, the above-entitled matter went off the
23 record at 4:17 p.m. and resumed at 4:38 p.m.)

24 CHAIRPERSON HILL: All right. Mr. Moy?

25 (Pause.)

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1 MR. MOY: All right. Thank you, Mr. Chairman.
2 The Board is back in session, and the time is at or about
3 4:35. And we can proceed with Case Application No. 20177 of
4 Aulona Alia as captioned for area variance from the minimum
5 alley width requirements, Subtitle C, Section 303.3(a). This
6 would create a new record lot, RF-1 Zone. This is at 2017
7 or 2017 Rear 2nd Street, Northeast, Square 3564, Lot 810.

8 CHAIRPERSON HILL: Okay, great. Could you please
9 introduce yourselves for the record?

10 MR. VASA: Left to right?

11 CHAIRPERSON HILL: Either way, it doesn't matter.
12 Thanks, though.

13 MR. VASA: Hi, my name is Gjergji Vasa.

14 CHAIRPERSON HILL: Could you spell your last name
15 for me?

16 MR. VASA: G-J --

17 CHAIRPERSON HILL: G-J?

18 MR. VASA: Yeah, E-R-G-J-I.

19 MS. ALIA: That's your first name.

20 CHAIRPERSON HILL: What's your last name?

21 MR. VASA: Vasa, V-A-S-A.

22 CHAIRPERSON HILL: Okay, great.

23 MS. ALIA: My name is Aulona Alia. A-L-I-A is my
24 last name. And Gjergji is my husband.

25 CHAIRPERSON HILL: Okay. So one of you guys is

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1 going to be presenting to us, I suppose.

2 MS. ALIA: I will.

3 CHAIRPERSON HILL: Okay. Were you guys sworn in
4 at the beginning of the day?

5 MS. ALIA: We were.

6 CHAIRPERSON HILL: Okay. You look a little older
7 than you did at the beginning of the day. Let's see. So we
8 did get your affidavit of maintenance. I had more questions
9 about really -- I guess I'm stuck about kind of the alley
10 width requirements.

11 I mean, so I guess if you could tell us a little
12 bit about your project and what you're trying to achieve.
13 And I might cut you off at some point and jump to the Office
14 of Planning. So you can begin whenever you like.

15 MS. ALIA: Sure. Just make it really fast. We
16 are building our first home. We found an alley lot that was
17 vacant and that met our requirements for the purchase price.
18 We used the plans that the person had before us. So
19 basically, we just did the zoning case and here we are.

20 CHAIRPERSON HILL: Okay. That's good enough for
21 me. Does anybody have any questions for the applicant?

22 (No response.)

23 CHAIRPERSON HILL: You can think about it while
24 I move to the Office of Planning. Again, from the Office of
25 Planning.

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1 MR. JESSICK: Thank you, Mr. Chairman and members
2 of the Board. My name is Matt Jessick. The Office of
3 Planning is happy to rest on the record in support of the
4 application, and I can take any questions. Thank you.

5 CHAIRPERSON HILL: Does the applicant have any
6 questions -- I'm sorry. Does the Board have any questions
7 for the Office of Planning?

8 MEMBER JOHN: Just one question. So is there a
9 request for relief from the alley frontage requirement? It's
10 supposed to be 24 feet wide. The lot should be 24 feet wide.
11 Is that correct? In addition to the alley not being -- the
12 alley being only, what, 15 feet wide?

13 MR. JESSICK: That's correct. Section -- well,
14 Subtitle C, Section 303.3(a) actually has two requirements,
15 one, that the lot front on an alley of at least 24 feet in
16 width and that it have access from the lot to the street
17 through alleys of at least 24 feet in width.

18 The DCRA referral -- and that is Exhibit No. 3 --
19 refers to both parts of the regulation. When I looked at the
20 alley, it appeared that the lot did front on a 24-foot wide
21 alley. It was just the second part of that regulation, the
22 alley width to the street which didn't appear to meet. So
23 we focused on the second part of that regulation. But the
24 DCRA referral does mention both.

25 MEMBER JOHN: So Mr. Chairman, we would have to

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1 grant both parts of the relief, I guess, for OAG to comply
2 with the referral or to be consistent with the referral.
3 Because if we only granted the alley access width and not the
4 frontage and it turns out that the frontage is not 24 feet,
5 then they would have to come back for relief, right?

6 MS. CAIN: Yeah, reading the DCRA referral letter
7 does look like you'd have to grant both. And the Office of
8 Planning can confirm this. I believe that in terms of the
9 frontage, it was not consistent throughout the alley.

10 So there were certain sections that were 24 feet
11 and then there were other sections that were narrower. But
12 that would be for OP to confirm. So I think if the Board,
13 you know, is moving that way, to address both of those issues
14 would be consistent.

15 MEMBER JOHN: Thank you.

16 COMMISSIONER TURNBULL: I mean, part of it is hard
17 to tell exactly how wide the alley is. It's not really a
18 finished or a paved alley. But the plat has it down as 16
19 and 15. So I'm just a little bit confused.

20 MR. JESSICK: Maybe I can refer you, Commissioner
21 Turnbull, to page 4 of the OP report where we have the layout
22 of the lots in the square.

23 COMMISSIONER TURNBULL: Yeah, I know. I noticed
24 that.

25 MR. JESSICK: And it does get wider right --

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1 COMMISSIONER TURNBULL: Right.

2 MR. JESSICK: -- adjacent to this lot.

3 COMMISSIONER TURNBULL: Oh, I see what you're
4 saying. So that would be an extending circumstance then?

5 MR. JESSICK: We thought that --

6 COMMISSIONER TURNBULL: I see. I get what you're
7 getting at, yeah.

8 MR. JESSICK: Out of an abundance of caution,
9 maybe the Board should just grant total relief to that
10 section and then it would be covered if DCRA --

11 COMMISSIONER TURNBULL: No matter what.

12 MR. JESSICK: -- has a different opinion.

13 COMMISSIONER TURNBULL: Okay. Yeah, it does like
14 it as it makes that little dogleg. It is maybe, like, 24
15 feet. So okay.

16 VICE CHAIRPERSON HART: I'm sorry. I kind of
17 missed a little portion of that. Could you repeat what you
18 just said about -- what you just were talking about?

19 MR. JESSICK: At the very end, I said perhaps out
20 of an abundance of caution, the Board could grant relief to
21 the entire section, both the frontage and the width out to
22 the street, just in case DCRA has a different opinion about
23 the width of the alley.

24 MEMBER JOHN: So if I could follow up, the area --
25 if we look at page 4, the area to the south would be the area

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1 that could possibly be 24 feet. Was that your thinking?

2 MR. JESSICK: It's definitely wider than 24 feet
3 towards that western part where it widens out.

4 VICE CHAIRPERSON HART: Just a question for OAG
5 for this case. Because this is what the ZA -- because the
6 ZA submitted a document on this, shouldn't we -- I'm not sure
7 if -- it doesn't -- it's not clear if we're actually
8 following all of that or if they're requesting all of that.
9 And maybe I'm just unclear as to --

10 MS. CAIN: I mean, the ZA memo calls out C303.3(a)
11 in its entirety. They don't say it's only from this first
12 position or the second. So I think building off of what OP
13 said, if you were to grant relief from that entire provision,
14 it covers everything that DCRA might have intended in that
15 memo.

16 VICE CHAIRPERSON HART: Does that mean that we'd
17 have to change what's noted under the caption?

18 MS. CAIN: I don't believe so. I believe the
19 caption is C303.3(a), yes. So you'd be fine.

20 VICE CHAIRPERSON HART: I'm just saying the words
21 that they have. So it says, you know, for an area variance
22 for the minimum alley width requirements. So you're saying
23 that's covered under --

24 MS. CAIN: I think that -- I mean, in terms of the
25 caption, I think that encapsulates it.

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1 CHAIRPERSON HILL: So distance --

2 MS. CAIN: If you want --

3 CHAIRPERSON HILL: -- requirements, frontage,
4 that's all in 303.3(a)?

5 MS. CAIN: Yes.

6 CHAIRPERSON HILL: Okay. All right. Okay. So
7 then we would be covered?

8 MEMBER JOHN: Yes.

9 CHAIRPERSON HILL: Or the applicant would be
10 covered? Okay. Without the specificity of the language.
11 Okay. All right. Okay. Does anybody have any more
12 questions for the Office of Planning?

13 (No response.)

14 CHAIRPERSON HILL: Is there anyone here -- does
15 the applicant have any questions for the Office of Planning?
16 You have to speak in the microphone.

17 MS. ALIA: No, thank you.

18 MR. VASA: No, thank you.

19 CHAIRPERSON HILL: Is there anyone here wishing
20 to speaking in support?

21 (No response.)

22 CHAIRPERSON HILL: Is there anyone here wishing
23 to speak in -- oh, sorry -- opposition? Please come forward.
24 Did you get sworn in earlier? Okay.

25 MS. MARTINEZ: Hello, I'm Morgan Martinez.

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1 CHAIRPERSON HILL: No, that's all right. Just
2 have a seat first, please.

3 MS. MARTINEZ: Hi.

4 CHAIRPERSON HILL: Go ahead and introduce
5 yourself.

6 MS. MARTINEZ: Morgan Martinez. I live at 1952
7 Third Street, Northeast. So I use that alley every day.

8 CHAIRPERSON HILL: Okay.

9 MS. MARTINEZ: And my car is parked there.

10 CHAIRPERSON HILL: Okay.

11 MS. MARTINEZ: So I can actually answer some of
12 your questions.

13 CHAIRPERSON HILL: Give me one second.

14 MS. MARTINEZ: Yeah.

15 CHAIRPERSON HILL: So Ms. Martinez, have you been
16 here all day?

17 MS. MARTINEZ: So my husband and I tag teamed
18 because he had a meeting he couldn't miss.

19 CHAIRPERSON HILL: Okay. That's okay.

20 MS. MARTINEZ: So he was here this morning.

21 CHAIRPERSON HILL: No, no. I was just curious if
22 you'd seen how we kind of went through all this stuff.

23 MS. MARTINEZ: Yes, I've been watching online.

24 CHAIRPERSON HILL: Okay. All right. And you did
25 say you did get sworn in?

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1 MS. MARTINEZ: I did.

2 CHAIRPERSON HILL: Okay. So as a member of the
3 public, you'll have three minutes to give your testimony.
4 Mr. Moy, if you could put three minutes on the clock. And
5 you can begin whenever you like.

6 MS. MARTINEZ: So as mentioned, I live at 1952
7 Third Street, Northeast, and I use that alley every day. I
8 have taken a look at the exhibits. And unfortunately, what
9 is not on there is that the 15-foot alleyway is a blind turn.
10 And so you have cars coming in and out.

11 Unfortunately, it's incorrect. It's not 24 feet
12 because that is used as a parking space. It is actually
13 someone's property. So for instance, today when I was
14 walking my dog, I almost got hit by a car on the blind turn
15 because it's so small that you can't actually see anyone.
16 And therefore, I actually had to go into someone's public
17 spot -- or private spot, private property to not get hit by
18 the car into someone's driveway, right?

19 And so the other thing that's not noted in these
20 photos which they have not given to you is the fact that the
21 blind turn on that alley. So where they are sitting, their
22 property will be a blind turn. The alley is already 15 feet
23 and it's too small already. It's a big problem. Cars cannot
24 get through.

25 They gave you an exhibit that showed a truck that

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1 could get through. But unfortunately, unless they spoke to
2 the driver of that vehicle, they wouldn't know how the person
3 got through that because it's a two-way alley, there's in and
4 out.

5 So unless they went and actually had spoke to
6 them, most of them can't get through that. I've had movers
7 in and out of there. I've owned that place for three years
8 now, and you can't get through. I've also had to help
9 Comcast back out of that corner, that blind turn.
10 Additionally, that blind turn is on a hill, and so it makes
11 it even more dangerous.

12 Unfortunately, the letters were not sent to the
13 residents either. The only reason why I found out about this
14 was because they did post it on the land. I'm HOA president
15 for 1952 Third, and none of us received a letter about this
16 and we are 200 feet away.

17 Moreover, they have endorsements from Rebecca
18 Walker on 2nd Street. But unfortunately, Rebecca Walker does
19 not use this alleyway at all. There is not a safe passage
20 for cars, trucks, fire, and there's no way an emergency
21 vehicle can get through that alley already.

22 This, unfortunately, just would be a really bad
23 decision for these members because it's a safety concern.
24 And therefore, I do think there should be a traffic safety
25 assessment before granting this.

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1 Thank you.

2 CHAIRPERSON HILL: Okay. Does anybody have any
3 questions for the witness?

4 VICE CHAIRPERSON HART: Yes, thank you, Ms.
5 Martinez --

6 MS. MARTINEZ: No problem.

7 VICE CHAIRPERSON HART: -- for coming down. So
8 you're saying that because there are -- your opposition is
9 because of the fact that this is an alley as opposed to what
10 it is that they want to do? Like --

11 MS. MARTINEZ: No, my opposition is that because
12 the alley is so thin already, they're asking because right
13 now the alley is not the 27 feet at all. Now where they had
14 stated they think that it's 24 to 27 feet on that turn, that
15 turn actually goes into a parking space, right? And so
16 people park there and that is their private property. So it
17 never does get large enough.

18 So the problem is -- there's a couple problems.
19 The first problem is fire emergency vehicles cannot make that
20 turn already. Okay? So that's the first, fire, EMT,
21 anything like that. Additionally, they will not be able to
22 get up the other side to come help us because of the hill and
23 the gravel.

24 Third and more importantly, the fact is, is that
25 if they are allowed to do this, they are going to build a

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1 home there, a quite big home. They say it's for three, but
2 it's 5,000 square feet. And we will have an increase in
3 traffic.

4 They are going to have to park there. There is
5 a garage there. That traffic, we are already seeing people
6 who are going around the corner because it's only 15 feet
7 wide and they're missing it.

8 There's no mirrors. There's nothing at this
9 point. And there, head-on collisions could happen all the
10 time. The only reason why us neighbors know is we honk
11 before we make the turn to go in there.

12 So we're already facing the problem of how skinny
13 that alley is. And to not only add a house there and
14 increase traffic and have someone have the front of their
15 house inside an alleyway where if they have guests or
16 anything like that, it's going to increase the traffic up
17 which is going to either be a traffic hazard and a concern
18 for safety.

19 COMMISSIONER TURNBULL: Looking at some of the
20 legal documents that we've seen, as the alley make that turn,
21 that little dogleg, it gets wider and it would appear to be
22 almost 24 feet. But I don't see that as someone's private
23 property.

24 MS. MARTINEZ: So it turns around, and the problem
25 is, is that someone if -- I don't know what rendering they

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1 have right now. But it is a -- someone parks there and that
2 is -- I've looked at their property line because it was a
3 concern because you can't do U-turns, right?

4 Like, if you get into a head-on with somebody,
5 it's not wide enough. You have to back up a hill that is
6 gravel right now. It's paved-ish. We don't really -- no one
7 has kept it up. We've put in multiple asks for the potholes
8 and so forth. They get filled, but usually not. Like I
9 said, Comcast just got stuck on it.

10 But people park right there. Additionally, that's
11 where their trash cans go. It might be 24 feet. I work as
12 a nonprofit employee. But even with that, because of the
13 parking and where people's trash cans are going, there's no
14 way a person could actually get in and make U-turn, nor could
15 you get two cars to pass by.

16 CHAIRPERSON HILL: Okay. Does the Board have any
17 further questions for the witness?

18 (No response.)

19 CHAIRPERSON HILL: Okay. Thank you very much.

20 MS. MARTINEZ: No problem. Thank you so much.

21 CHAIRPERSON HILL: Oh, wait. Hold on. I'm sorry.
22 Ms. Martinez, can you come back here for one second?

23 MS. MARTINEZ: Yes.

24 CHAIRPERSON HILL: Did you get a chance -- or you
25 said your husband was here earlier -- get a chance to go to

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1 the ANC meeting?

2 MS. MARTINEZ: So I just got married in December.
3 So we actually -- one, we weren't attending that. But I
4 believe we were actually gone for it. That being said, I
5 usually go to the Eckington Association meetings, and there
6 wasn't a quorum for this.

7 MS. ALIA: Yes, there was. We were --

8 CHAIRPERSON HILL: Okay.

9 MS. MARTINEZ: No, there wasn't. According to the
10 exhibit, there was not a quorum.

11 CHAIRPERSON HILL: There was --

12 MS. ALIA: We were at Eckington Association, and
13 everybody that was there voted for it. We were also at the
14 ANC meeting and everybody voted for it. You are coming at
15 a complete surprise.

16 CHAIRPERSON HILL: Wait, wait, wait, wait, wait.
17 Give me a second. Give me a second.

18 MS. ALIA: Okay, sorry.

19 CHAIRPERSON HILL: It's okay. It's okay. I'm not
20 -- I was just asking a question about the ANC meeting. And
21 right, in their letter, they do say that due to a lack of a
22 quorum --

23 MS. ALIA: Yeah.

24 CHAIRPERSON HILL: -- they were unable to formally
25 say its position. Nonetheless, none of the seven ECA members

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1 present or who attended the meeting voted in opposition to
2 the request. So I don't know what their number of a quorum
3 is. They were saying that the people that were there didn't
4 have any opposition to it. Okay. Well, thank you, Ms.
5 Martinez.

6 MS. MARTINEZ: No problem. Thank you so much.

7 CHAIRPERSON HILL: Yeah. Okay. Let's see. Does
8 the Board have any questions for the applicant?

9 VICE CHAIRPERSON HART: With regard to -- are you
10 aware of any of the concerns in terms of being able to travel
11 down -- or up and down the alleyway?

12 MS. ALIA: Not at all. This comes at a complete
13 surprise for us. As I said, the two neighbors that back into
14 our property, they are actually using the property right now.
15 And they are driving up our hill into their property.

16 So Ms. Martinez said that they don't -- the lady
17 that gave us the letter of support said that she doesn't even
18 use the alley. She does. She uses our property to go into
19 her driveway and is supporting this. We are at a shock
20 really to have someone like this.

21 CHAIRPERSON HILL: That's okay. Don't worry. I
22 mean, people can come and testify and that's how the system
23 works. So just go ahead and answer the questions that --

24 MS. ALIA: Yes. So I'm aware. We've traveled
25 down there multiple times. There's not really a risk of

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1 head-on collisions. There's trucks going through. There's
2 four-story buildings with apartments and trucks that are
3 going through there to construct these buildings. So I don't
4 really understand why our land would be inaccessible because
5 Ms. Martinez says that.

6 (Simultaneous speaking.)

7 CHAIRPERSON HILL: Again, just answer the
8 question.

9 MS. ALIA: Okay. I did.

10 CHAIRPERSON HILL: That's all right. All right.
11 Does the Board have any further questions?

12 (No response.)

13 CHAIRPERSON HILL: Okay. Do you have anything
14 you'd like to add in conclusion?

15 MS. ALIA: I mean, yeah, this is our family -- I
16 mean, we bought this to build for our family. And yes, our
17 family is a family of three right now, but we'll have a lot
18 more people, like, our elderly parents that will live with
19 us. So that's why we need the bigger space.

20 CHAIRPERSON HILL: Okay. All right. I'm going
21 to go ahead and close the hearing. Is the Board ready to
22 deliberate? Okay. I can start.

23 I mean, I know that there were some issues or
24 concerns about the alley traffic. I assume that the
25 applicant will do their best to work with the neighbors in

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1 the neighborhood there in terms of the alley and how they can
2 best kind of manage and negotiate that area.

3 In terms of the emergency EMS, that's something
4 that's kind of out of our purview in terms of whether or not
5 that would be something that would not be something that we
6 would be necessarily looking at.

7 And my analysis really is kind of I'm resting it
8 on the discussions that we've had with the Office of Planning
9 and the report that the Office of Planning is giving us. And
10 I do think that they meet the criteria with which we can go
11 ahead and grant the application.

12 I think that I also am comfortable with the fact
13 that ANC 5E has also voiced their opinion concerning the
14 application and also going to be moving forward with that in
15 terms of the ANC.

16 And also then even though there wasn't as was
17 stated by the witness a quorum, that the Eckington
18 Association did at least have a bit of an opportunity to
19 weight in.

20 But it wasn't necessarily -- I mean, we don't give
21 great weight to that association anyway. We give great
22 weight to the ANC and also the Office of Planning. But at
23 least there was some feedback from the Eckington Civic
24 Association.

25 I mean, obviously, as everything -- not everything

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1 -- it is always disappointing when there are people that are
2 concerned about projects that come before us. But hopefully
3 as is everything with the good neighbor policy and making
4 sure that you work with your neighbors in doing the best
5 things that you can to be able to work and live together in
6 a conducive way. That's the things that we also try to
7 mention.

8 And as well as -- as far as, again, the standard
9 with which to grant the relief requested, I would be in favor
10 of the Office of Planning's analysis as well as that of the
11 record in terms of what the applicant has put forward.

12 Is there anything else? Somebody else, let me
13 know what they have to think.

14 MEMBER JOHN: Mr. Chairman, I agree with you. I
15 believe the applicant has met the requirement for the
16 variance as has been described by the Office of Planning.
17 And the fact that the alley is only 15 feet wide would not
18 prevent the applicant from being able to get a record lot
19 because having a record lot is necessary to get a permit to
20 build anything on the lot.

21 And the alley is currently being used now. And
22 as you said, the issue of emergency vehicles is not within
23 our jurisdiction. However, in the past, we have had
24 situations where we have been told reliably that they would
25 use smaller vehicles or some sort of way to get to a building

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1 if it were on fire in the alley. The same conditions would
2 exist now if EMS had to get into the alley. So it wouldn't
3 be any increased impact.

4 CHAIRPERSON HILL: Okay. And also just again,
5 it's not within our purview. Okay. Yes, Mr. Turnbull?

6 COMMISSIONER TURNBULL: Yeah, let me just add.
7 I think the city is in a dire need for housing. And I think
8 this is an opportunity to maximize. It's a really nice sized
9 lot which you don't often get.

10 So I think this is an opportunity to expand the
11 housing stock that we have. And I think these people are
12 taking advantage of an opportunity I think is very
13 worthwhile. And I would be in favor of supporting it.

14 CHAIRPERSON HILL: Okay. I'm going to go ahead
15 and make a motion to approve Application No. 20177 as
16 captioned and read by the Secretary which would include all
17 the distance frontage requirements and width requirements
18 that were listed in Subtitle C303.3(a) and ask for a second.

19 MEMBER JOHN: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All
21 those in favor, say aye.

22 (Chorus of aye.)

23 CHAIRPERSON HILL: All those opposed?

24 (No response.)

25 CHAIRPERSON HILL: The motion passes, Mr. Moy.

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

7 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
8 Thank you very much. All right, Mr. Moy. Let's keep
9 chugging along.

10 MR. MOY: If we can have parties to the table to
11 Case Application No. 20179 of Eli Richman Kaplan NMP
12 Revocable Trust, captioned and advertised for a special
13 exception, Subtitle E, Section 5201 from lot occupancy
14 requirements, Subtitle E, Section 304.1, to permit an
15 existing rear deck addition to an attached principal dwelling
16 unit in an RF-1 Zone. This is at 1407 5th Street, Northwest,
17 Square 511, Lot 99.

18 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
19 Moy. Could you please introduce yourself for the record?

20 MR. CROSS: Michael Cross, Architect.

21 CHAIRPERSON HILL: All right. Mr. Cross, just
22 give me one second here. All right, Mr. Cross. If you could
23 go ahead and clarify a couple of things. Did you guys submit
24 your affidavit of maintenance?

25 MR. CROSS: I believe so, on the 10th.

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1 CHAIRPERSON HILL: Okay. All right. I got that.
2 And okay. All right. I guess if you can kind of, like, walk
3 us through what's going on and what happened. I mean, you're
4 here again for something that's already been done, right?

5 And I guess you did have an opportunity to speak
6 before the ANC. So really what we're trying to find out is
7 -- well, I guess, whether or not it's been done or not is
8 kind of beside the point at this -- regardless. I mean,
9 because you're here just arguing the case as to whether or
10 not you believe that this is something that -- a relief that
11 should be granted.

12 So why don't you go ahead and tell us why you
13 believe that you're meeting the standard for which we could
14 grant the relief. I'm going to put five minutes on the
15 clock, Mr. Moy, just so I know where we are. And you can
16 begin whenever you like, Mr. Cross.

17 MR. CROSS: Thank you very much. Yeah, we're
18 seeking relief from lot occupancy via Section 304.1. The
19 project is located at 1407 5th Street, Northwest. That's
20 between O and P. It backs up to Bundy Field there.

21 The relief is being sought for a rear deck and
22 stair, as you suggested, that is existing today. It was
23 originally built by the developer sometime between 2011 and
24 2013.

25 The property was purchased by the current owners

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1 in 2013. Unfortunately, neither of the current owners -- it
2 was developed as a two-family flat. Neither of the current
3 owners were aware at the time of sale that the property had
4 never received a final inspection nor a C of O. And that's
5 what I've been tasked with cleaning up so that they can sell
6 those units and move on.

7 As part of rectifying this, we found that the rear
8 stair and decks constructed on the rear of this property are
9 over lot occupancy. The primary structure is conforming, but
10 those rear deck and stair are not.

11 We believe that they do not unduly affect the
12 light and air of the adjacent neighbors because the decks are
13 -- the stairs and decks are largely open in nature. And they
14 back up against a conforming structure that is on the north
15 side of the lot.

16 So they do not largely have any excess shadow on
17 that lot to the north. This -- lastly, this is part of a
18 relatively unique row of structures on this block of 5th
19 between O and P where most of the structures exceed the
20 allowable lot occupancy.

21 As you can see on the sheet on the screen here,
22 BZA 02, only those properties color coded in green are
23 actually conforming whereas the majority of lots are
24 nonconforming with lots occupancies averaging up to 70
25 percent as we're requesting here with a number of them

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1 actually exceeding 70 percent itself.

2 We've received ANC support. We also have eight
3 letters of support, including the neighbor to the north which
4 would be affected by any shadows created by the nonconforming
5 structure.

6 CHAIRPERSON HILL: Okay. Does the Board have any
7 questions for the applicant?

8 (No response.)

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

11 MS. FOTHERGILL: Good afternoon. I'm Anne
12 Fothergill with the Office of Planning. And we rest on the
13 record in support of the application. And I'm happy to take
14 any questions.

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

17 (No response.)

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

20 MR. CROSS: I do not.

21 CHAIRPERSON HILL: Is there anyone here wishing
22 to speak in support?

23 (No response.)

24 CHAIRPERSON HILL: Is there anyone here wishing
25 to speak in opposition?

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1 (No response.)

2 CHAIRPERSON HILL: Mr. Cross, is there anything
3 you'd like to add at the end?

4 MR. CROSS: No, sir.

5 CHAIRPERSON HILL: Okay. All right. Sure, of
6 course.

7 VICE CHAIRPERSON HART: There's a letter that we
8 got in opposition to this. Steven Taylor, property owner at
9 -- I don't know what number that is.

10 CHAIRPERSON HILL: Forty-five, Exhibit 45.

11 VICE CHAIRPERSON HART: Thank you. Exhibit 45.
12 I think it's 1405 ½ 5th Street.

13 MR. CROSS: I saw that this morning.

14 VICE CHAIRPERSON HART: Yeah, and had you been
15 aware of that?

16 MR. CROSS: I was alerted by my client who had
17 been doing the outreach to all the members in the block that
18 he had not been able to get in touch with them. He did end
19 up getting in touch with them yesterday evening. He
20 regularly walks his dog on that block.

21 And so saw him coming in and out of the house and
22 had a conversation with him. At that time, he had received
23 sort of a verbal disagreement with the property. The stated
24 opposition at that time was that his structure was on -- my
25 client's structure is on the neighbor's lot which we have at

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1 least one survey.

2 I think we actually have two surveys on file for
3 this property, neither of which show that to be true, nor
4 does the photographic evidence. But that's all we heard last
5 night. This morning, I saw the letter of opposition. I have
6 read it. I can speak to any of those if you care, I guess.

7 VICE CHAIRPERSON HART: Yeah, I was just
8 understanding that --

9 MR. CROSS: Yeah, let me speak to those just --

10 VICE CHAIRPERSON HART: I mean, some of it is --

11 MR. CROSS: -- for the record.

12 VICE CHAIRPERSON HART: -- the -- whether it was
13 2011 or 2013, I'm not -- that's not what I was really looking
14 at. It's just understanding what the kind of --

15 (Simultaneous speaking.)

16 MR. CROSS: And I couldn't be sure there. As
17 presented here today, I was not part of the original design,
18 construction, or purchase. So I have no clue what the actual
19 timelines are. All of my facts are just coming from some of
20 the permit records. And so I'm not exactly sure when it was
21 actually constructed.

22 What I can say is that the 200 foot letters did
23 go out. As you know, we did meet with the community, the
24 zoning subcommittee, as well as the larger ANC and got their
25 support.

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1 As stated, my client has a dog, walks that dog
2 regularly, and has received these other letters of support.
3 He says that he believes he probably knocked on the
4 neighbor's door about 20 times.

5 He can say for sure that he knocked on that door
6 at least the four times where he was out getting some of the
7 letters he knew he has dates on getting signed. And those
8 date back to November 10th of 2019.

9 I think all the same light and air conversations
10 are true for his property as well. But I would point out
11 that he is to the south of this structure. So he would
12 receive no shadows. So it's purely light and air, and he is
13 on the side where it is the most open.

14 VICE CHAIRPERSON HART: So in this case, he'd be
15 this kind of the green that's kind of to the right of the
16 property in this?

17 MR. CROSS: He is the peach house seen in View 2.
18 View 2 on the screen now, there's a shot that kind of goes
19 straight down the property line, the peach house. No.

20 VICE CHAIRPERSON HART: That one?

21 MR. CROSS: Sorry.

22 VICE CHAIRPERSON HART: Oh, that color? Oh, I'm
23 sorry.

24 MR. CROSS: Here, it's --

25 VICE CHAIRPERSON HART: I was trying to figure out

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1 --

2 MR. CROSS: -- coming up now. That's the
3 neighbor's --

4 VICE CHAIRPERSON HART: Okay.

5 MR. CROSS: -- property. Our structure being the
6 red porch that's right up against it. Again, you can see the
7 plat that's in the record. Actually, since it's built, it's
8 not a theoretical plat. It's actually from a surveyor. So
9 they're stating that the face is online and fence aligns with
10 that.

11 VICE CHAIRPERSON HART: If you could point out
12 where the deck is on View 3.

13 MR. CROSS: Yeah, you can't see our deck in View
14 3. I think View 3 --

15 VICE CHAIRPERSON HART: There's a deck that is --

16 MR. CROSS: That is not our deck.

17 VICE CHAIRPERSON HART: That's not it? Okay.

18 MR. CROSS: I think --

19 VICE CHAIRPERSON HART: It's just blocking the
20 view of it.

21 MR. CROSS: It was intended to show the context
22 that --

23 VICE CHAIRPERSON HART: That's fine.

24 MR. CROSS: -- there's a lot of these types of
25 structures along this alley.

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1 VICE CHAIRPERSON HART: It's kind of shown in the
2 top one, I think.

3 MR. CROSS: That's right. That's the --

4 VICE CHAIRPERSON HART: About there?

5 MR. CROSS: -- view --

6 VICE CHAIRPERSON HART: Okay.

7 MR. CROSS: Sorry. Yes, that's the view from the
8 entrance to the alley. It shows it again in context with the
9 other structures along that row, many of them exceeding it.
10 And then again in View 2 in direct context with 1405 ½ 5th
11 Street --

12 VICE CHAIRPERSON HART: Thank you.

13 MR. CROSS: -- Northwest.

14 MEMBER JOHN: Just one quick question. So the
15 applicant's house is next to the peach house in View 2?

16 MR. CROSS: That is correct. The applicant's
17 house is that view. I think this -- if I may, I can flip.
18 I think this slide doesn't have too many of the actual house
19 because it was intended to be the context slide. So we could
20 go back possibly to BZA 01. I think actually there's a slide
21 here, this one. BZA 06 shows the front and rear of my
22 client's house, the subject property.

23 MEMBER JOHN: I don't understand why you can't see
24 the deck. This is the front.

25 VICE CHAIRPERSON HART: I don't have any further

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1 questions. Thanks.

2 CHAIRPERSON HILL: All right. Okay. I'm going
3 to close the hearing. Is the Board ready to deliberate?

4 VICE CHAIRPERSON HART: Yeah. And you probably
5 heard some of the conversation earlier about retroactive
6 relief request. It's unfortunate that this wasn't heard
7 before it was actually built. But we are here now.

8 So after reviewing the record and listening to
9 your presentation, Mr. Cross, and listening to the -- and
10 reading the Office of Planning report on this case, I thought
11 that this was a fairly straightforward project.

12 I agree that there would not be any light and air
13 impacts to the property to the south of this because the
14 shadows and such would be really to the north of the project.
15 I also will note that the ANC is in support of the project,
16 and you have quite a number of folks that have also written
17 letters in support of the project.

18 I will note that there is someone that -- the next
19 door neighbor to the south that has written a letter in
20 opposition. Some of that is -- some of the issues that are
21 raised in there are actually not really pertinent to the
22 discussion today about when -- what the timing was and when
23 this was built and understanding that.

24 And I just think that the applicant has put
25 forward a project that is -- well, it's already constructed.

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1 And we already know what the impacts are because it's
2 existing.

3 And you can see in this image that's on the screen
4 which is -- I don't know what -- I think it's No. 30. Is
5 this in the -- this slide, I think, is in the record, and I
6 think it's actually No. 30, Exhibit 30.

7 Yes, it's page 7 on Exhibit 30 shows what the rear
8 of the building is and the deck itself. And it also shows
9 that there are no shadow impacts. And you can see that
10 because to the property to the south.

11 So anyhow, I would be in support of the
12 application, and as I said, because of what the Office of
13 Planning report said and the support of the ANC. And that's
14 it.

15 And I'll make a motion to approve Application No.
16 20179 of Eli Richman Kaplan NMP Revocable Trust. I'll make
17 a motion.

18 CHAIRPERSON HILL: Second the motion.

19 VICE CHAIRPERSON HART: Make a motion to approve
20 this application.

21 CHAIRPERSON HILL: I second the motion. Motion
22 made and seconded. All those in favor, say aye.

23 (Chorus of aye.)

24 CHAIRPERSON HILL: All those opposed?

25 (No response.)

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1 CHAIRPERSON HILL: The motion passes, Mr. Moy.

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

8 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
9 Thank you, sir. I'm just going to take a poll here real
10 quick if I could. So we have three cases left. Just if
11 people could raise their hands because I'm just curious of
12 a couple things.

13 So how many people are here for 20181? Oh, okay.
14 And how many people are here for 20078? Okay. And how many
15 people are here for 20144? Okay. Well, we're going then in
16 the correct order. So all right. We'll go ahead and do
17 20181 when you get a chance, Mr. Moy.

18 MR. MOY: Thank you, Mr. Chairman. So with that,
19 that is Case No. 20181 of Medici Road, M-E-D-I-C-I, captioned
20 and advertised with special exceptions under the residential
21 conversion requirements -- rather conversion regulations of
22 Subtitle U, Section 320.2, and under Subtitle C, Section
23 703.2, from the minimum parking requirement, Subtitle C,
24 Section 701.5, and pursuant to Subtitle X, Chapter 10, for
25 an area variance from the minimum land area requirements,

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1 Subtitle U, Section 320.2(d). This would convert an existing
2 one-family dwelling into a four-unit apartment house, RF-1
3 Zone. This is a 1315 Harvard Street, Northwest, Square 2854,
4 Lot 86.

5 And I believe, Mr. Chairman, there is no affidavit
6 of maintenance.

7 CHAIRPERSON HILL: Okay. Just to let, again, the
8 people in the audience know what we may try to do. We're
9 going to get through this case. We're probably then going
10 to go through the next case.

11 Then we're probably going to take a break. And
12 then we're going to do the last case. And then I was going
13 to think that there might be food involved. But I just don't
14 think that -- I don't think that's going to happen.

15 So all right. Please introduce yourselves from
16 my right to left.

17 MR. CLOCK: Jason Clock, ANC Commissioner, 1A12.

18 MR. WRAY: Michael Wray, ANC Commissioner, 1A09.

19 MR. CLARK: Sheldon Clark, Architect of Record.

20 MR. HOUSTON: Thomas Houston, Applicant.

21 CHAIRPERSON HILL: Commissioners, you all have
22 been here all day.

23 MR. WRAY: No, actually, I stopped for a bagel
24 before I came down here.

25 CHAIRPERSON HILL: That's funny. That's funny.

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1 All right. Okay. So all right. Okay. So Mr. Clark, are
2 you going to be presenting to us?

3 MR. CLARK: Both of us will be, yes.

4 CHAIRPERSON HILL: Okay. So I hate to tell you
5 this, but this is kind of a little bit of a mess, right?
6 Okay? Meaning that, like, you know that -- and I don't know
7 what has gone on with the Office of Planning over there. And
8 I might even kind of jump around a little bit because I'm
9 trying to get to the last case of the day as quickly as
10 possible.

11 It seems, again, the Office of Planning is in
12 denial of some of the relief, if I'm not too clear. Then
13 there's, like, some confusion about -- or at least I thought
14 there was some confusion about the parking.

15 And then I know that the ANC is here because
16 they're in support as well as they like the IZ units, I would
17 assume, and also just the community aspect. And so it's
18 great that you guys are here to now do battle with OP. Okay?
19 So this is going to be interesting.

20 So I suppose -- why don't you go ahead, Mr.
21 Houston, or you're both are going to do it. Why don't you
22 guys just jump to where there's a little bit of disagreement
23 with the Office of Planning. Okay? And then kind of also
24 clarify what kind of relief you are requesting in terms of
25 the parking and let's start with that. Okay? You need to --

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1 by the way, did you guys get sworn in earlier?

2 MR. HOUSTON: Yes.

3 CHAIRPERSON HILL: Okay. Everybody got sworn in?
4 Is there anybody not get sworn in yet today? Oh, wow. Okay,
5 okay. If you all weren't here the beginning of the day, I'm
6 not so sure that you've done your time. But okay, we'll
7 swear you in at some point. So go ahead and begin, I guess,
8 Mr. Houston.

9 MR. HOUSTON: Sure. And actually, I'm going to
10 make one change to the parking. We are no longer asking an
11 exception to go from two parking spots to one. After a
12 conversation with the community and Office of Planning, we
13 are actually now asking for a variance to go from one full
14 size parking spot to two compact parking spots.

15 CHAIRPERSON HILL: Okay. So that was part of, I
16 think -- okay, that's fine. So meaning I understand that,
17 so you're going to have to argue that then. Okay? So that's
18 one issue, right? Where else are you in conflict with the
19 Office of Planning?

20 MR. HOUSTON: Technically, we are having four
21 units, and we should -- by having -- there should be 900
22 square feet. The lot size should be 900 square feet per
23 unit. So the lot should be 3,600 feet.

24 The existing lot is actually 1,800 square feet.
25 So by right, we should only be able to build two units on

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1 that lot. And so the discrepancy is, do we have the hardship
2 to ask for the variance of an additional 1,800 square feet?

3 CHAIRPERSON HILL: Got it. Okay. Mr. Houston,
4 have you been before us before?

5 MR. HOUSTON: Yes.

6 CHAIRPERSON HILL: Okay. And have you been before
7 us before for this specific request?

8 MR. HOUSTON: No.

9 CHAIRPERSON HILL: No. Because this one is hard
10 one for the Office of Planning. Okay? All right. I'm just
11 going to turn to the Office of Planning.

12 MS. THOMAS: Yes. Good evening, Mr. Chair and
13 members of the Board. Yes, this is indeed a little
14 heartbreaking for us in a sense that while we are very much
15 in support of housing and additional housing in the District,
16 in this instance, we could not find a nexus that would
17 support the exceptional situation of the property with what
18 the argument applicant was presenting with respect to the
19 financing.

20 And we saw that the applicant presented their case
21 based on a promissory situation with DC Housing Finance
22 Agency, and that promissory situation of building affordable
23 units, one IZ and three affordable units. We had offered the
24 applicant to do an IZ, and we would support two units so for
25 a total of three units.

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1 CHAIRPERSON HILL: One IZ and two units.

2 MS. THOMAS: Right.

3 CHAIRPERSON HILL: Whereas, right now, they only
4 have enough square footage for two units.

5 MS. THOMAS: Right.

6 CHAIRPERSON HILL: And they're trying to get four
7 units.

8 MS. THOMAS: Right, and --

9 CHAIRPERSON HILL: Okay.

10 MS. THOMAS: -- the cellar, I could support the
11 conversion of the cellar into a unit. But for a total of
12 just three units. We couldn't find a way to four.

13 CHAIRPERSON HILL: Okay. And what about the
14 parking?

15 MS. THOMAS: The parking, we would accept the
16 parking.

17 CHAIRPERSON HILL: The argument for the variance
18 --

19 MS. THOMAS: Yes.

20 CHAIRPERSON HILL: -- for the parking --

21 MS. THOMAS: Yes.

22 CHAIRPERSON HILL: -- for the two compact spots?

23 MS. THOMAS: Two compact spots, yes.

24 CHAIRPERSON HILL: Okay. All right. So Mr.
25 Houston, you've been working with the Office of Planning now

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1 for a little while, right?

2 MR. HOUSTON: Correct.

3 CHAIRPERSON HILL: And so you can go ahead and
4 make your argument if you like, right, in terms of how you
5 believe the nexus, the confluence of factors, or whatever you
6 have and I'll go ahead and let you do that.

7 I'm just saying right now, you've got a really
8 tough uphill climb right now, right? So -- and I'm trying
9 to, again, be as quickly to the chase as I can because just
10 at the end of the day, right?

11 And so I'm going to let the Board ask whatever the
12 Board wants to ask in a few minutes. But since the ANC has
13 been here and the ANC also knows what the situation is,
14 right? How would you like to -- would you like to please
15 give any kind of comment or presentation since you've been
16 here all day?

17 MR. CLOCK: Yes. Thank you, Chairman. So I would
18 say that this is my single member district. The zoning
19 varies greatly from RA to RF with a new row house just one
20 block away being turned into ten market rate units with one
21 parking space. So I understand where we're going. But one
22 block away in the same area, we have ten units, market rate,
23 no IZ, no affordability.

24 CHAIRPERSON HILL: But they have 900 square feet
25 per unit.

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1 MR. CLOCK: No, they do not. They have maybe 500
2 square feet. It's apartments, so it's much smaller for rich
3 white people. But I won't go there.

4 So while developers do overpay for properties with
5 assumptions and misunderstandings about what can be done by
6 variances or exceptions, in this case, the intentions are
7 very clear, to create four family-sized affordable units, one
8 three-bedroom IZ at 80 percent MFI, and three two-bedroom at
9 120 percent MFI. So they're all affordable which is why
10 we're really for this. And in a properly noticed meeting,
11 we did vote fully in support of the requested relief.

12 And personally, I'm strongly in support of this
13 because it creates affordable family housing in my
14 neighborhood. But had affordability not been applied to all
15 four units, I would less likely support this project. So I
16 would like you to consider that.

17 One block away, we have ten market rate 500 square
18 foot or less units with one parking space. We're asking one
19 block away. Due to our wonderful zoning, not being allowed
20 to do this. Thank you.

21 COMMISSIONER TURNBULL: How is 80 percent
22 affordable?

23 MR. WRAY: Well --

24 COMMISSIONER TURNBULL: For who? For who?

25 MR. WRAY: -- I'll let the applicant talk to how

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1 the 80 percent --

2 COMMISSIONER TURNBULL: And then 120 percent?

3 MR. WRAY: Well, those are workforce housing. We
4 didn't create what the city created in terms of 80 percent
5 and 120 percent, but --

6 COMMISSIONER TURNBULL: Well, if you're asking for
7 something, you could go for more. Why didn't you make it,
8 like, 60 percent?

9 MR. WRAY: Well, I would assume -- and we did talk
10 about 60 percent, in fact. But there becomes -- this is not
11 something where the city is involved in the financing. So
12 until you start to get those kinds of programs in place --

13 COMMISSIONER TURNBULL: They're asking for a lot
14 of relief here.

15 MR. WRAY: They are.

16 COMMISSIONER TURNBULL: And what are we getting
17 back?

18 MR. CLOCK: We're getting four affordable units.

19 COMMISSIONER TURNBULL: Affordable for you maybe,
20 but not for a lot of people.

21 MR. WRAY: I don't qualify, but that's okay.

22 COMMISSIONER TURNBULL: All right. You know what,
23 Mr. Chair? I can't get into this discussion because
24 affordability for a lot of people in this city is a hard
25 thing to come by. And I hear 80 percent and 120. This is --

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1 I'm sorry.

2 The Zoning Commission has been trying to push and
3 make changes to the regulations to get more affordable
4 housing. This sticks in my craw. I'm sorry. I'm making a
5 comment here.

6 MR. HOUSTON: Can I speak to that, please? So we
7 are a community development corporation based out of
8 Deanwood, and so I understand your point. And so we also
9 created a mortgage calculator that allows residents to put
10 in information.

11 The unit that's IZ, 80 percent sounds high. It
12 appraised at 560,000 dollars. We're selling for 280,000
13 dollars. By the time you add on HPAP as well as DC Open
14 Doors, not even including EAHP, they're basically getting
15 120,000 dollars to pay for that 280,000 dollar unit. That
16 is an affordable unit.

17 There's also a narrative that says a person who
18 is a school teacher or a fireman can't afford to pay -- are
19 not mortgage ready at 120 percent AMI. By the time you add
20 on, again, DC Open Doors as well as EAHP which has an
21 additional potentially 30, 40,000 dollars on top of the DC
22 Open Doors, that note now becomes one-third of what they
23 bring home which according to HUD is exactly what they should
24 be paying for a house.

25 And so we have done the calculations. We also

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1 made that calculator available for free for everybody in the
2 city. And so we went into this with that knowledge before
3 we even make the choice to purchase this home and do those
4 adjustments.

5 MR. WRAY: Can I add back to Commissioner
6 Turnbull? I mean, I'll remind that you, yourself, said
7 earlier that we're having a housing crisis. We do want to
8 add additional housing. We want to make it where we can.

9 We are in an RF-1 zone. So for the most part,
10 we're going to get two units. We're going to get maybe three
11 units. We're almost never going to see an IZ unit. So if
12 we do have a housing crisis, then we have to do something
13 about it. And this is one way that this ANC felt that we
14 were, in fact, trying to do something about it.

15 I would add to what the applicant is saying that
16 when bidders come to try to purchase this property, they
17 cannot be outbid. The first person who's qualified that
18 comes forward and makes their case gets the house. They
19 don't have to worry about someone like me coming along and
20 trying to outbid them for that home. That's a rarity in my
21 community.

22 I represent the members of the Park Morton
23 Redevelopment. They are currently trying to find homes that
24 some of them can buy because they have spent their lives
25 trying to put their finances together in a way that they

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1 would be able to do that.

2 There are very few -- there are probably no
3 opportunities in my community for them to buy a home. But
4 the type of house that the gentleman is talking about is a
5 possibility.

6 I mean, I don't know the specifics and I'm not an
7 expert in this. And that's why we're here to make the case.
8 But I would say that we're trying to do something, and that's
9 why we're here.

10 COMMISSIONER TURNBULL: How about the OP position?

11 MR. WRAY: OP, I did note that of the three areas
12 mentioned in the variance request, they were in support of
13 the second and the third prong. So I guess we're going to
14 have to focus on what is exceptional about this house.

15 I do know that the house next door was converted
16 into four units illegally back in the mid-aughts. Because
17 of that, there are some underpinning questions that the
18 applicant is going to have to deal with that come to a cost
19 of 125,000 dollars or more. Obviously, they're going to have
20 to present you with some information on that.

21 But being next door to that house now means that
22 they have to deal with it. They may have to put in that
23 additional cost. And if they want to hit their mission and
24 provide those houses, that's, to me, at least enough of an
25 exceptional issue that we might be able to find our way to

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1 some resolution here.

2 MR. CLOCK: And I would have to say that I live
3 in an affordable unit now a block away, and I wouldn't be
4 able to live in that neighborhood if I hadn't had assistance.
5 So I understand they would be against the four units.

6 But at the same point, there's ten market rate
7 units right behind me that are going to be one-bedroom units
8 at 500, 600,000 dollars each that are in no way affordable.
9 So I would just like some assistance and help to make sure
10 that we have as much affordability as we can since we seem
11 to have no luck with my residential apartment zones. So
12 we're kind of losing that battle there with affordability.

13 MEMBER JOHN: So Mr. Chairman, I had a quick
14 question for the applicant. So what's the status of the DC
15 HFA agreement?

16 MR. HOUSTON: So the status is really based on the
17 BZA decision. And so if BZA's answer is no, then we can only
18 build the two units by right which the partnership is null
19 and void. And that also means we now no longer have our
20 traditional bank financing.

21 And so the -- we lose -- so the way it works is
22 they essentially cover 80 percent of our equity but only
23 require 20 percent of the return. And so without HIP, I'm
24 now covering 100 percent of the equity which is about 300,000
25 dollars -- actually more than 300,000 dollars.

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1 It also means I lose the bank's financing which
2 means we will have to, for the next seven months or so, keep
3 our hard money financing which makes the project even more
4 unaffordable.

5 Which also means that the money we have planned
6 on taking out to buy affordable -- there's two affordable
7 housing buildings that we're looking at purchasing for
8 preserving over in Deanwood. We couldn't buy those because
9 the money would be in harbor for the next seven months.

10 So that's part of our -- the burden of proof is
11 we lose the HIP if we have to do the by right of two because
12 they are now million dollar flats which they are HIP capped
13 out at 120. And we also, without having the HIP partnership,
14 lose the bank partnership.

15 MEMBER JOHN: Do you have any documentation of
16 that to put in the record?

17 MR. HOUSTON: Yes. I shared it with OP, and I can
18 also upload the information as well.

19 CHAIRPERSON HILL: Okay. What happens if it's
20 three units?

21 MR. HOUSTON: So we actually ran the numbers, and
22 we can't do the IZ doing the three units. So we end up doing
23 market rate. So A, it's against our mission. So even if we
24 said -- we got past it's against our mission point. It still
25 ends up being three homes. One of the homes ends up being

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1 market rate. So two of them could be 120 AMI. Another one
2 still ends up being a million dollar unit.

3 CHAIRPERSON HILL: Yeah, one of them does.

4 MR. HOUSTON: Yeah.

5 CHAIRPERSON HILL: So you could do two? You lost
6 me there. You could do two. I thought there was going to
7 be one IZ unit --

8 MR. HOUSTON: Correct.

9 CHAIRPERSON HILL: -- is what the Office of
10 Planning was speaking to as how they could somehow possibly
11 work it out with you guys. And I'm curious how that works
12 with DC financing. Does that still work in your model?

13 MR. HOUSTON: No. So it works with DC Housing
14 Finance if we were able to do two of those as 120 and then
15 one as IZ. But the way it works is essentially the top level
16 -- one of those -- there isn't enough revenue to essentially
17 allow us to do two units as -- two 120 AMIs and one IZ. So
18 if you think about --

19 CHAIRPERSON HILL: Yeah, I got it. I got it.

20 MR. HOUSTON: Yeah.

21 CHAIRPERSON HILL: I'm just listening.

22 MR. HOUSTON: We're basically at 1.3 million in
23 revenue.

24 CHAIRPERSON HILL: Right. The -- okay. So this
25 -- all right. Is there anybody here wishing to speak in

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1 support?

2 (No response.)

3 CHAIRPERSON HILL: Is there anyone here wishing
4 to speak in opposition?

5 (No response.)

6 CHAIRPERSON HILL: Okay. I don't know where the
7 Board is with this. I'm a little bit -- I've got to say it's
8 kind of, like, I kind of want to let them work with the
9 Office of Planning a little bit more. Or I don't know if
10 there is any reason to do that other than -- I'm looking at
11 the Office of Planning.

12 I guess what I'm trying to -- and I don't --
13 there's a lot of complicated issues going on right now in
14 terms of the financing, right? And I've been sitting here
15 for ten hours. Okay?

16 And so I'm just trying to think that maybe we
17 might want to see if there's a little bit of time to let the
18 applicant try to work with the Office of Planning again, at
19 least try to understand whether or not there is any kind of
20 way to get to the -- I mean, everybody -- nobody has any
21 problem with what you're trying to do, right? Okay? Except
22 the zoning a certain number of square footage that you're
23 supposed to have for each one of these units, right? Okay?
24 And that's just a hard fact, right?

25 I mean, so it's not, like, if we -- I'm just

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1 saying, like, I've been here long enough that that's a real
2 hard one for the Office of Planning to get by, right? And
3 so if there's some way that you all can work with the Office
4 of Planning to try to figure out some way to get this thing
5 done, and maybe you don't get all of it, right? Okay? And
6 they can somehow do something.

7 I got a little bit confused with the Office of
8 Planning's analysis, right, in terms of, like, how they were
9 getting the three units. And that's where now I'm looking
10 to my Board members to kind of help me figure this out.

11 I mean, we can keep on going through this right
12 now and whatever way the Board thinks that we might be able
13 to get to something, I'm open to discussion. Does anybody
14 got a question or a suggestion?

15 VICE CHAIRPERSON HART: Well, I have -- I guess
16 it's a question for the applicants. Right now, you've had
17 some conversations with the Office of Planning. Do you
18 believe that there is a -- that you would be able to have
19 additional conversations with them and that might, yeah, be
20 something that is fruitful for you? Or where do you see
21 that?

22 MR. HOUSTON: I think we could have additional
23 conversations. But after three rounds, I think we've gotten
24 to the best case scenario. So my ask would probably be for
25 us to be able to share what we think is our burden of proof

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1 and then kind of just leave it up to the Board to make a
2 vote.

3 VICE CHAIRPERSON HART: Well, I'm also -- if you
4 don't get a vote from us, then that means that you said you
5 basically would not have any sort of agreement with DCHP or
6 I can't think of what -- whatever, the housing folks. And
7 I know I'm, like -- as the Chairman said, it is kind of late.
8 And so I'm -- thank you.

9 But you lose the financing. So that would then
10 kind of push you in a -- you have to go in a different
11 direction. And I currently have -- I think the hardest part
12 looking at the extraordinary or exceptional condition part
13 of this of the prongs for the variance test.

14 And I mean, what you've raised is that you
15 purchased the property that this particular property, you
16 were thinking you'd be able to do a development that was
17 similar to one that was next door. You found that was not
18 actually possible because of some things that didn't happen
19 next door regarding permits and things. And so now you're
20 trying to -- and then there was some -- and I wasn't exactly
21 sure what you meant by the underpinning aspect of this.

22 But I think that that part of the prong needs to
23 be -- that there needs to be more meat added to that. I
24 don't think that is strong enough for me to be able to say,
25 oh, okay, I get it, and, yeah, that kind of makes sense. And

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1 also without the Office of Planning.

2 But I don't know if that's something that you all
3 -- I don't know how much deeper you all can go or to be able
4 to have that further conversation with the Office of Planning
5 to be able to get there. And I don't know if you have a
6 comment now, or --

7 MR. HOUSTON: I would say we've done enough, I
8 think, due diligence in terms of what we think are a
9 combination of issues versus one. And outside of making up,
10 which we don't want to do, I think this is kind of where we
11 are.

12 And so it's the idea of the HIP program. It is
13 thinking that we could copy -- we literally walked the
14 property, us with HIP, and said, hey, we can do exactly what
15 was done next door. Didn't have to underpin because there's
16 enough clearance in the cellar to be able to just remodel it
17 as is. And then now finally, we have to underpin.

18 So thinking we could copy what was done. Having
19 to actually go and underpin. And then also probably about
20 three months after we purchased, I believe it was DCRA or
21 Office of Zoning came out with a rule that says IZ can't be
22 in the basement. And so us having to shift all of our condos
23 down, took 30,000 of revenue out.

24 And so you add all those things up, like, for us,
25 like, that's what we have as our exceptional situation.

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1 Anything else would be made up.

2 MEMBER JOHN: In terms of what OP proposes, would
3 the DC HFA financing work with the three unit?

4 MR. HOUSTON: They would work with the three units
5 if we were able to keep everything under 120cpte per AMI.
6 We've run every single scenario, and it doesn't come out in
7 the positive at all without having at least one of those be
8 market rate.

9 And part of the conversation is people think that
10 we're really pushing for it to maximize our revenue or our
11 profits. And so we actually created a chart to show we
12 actually are bleeding about 20 grand on the table by adding
13 the IZ unit. And so it's not incremental income for us. But
14 we literally couldn't figure out how to make it work by doing
15 three units and keeping the IZ.

16 MEMBER JOHN: So for me, I would like more of that
17 financial information. And I would also like to see more
18 information on the potential partnership with DC HFA. And
19 just to run the charts, the way you've laid it out here on
20 slide 23, the different options to show why it would be a
21 financial hardship for you if you were to do something
22 because I think that's where you're headed.

23 Financial hardship cases are difficult for us, and
24 we try not to go down that road. But just -- you run a risk
25 if you ask us to vote today frankly because you don't know

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1 where we are. It's late. Everybody is tired.

2 My suggestion would be like the Chairman said, to
3 take some time to think about it. Look at some other
4 options, and come with better documentation. Right now,
5 there's nothing in the record.

6 I'll just be frank with you. Your testimony today
7 was helpful to me in laying out why D.C. did the loan and the
8 potential partnership is important to making this financially
9 viable. But we would prefer to see some more detailed
10 documentation. And while everybody supports this project,
11 still we have to comply with the regulations. So I would
12 support what the Chairman recommended.

13 CHAIRPERSON HILL: Give me one second. Give me
14 one second. So then I think you understand that the numbers
15 that Ms. John is asking for, right? Okay? And I don't know
16 if the Office of Planning has any suggestion on any kind of
17 numbers that maybe they might like to see.

18 MS. THOMAS: I would stand in support of Mrs.
19 John's statement regarding those financials. It has been
20 used in the past by the Board.

21 CHAIRPERSON HILL: Could you repeat that? Like,
22 what does that mean to you, provide specificity here for the
23 applicant?

24 MS. THOMAS: Well, again, what we would like to
25 see what would be the difference between perhaps doing a

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1 matter of right -- if they can document matter of right, a
2 flat, the costs the involved, cost and profit analysis, all
3 the way through what they would do. Let's say even up to
4 three units. Three units and then four units, and do a cost
5 benefit analysis or profit analysis based on that. And --

6 CHAIRPERSON HILL: Okay. And then --

7 MS. THOMAS: -- I think those things have been
8 presented to the Board to help you determine when we couldn't
9 support.

10 CHAIRPERSON HILL: No, I understand. But then
11 also you would have an opportunity to meet with them again?

12 MS. THOMAS: Well, the Office of Planning, we
13 don't use financials to support our -- to go through with the
14 criteria --

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: Yeah.

17 MS. THOMAS: -- situation because we just don't
18 have a way to tie that to the property. But certainly, the
19 Board has in the past.

20 CHAIRPERSON HILL: Right. The Board has done it
21 in the past. So again --

22 MS. THOMAS: Yeah.

23 CHAIRPERSON HILL: -- the argument that you're
24 getting is the Office of Planning is still -- so the Office
25 of Planning is still going to be where the Office of Planning

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1 is, right? So now you're going to be arguing to us more
2 directly in terms of how the finances is actually giving you
3 that first prong, right?

4 What's making this property exceptional and to why
5 you can't do -- I mean, because right now you can do two
6 flats, right? I'm sorry. You can do a flat. You can do two
7 units, and you can make money, right?

8 And so what you're trying to do is -- and I'll
9 believe what you're saying -- is that the business model that
10 you guys are doing is you're actually trying to provide
11 affordable housing in the city which is something that we all
12 and the mayor is trying to do and everybody is trying to do,
13 right? Okay? You got Commissioners that are sitting here
14 all day that are trying to do it. Okay?

15 But again, the regulations are what the
16 regulations are, right? They got 900 square feet. And so
17 I suppose them when or how long you -- I mean, first of all,
18 do you think you can come up with some kind of an argument
19 that you might be able to tie in the finances to the actual
20 first prong of the variance test? And if so, then how much
21 time do you think you might need in order to put that chart
22 together, in order to put that argument together?

23 MR. HOUSTON: We've already done it, and so we'd
24 be ready at the next meeting.

25 CHAIRPERSON HILL: Okay. The next time you're

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1 ready or the next time we're ready? Okay.

2 COMMISSIONER TURNBULL: Mr. Chairman, if I could.
3 Right now, you can do one unit. You can do two units. You
4 can do three units. That fourth unit is a high bar to cross,
5 and you really have to prove to us why this Board should
6 grant you the fourth unit.

7 I mean, that's -- as I say, it's a high bar to
8 cross. And as the Office of Planning is pointing out, it's
9 very difficult. So you really got to prove to us why we
10 would want to approve this.

11 I mean, the financials as is -- the Office of
12 Planning says financials is one thing but it's not the only
13 thing. There has to be some very solid ground, solid
14 reasoning why this Board should reach out and do this.

15 I mean, we all want affordable housing, and of
16 course, you have a difference of opinion what's affordable.
17 But we understand that. But again, you really haven't made
18 a convincing argument, I think, to me that we would want to
19 approve this.

20 So I think you got to come back. Either meet with
21 Office of Planning or do some more homework. But then come
22 back to us with your arguments on what you want to do on this
23 property.

24 CHAIRPERSON HILL: So I mean, you guys have been
25 -- I know -- Mr. Clock, I recognize at least before. I don't

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1 know, Mr. Houston, you've been here before or not again, but
2 I'm sure you have.

3 I mean, you're here for a variance, right? It's
4 not an easy thing, right? And so I don't even know if next
5 week if that's too soon, right? Like, you might want to get
6 your argument together and try -- I mean, the Office of
7 Planning -- and I'm not even terribly sure again how they're
8 getting to the three units, right? Okay?

9 If you can somehow make the model work with three
10 units, you're getting one more unit in there that I think
11 you're going to probably get. I think you getting four units
12 is probably going to be really hard for you to get to. I'm
13 just telling you right now, right?

14 And so -- and I don't want to now get the ANC
15 Commissioners throwing bagels at us later on which to say
16 just make your money. Go ahead and get the two units. Screw
17 everybody, okay, and make the money. Okay?

18 And so I don't know -- but still, I think that
19 you're going to have to work with the Office of Planning,
20 right, okay, to talk about either that third unit because
21 you're only supposed to get two, right? Okay?

22 And then I'm just thinking you need a little bit
23 more time, right, than even next week. Or I don't know when
24 the Office of Planning might be able to kind of put aside
25 time to -- I mean, you've already met with them three times.

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1 And I guess -- but this is the first you've been
2 before us. So you didn't know just maybe how we were going
3 to react to your argument, right? So now I think it would
4 be worthwhile to go ahead and talk with the Office of
5 Planning, put your numbers back together.

6 And I don't think you should come back to us for
7 a little while unless you -- I mean, we could vote today.
8 But I know where you're going to get to today. And so --
9 yeah. Mr. Moy, then in terms of time -- when are you back
10 here again, Mr. Turnbull?

11 COMMISSIONER TURNBULL: February, I think.

12 CHAIRPERSON HILL: February?

13 COMMISSIONER TURNBULL: Sometime in February.

14 CHAIRPERSON HILL: Okay. So then -- and I'm
15 turning back to -- I thought you guys were going to be the
16 easy one of the three ones that are coming up. So then how
17 -- I mean, realistically, given where I think you guys are,
18 how much time do you think you need and when you do think you
19 can talk to the Office of Planning again and determine
20 whether or not you're going to come back to us at all
21 perhaps? I mean, you might decide to just drop it. I don't
22 know.

23 MR. HOUSTON: Like I said, we've already done the
24 two, three, and four analysis. So the matter of right, what
25 it means to do the three and what it means to do the four.

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1 We've done, like, every scenario possible on our own --

2 CHAIRPERSON HILL: You can't even make three work
3 --

4 MR. HOUSTON: We can make three work but not with
5 IZ. And so we -- and we can make more money doing three than
6 matter of right by two.

7 CHAIRPERSON HILL: Well, you can only do two.

8 MR. HOUSTON: So I think the Office of Planning
9 was saying they could approve three.

10 CHAIRPERSON HILL: One of them was going to be an
11 IZ, yeah. One of them was going to be an IZ.

12 MR. HOUSTON: And we can show the model. But,
13 like, that's the one we're in the red in. So we maximize
14 money doing two. We make a pretty good profit doing four.
15 We're in the red on three.

16 CHAIRPERSON HILL: Got it. Hold on. Give me a
17 second. Give me just one second. So -- and I don't know.
18 Then maybe we're just where we are. Okay? I mean, I'll give
19 you -- I'm just going to give you a couple weeks, unless you
20 want a vote right now. I mean, if you think that three isn't
21 going to work. And Commissioner, you had some comment?

22 MR. WRAY: It was just -- it's because of the
23 dates. Our vote was conditioned on certain things which may
24 no longer be able to hold up.

25 CHAIRPERSON HILL: I see.

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1 MR. WRAY: And so if we have to change the vote
2 so it's no longer to be in agreement with those conditions,
3 then we would need enough time to vote -- I mean, we'd need
4 time to meet again in February which is the 2nd Wednesday in
5 February. That's all I'm pointing out.

6 CHAIRPERSON HILL: I see, right. Do you have any
7 idea if it was -- I'm just completely going off here. If you
8 had two -- if you had one -- if they only had one IZ unit,
9 do you know if that was something that the ANC would've
10 necessarily been interested in hearing about?

11 MR. WRAY: Yes. I mean, again, it was all
12 conditioned on it being affordable or having an affordable
13 unit. So that's why I would say we would need to meet again
14 in order to readdress it. Because otherwise, those
15 conditions are going to stand and we would be considered in
16 opposition because he may not have that IZ unit. That's why.

17 CHAIRPERSON HILL: Okay, okay. Office of Planning
18 has comment?

19 MS. THOMAS: Yeah, just to be clear that it was
20 IZ unit and then affordable units. So ADUs -- three ADUs and
21 one IZ. So not everything was going to be IZ. So there is
22 a difference if you care to explain.

23 MR. HOUSTON: Yeah, so essentially, there's three
24 units that are averaging revenue-wise, excuse me, 550,000
25 dollars. And then the IZ unit is 280 which gets us to, like,

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1 1.95.

2 CHAIRPERSON HILL: That gets you the four units.

3 MR. HOUSTON: That's the four units.

4 CHAIRPERSON HILL: Okay, right.

5 MR. HOUSTON: So if --

6 CHAIRPERSON HILL: And then what was the Office
7 of Planning one that they were taking about the three units?

8 MR. HOUSTON: They want to do two at 550 and one
9 at 280. So that puts us right around 1.3, 1.4.

10 CHAIRPERSON HILL: Okay. And that didn't work?

11 MR. HOUSTON: We're at 1.4 just on construction,
12 the bond, acquisition.

13 CHAIRPERSON HILL: No, I got you.

14 MR. HOUSTON: Yeah.

15 CHAIRPERSON HILL: I'm just saying so it didn't
16 work?

17 MR. HOUSTON: It didn't work.

18 CHAIRPERSON HILL: So you already tried it with
19 the three --

20 MR. HOUSTON: Yeah.

21 CHAIRPERSON HILL: -- the way that the Office of
22 Planning was trying to do it?

23 MR. HOUSTON: Correct. The only way three works
24 is if one of those have to be market, and we didn't want to
25 do that.

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1 MEMBER JOHN: While the Chairman is getting his
2 thoughts together, if you could address, if you come back,
3 this whole issue of the unpinning. Because I'm not
4 understanding why the fact that the other house was not
5 properly built, you would necessarily have to do their
6 unpinning of this house.

7 Because in my view, you would have to do the
8 underpinning anyway. So I'm not sure that would be a cost.
9 If you're going support, you know, the project that you're
10 thinking of building, wouldn't you have to underpin anyway?

11 MR. CLARK: So the current building is, we're not
12 looking at adding any height to the building or going up any
13 higher. So right now, we're looking at a building of where
14 we can safely assume the existing foundation should work in
15 place.

16 And so doing the investigation towards the rear
17 of the building, seeing the insufficient work that was done
18 on the adjacent building, which we share the party wall with,
19 that we need to be responsible and take care of actually
20 properly supporting that foundation there on that part.

21 If their work was done completely, and the
22 assumption's going forward ahead, we would not need to drop
23 the slab at all. We have enough that we could have a legal
24 unit down in the basement. So we would need to do the
25 underpinning now.

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1 MR. HOUSTON: And we've done all the soil tests.
2 And, like, if nothing was wrong with the unit next-door, it
3 could sustain the four units.

4 CHAIRPERSON HILL: All right, gentlemen, I got to
5 tell you, I don't know where I am. Like, I don't know what
6 to tell you. And the Commissioner, I'm glad he has a
7 suggestion in a second. But, I mean, again, if you've
8 already done all the math, and three isn't going to work,
9 then I'm pretty sure you've got a no vote up here right now,
10 just because you just can't make your case.

11 I mean, I just don't think how you're going to get
12 us to approve this particular variance, because I think you
13 just, you don't have, you're not meeting the first prong,
14 right. And even with the finance component, and the great,
15 good work that you guys are trying to do, right, we're don't
16 discount that at all, I don't see how we can get past the,
17 again, the standards that we need to weigh in order for you
18 to get your variance approved, right, okay.

19 And so, you know, you've been here all day, it's
20 not about whether or not we like the project or don't like
21 the project. Because I'd just vote yes then, right. But
22 it's that we have to get past the standards.

23 And so I don't know whether it's worth it to, I
24 guess, what I'm just trying to think about is if you went
25 back to the office -- You're going to get a no here right

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1 now, right. And if you went and go back and try to see if
2 you can do anything with the Office of Planning to try to
3 figure out how maybe, even with the numbers, that you can
4 somehow get to three, right, that that might be worth you
5 coming back, right?

6 But if you can't do that then, you know, I don't
7 know if there's much of an argument or a reason for you guys
8 to come back. So I don't see the harm, I suppose, in just
9 spending another week or two with the Office of Planning.
10 And if you come up to something and want to come back to us
11 and present your case, then great. We can hear from you.
12 Commissioner?

13 MR. CLOCK: Yes, I just want to close and say that
14 there's very little affordable housing, different models of
15 affordability in my neighborhood. And I just feel that they
16 want something really good for the community and try to help
17 us get more housing density.

18 And as I mentioned earlier, one block away there's
19 a ten-unit apartment building going in with small 500 square
20 feet units by right. And this is, I mean, they have
21 different spatial requirements as R-A versus R-F zones. But
22 just still, it's one block away.

23 CHAIRPERSON HILL: I know. It's unfortunate, it's
24 always silly.

25 MR. CLOCK: But you guys are here to help us make

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1 exceptions if possible.

2 CHAIRPERSON HILL: Oh, no, no, no. We're doing
3 our best, okay. And you happen to be arguing it on this
4 side, this time, okay, right? But you can be here next week,
5 and you'll be telling us, oh no, variances are very hard.
6 You got all these three prongs, you know, you can't do this.
7 Bagels need a lot of cream cheese, you know, I don't know,
8 whatever it is that you want to argue next, right.

9 So I'm just telling you, we're just trying to do
10 the same thing each time. But we're not arguing against what
11 the point of this project is.

12 MR. CLOCK: But there's no way you can vote yes,
13 by principle or by just --

14 CHAIRPERSON HILL: No.

15 MR. CLOCK: So you all could vote yes, and say
16 yes, we love this project, and we're done.

17 CHAIRPERSON HILL: No, no. But, I mean, we can't
18 go against the law, I mean, you know, right? Okay. So all
19 right, what do you guys want to do?

20 MR. CLARK: So because with the Office of
21 Planning, that they're not able to consider financials, if
22 that's correct?

23 MS. THOMAS: That's correct.

24 CHAIRPERSON HILL: It's not that, Office of
25 Planning isn't able to consider financials. However, you

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1 might be able to talk with the Office of Planning and talk
2 about the three units. And they might be able to think about
3 some times that financials have been argued before the Board.
4 And perhaps then you can create your argument for the three
5 units. I don't know how you're going to get to four, okay.

6 MR. CLARK: Okay. That's fine.

7 CHAIRPERSON HILL: Go ahead.

8 MR. CLARK: Because I believe my understanding was
9 they wouldn't be able to consider financials and that it
10 rests with the Board to consider financials. And laying out
11 the, even though it hasn't been entered into the record as
12 requested, as it has been discussed now and laid out, just
13 wanted to take the temperature, do you need a greater
14 argument than the financials as laid out?

15 CHAIRPERSON HILL: I think there's more
16 specificity, perhaps, /that would be helpful for me in terms
17 of the financials for the three. I'm just going to cut right
18 to the chase for the three units, right? Okay. Again, the
19 amount of square footage that you guys have, that you're
20 trying to get around to get the four units, I think is a big
21 pull, okay, right?

22 So, you know, understanding what the financials
23 are that you can't get -- Or I don't know, I mean, maybe you
24 can try to argue, I'm just saying the Office of Planning
25 might be able to at least provide some historical insight

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1 that they've seen before about how financials have been
2 brought into a case, or at least they can give you their
3 opinion. They don't take it into consideration. I'm just
4 saying you're at no right now, right?

5 MR. CLARK: Yes.

6 CHAIRPERSON HILL: So if there is something that
7 points out the financials a little bit more for the three
8 units, and I guess you can even try the four units. As I
9 said though, I don't think you're going to be able to get us
10 to get you to four units, right? Then you can come back and
11 argue just the financials.

12 And I guess, and I don't mean to say it's
13 unfortunately, but unfortunately, it is at the end of the day
14 now, right? And, like, we have been here a really, really
15 long time. And there are a lot of numbers that you're trying
16 to walk us through, and you don't have the support of the
17 Office of Planning to something that is way beyond what
18 they're normally able to get behind, okay.

19 And in terms of the zoning thing, I mean, it is
20 the zone it's in, right? Even if it's a block next door,
21 that's why it's the zone, right? So if you were a block
22 away, I guess you could have done something that the
23 Commission would be thrilled about, right?

24 So back to the point, I guess, if I were you, I'd
25 go ahead and, I mean, I'm not giving you advice, I'm just

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1 saying, like, if you want to postpone for a couple of weeks
2 to see if you can kind of get some financials together, talk
3 with the Office of Planning, see if you can put together an
4 argument for three units, and then come back, or you might
5 determine, in all that due diligence, that there's really no
6 point, you can't get to it, then you should just do the
7 matter of right, I guess. I don't know.

8 MR. HOUSTON: Can I make a comment and ask OP a
9 question --

10 CHAIRPERSON HILL: Sure, sure.

11 MR. HOUSTON: -- and then I'll be done.

12 CHAIRPERSON HILL: Of course.

13 MR. HOUSTON: I want to just clarify, from the
14 Office of Planning, is your requirement that, if we can't
15 make an argument for the three units, it has include IZ?

16 MS. THOMAS: We would appreciate the IZ unit,
17 because you're basing your argument on affordability in part.
18 And, you know, if you want to bolster the argument, you bring
19 in a cellar unit. I don't want to get into all the
20 parameters here. But we will appreciate an IZ unit.

21 CHAIRPERSON HILL: It sounds like a discussion
22 you've can have with them, right?

23 MR. HOUSTON: So I just wanted to ask that,
24 because, like, I want to take that off the table. Because
25 there's no scenario where three units with IZ works. And so

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1 if IZ becomes the parameter of doing three, I don't want to
2 waste anybody's time to come back.

3 CHAIRPERSON HILL: Okay. I guess what I'm, I mean
4 -- Ha, ha, ha.

5 MR. HOUSTON: So I --

6 CHAIRPERSON HILL: No, I got you. I got you. And
7 the only reason why I'm laughing is just because it's the end
8 of the day.

9 MR. HOUSTON: Yes.

10 CHAIRPERSON HILL: And again, I don't see any
11 difference between you having a conversation with the OP and
12 deciding it's not going to work, and then you just decide
13 it's not going to work, right? Because you're getting a no
14 here now, right? So, you know, I don't see the problem with
15 a little bit more of a week with them or a conversation. Or
16 you can just have us vote. We can vote right now.

17 MR. HOUSTON: All right. I'll take the extra
18 week. I want to ask the Board a question first, because it
19 will help us in our decision.

20 CHAIRPERSON HILL: Sure.

21 MR. HOUSTON: So all the scenarios, Office of
22 Planning has a lot of examples where people got this exact
23 same square footage variance or more. But the three units
24 were already existing, and they were just converting an
25 unused basement. And so we're in a scenario where there

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1 weren't three units.

2 And so, like, there's plenty of other examples
3 where people got the larger variance and square footage. But
4 there were certificates of occupancy already for the other
5 three units. If you would take those as comparable examples,
6 then we have something to come back with.

7 CHAIRPERSON HILL: I guess you can come back with
8 those as comparable examples and then go ahead and argue that
9 as well, right? Yes. Office of Planning, can you clarify
10 a little bit some of the things they're talking about? I'm
11 a little, they're preexisting.

12 MS. THOMAS: Yes. I think what he's probably
13 referring to is that there have been cases in the past where
14 we've had row dwellings that, for one reason or another,
15 each level was divided up, you know, illegally or something.
16 And they had toilets, and baths, and everything, what the
17 zoning administrator would classify as habitable space, as
18 a dwelling unit, rather.

19 CHAIRPERSON HILL: Okay.

20 MS. THOMAS: And so it was easy for the applicant
21 to come in and make the case. It was an easier case to make
22 to have that conversion --

23 CHAIRPERSON HILL: It was preexisting.

24 MS. THOMAS: Yes, it's a former place, it's in
25 condition. I don't know how the Applicant could make that

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1 case. Maybe he can. But he would need time to do that, I
2 guess. I'm not precluding anything, but they need to make
3 their case.

4 CHAIRPERSON HILL: Okay. So I'd say, you know,
5 so we'll go ahead and put you off for a couple of weeks,
6 okay. And I wish you all the best. I mean, I think what you
7 guys are trying to do is great. I think what you're, you
8 know, trying to do for the community is great. And you don't
9 have any issues here at the Board other than you haven't met
10 the standard for us to grant the variance, I believe. Mr.,
11 sorry.

12 COMMISSIONER TURNBULL: I just wanted to point
13 out, I don't believe you've got a C of O for a residential
14 unit. I don't think a C of O is given for a residential
15 unit.

16 MR. CLARK: You do when it's more than two
17 dwellings.

18 COMMISSIONER TURNBULL: Oh, for more than two, as
19 an apartment building?

20 MR. CLARK: Yes. So as an apartment building, or
21 once you, and as a matter of fact, once you go to two you
22 need a C of O. So if you're going to add an ADU into your
23 house, you need to have a C of O.

24 COMMISSIONER TURNBULL: Okay.

25 MR. CLARK: It's one of the --

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1 COMMISSIONER TURNBULL: No, I can see that.

2 MR. CLARK: -- issues you run into in the
3 industry. Because no one has a C of O for a single dwelling.

4 COMMISSIONER TURNBULL: That's what I thought,
5 yes.

6 MR. CLARK: Yes.

7 COMMISSIONER TURNBULL: I was confused at what you
8 were saying there. All right, thank you.

9 MEMBER JOHN: So, Mr. Chairman, I just wanted to
10 recap. If they come back, I would like to see some
11 information on the DCHFA partnership and what that does to
12 your model, or something from DCHFA that supports what you're
13 saying.

14 CHAIRPERSON HILL: Okay. All right, so Mr. Moy,
15 then we'll come back. Oh wait, there was the ANC. So you
16 all had your meeting in February, okay. And so when's
17 February again?

18 MR. WRAY: Let me, sorry, it's the second
19 Wednesday of February.

20 CHAIRPERSON HILL: Sorry, go on. You all can
21 talk.

22 MR. CLARK: Your question was if the nature of
23 what you had already approved changes, then you need more
24 time. We're preparing to come back with the four units of
25 the nature of what they've already approved. Because of the

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1 depth of affordability that were in their conditions, we're
2 still pushing for deeply affordable on that IZ unit and 120
3 AMI on the others.

4 CHAIRPERSON HILL: Okay. So you're going to come
5 back here with the four units and argue that? Okay. And if
6 you argue the three units, then you'd have to maybe go back
7 before the ANC again. Is that what the ANC is trying to say?

8 MR. WRAY: I just don't want our resolution to
9 cause any issues with whatever they come back with. Because
10 we put in very specific conditions.

11 CHAIRPERSON HILL: Sure.

12 MR. WRAY: I'm just trying to make sure that
13 that's not going to be another problem.

14 CHAIRPERSON HILL: Sure, sure, I understand.
15 Well, I guess we can cross that bridge when we get to it, I
16 suppose. I mean, again, if you guys do come back with three
17 units somehow, I mean, I know you're shaking your head, okay,
18 but if you came back with three units somehow, right, I guess
19 then, well, then in that case I guess, you know, if you're
20 going to argue the four units, again, then you're going to
21 have to pull a whole bunch of numbers together for Ms. John,
22 okay, right? And --

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: And then talk with the Office
25 of Planning, I suppose, again, and then determine whether or

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1 not you think it's worthwhile for you all to come back,
2 right? Okay.

3 COMMISSIONER TURNBULL: You're going to need three
4 votes.

5 CHAIRPERSON HILL: Right. So, yes. But again,
6 think you all are doing a great job, okay.

7 MR. CLARK: Thank you for your time.

8 CHAIRPERSON HILL: There's nothing wrong with what
9 you're trying to do. So that means, Mr. Moy, we're coming
10 back in two weeks.

11 MR. MOY: Well, I had some questions of you first,
12 Mr. Chairman.

13 CHAIRPERSON HILL: Oh yes, sure --

14 (Simultaneous speaking.)

15 MR. MOY: They're easy. So did the Board want to
16 allow time for the ANC to go back to their meeting on the
17 12th?

18 CHAIRPERSON HILL: It doesn't sound as though
19 that's necessary.

20 MR. MOY: Okay, all right. So if you want to give
21 the applicants a full two weeks, then we're back here on
22 February the 5th. In other words --

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: We're off for Martin Luther
25 King holiday. And then we got the 22nd. And so we're not

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1 back here again until the 5th.

2 PARTICIPANT: The 29th.

3 CHAIRPERSON HILL: Oh, the 29th, 29th.

4 MR. MOY: Yes, but I thought you wanted to give
5 the Applicant a full two weeks. Today is the 15th.

6 CHAIRPERSON HILL: What day do you all want to
7 come back? All right, the next meeting is what they're
8 saying. So then the --

9 MR. MOY: The next meeting then would be January
10 29th. We have an appeal that day along with --

11 CHAIRPERSON HILL: No, what about the 22nd?
12 (Simultaneous speaking.)

13 MR. MOY: There's no hearing on the 22nd, sir.

14 CHAIRPERSON HILL: Oh, we got an appeal on the
15 29th? I don't know when --
16 (Simultaneous speaking.)

17 MR. MOY: Unless you want a special hearing.

18 VICE CHAIRPERSON HART: No, I don't want a special
19 hearing. The 29th, all right. Okay, so there's an appeal
20 on the 29th.

21 MR. MOY: Yes, we're having, on the 29th we have
22 one appeal along with one, two, three, four, five, six,
23 seven, eight cases.

24 CHAIRPERSON HILL: Okay. All right, Mr. Houston,
25 so I'm going to go ahead, we'll put you down on the 29th.

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1 I mean, the 29th -- So appeals can take us up to six hours,
2 okay, right? And then each case takes however long it ends
3 up taking. So we've already eight of those, right. So you
4 guys really are going to be, we're going to really zone in
5 quickly on you all.

6 If you all come in, it's just going to be the
7 finance piece. It's just going to see how you're arguing the
8 variance test to your four units. And I'm letting you know,
9 it's going to be a little difficult, okay. So take that into
10 account as you're doing your math and talking to the Office
11 of Planning and determine whether or not you think it's
12 something that you even want to come back, okay? And I say
13 that only just to be honest, okay. All right, so that's it.
14 So we'll see you guys on the 22nd?

15 MR. CLARK: Thank you.

16 CHAIRPERSON HILL: Thank you all very much.

17 MR. MOY: Twenty-ninth.

18 CHAIRPERSON HILL: Sorry, 29th.

19 MR. CLARK: Twenty-ninth.

20 CHAIRPERSON HILL: Twenty-ninth, I apologize,
21 29th.

22 Mr. Moy, just for the record again, that's a
23 continued hearing. Okay, and I thought that was pretty
24 apparent.

25 All right, Mr. Moy, let's go.

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1 MR. MOY: Okay, let's see, we're, oh, okay. So
2 if we can have parties to the table, this is Case Application
3 Number 20078 of Sig LLC, as amended, for special exceptions
4 under the theoretical lot subdivision Requirements, Subtitle
5 C, Section 305, and under Subtitle E, Section 5206.1, minimum
6 lot width for mandatory inclusionary development
7 requirements, Subtitle E, Section 201.3, and pursuant to
8 Subtitle F, Chapter 10, for area variances from the front
9 setback requirement, Subtitle B, Section 315.1(c) and
10 Subtitle E, Section 305.1, and the height and story
11 requirements, Subtitle E, Section 303.2, to raise an
12 existing, detached, principal dwelling unit, and to create
13 six new theoretical lots, and to construct six new flats, RF-
14 1 zone. This is at 1256 through 1258 Talbert Street
15 Southeast, Square 5805, Lot 824.

16 CHAIRPERSON HILL: Okay, is the ANC here? Okay.
17 If you can please introduce yourselves from my right to left.

18 MR. ABEBE: Siem Abebe with Sig LLC.

19 CHAIRPERSON HILL: Can you spell your last name
20 for me, sir?

21 MR. ABEBE: A-B-E-B-E.

22 MR. SULLIVAN: Marty Sullivan on behalf of the
23 Applicant.

24 MR. LEE: Matt Lee, architect.

25 CHAIRPERSON HILL: Okay, Mr. Sullivan, are you

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1 going to present to us?

2 MR. SULLIVAN: Yes.

3 CHAIRPERSON HILL: Okay. Do you know if, I'm
4 going to try to do this a little bit, as quickly as possible.
5 Do you know if the Office of Planning has gotten everything
6 they were trying to get from you guys?

7 MR. SULLIVAN: That's our understanding. I had
8 a conversation with them.

9 CHAIRPERSON HILL: Okay, give me one second. I'll
10 get there in one second, Mr. Mordfin, just one minute. All
11 right, so that was one thing. So I guess why don't you go
12 ahead, Mr. Sullivan, and walk us through what you're trying
13 to do. I mean, unfortunately, there's a lot of stuff you're
14 trying to do. And so if you could just kind of walk us
15 through what you're trying to do.

16 And then if you would speak to the Office of
17 Planning and their analysis, and then also that of ANC 8A and
18 their opposition, and I'm going to just kind of let you talk.

19 MR. SULLIVAN: Okay, thank you. ANC 8A is in
20 support as of this morning.

21 CHAIRPERSON HILL: Okay.

22 MR. SULLIVAN: So the Commissioner brought the
23 letter down here this morning and dropped it off --

24 CHAIRPERSON HILL: Okay, great, then go ahead.

25 (Simultaneous speaking.)

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1 MR. SULLIVAN: -- late last night.

2 CHAIRPERSON HILL: Go ahead and walk us through
3 that, and you guys can speak to the ANC. And now that they
4 are in approval, you can also speak to that.

5 MR. SULLIVAN: Okay, thank you. And I want to
6 mention, at 6:45 I have to get my car. I don't know if the
7 break was timed to be around that or not, but --

8 CHAIRPERSON HILL: Sure, we'll try. I forget now,
9 is that, Mr. Moy, did you figure out what's going on with the
10 parking garage?

11 MR. MOY: Yes, the parking garage closes at 7:00
12 p.m., so you should actually move your car out by 6:30 just
13 to be on the safe side.

14 CHAIRPERSON HILL: Okay.

15 MR. MOY: And park on the street.

16 CHAIRPERSON HILL: Okay. Does anybody else have
17 parking in the garage right now that's in the audience?
18 Okay, because a Board member up here does. And so -- All
19 right, okay. Well, let's see what happens.

20 Go ahead, Mr. Sullivan.

21 MR. SULLIVAN: Thank you, Mr. Chair. So a quick
22 overview here, first of all, and we'll get into some of these
23 other photos when the architect's part of the presentation.
24 But the Board at our initial hearing asked for this
25 additional information, the landscape plan, a plan with the

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1 retaining wall, existing grade plan, a response to DDOT's
2 comments about sidewalk in response to ANC's concerns, a
3 stronger variance argument regarding the height relief, and
4 a summary of the relief. The landscape plan --

5 CHAIRPERSON HILL: Give me one second. So go back
6 to that again. Right, so I don't remember. So all of those
7 things you did give us, correct?

8 MR. SULLIVAN: Correct.

9 CHAIRPERSON HILL: Okay. And then in addition to
10 this, you went back and presented to the ANC, correct?

11 MR. SULLIVAN: Correct.

12 CHAIRPERSON HILL: And what did the ANC have to
13 say? Because I'm looking, it wasn't there when I first
14 reviewed the thing. Oh, it came this morning.

15 MR. SULLIVAN: I believe he submitted them in by
16 hand, submitted the copies --

17 CHAIRPERSON HILL: Oh, submitted the copies by
18 hand.

19 MR. SULLIVAN: -- and I have a copy with me.

20 CHAIRPERSON HILL: Mr. Moy, do you have those?
21 And while this is going on, I'm going to hear from Mr.
22 Mordfin. Mr. Mordfin, could you please give the Office of
23 Planning's report to us?

24 MR. MORDFIN: Yes. Good evening. I'm Stephen
25 Mordfin. And the Office of Planning is in support of this

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1 application, finding that the variance is supported by the
2 hillside on the property. You have the different buildings
3 with the different setbacks on the street which affect how
4 far the front setback should be for each of the buildings.

5 And therefore, the Office of Planning recommends
6 approval of the varying front setbacks, which are different
7 from the adjoining properties, and also for the height
8 because of the slope as it goes from Talbert Street down to
9 Morris Road. That affects the way they can design the
10 property. So we're in support of that.

11 The Office of Planning is also in support of the
12 theoretical subdivision in that the Applicant has met all the
13 special exception requirements and also for the IZ
14 dimensional modifications. The Applicant is in conformance
15 with all those.

16 There were two conditions. The first one which
17 had A, B, C, and D, the Applicant has satisfied those. The
18 second one I haven't seen on plans. That one was we had
19 requested that the, or suggested that the Applicant provide
20 a fence that would separate the rear yards of the two flats
21 on the northwest side of the property from the single-family,
22 detached dwelling on the adjoining property. And I haven't
23 seen that on the plans. So that is the one thing that I
24 haven't seen. But all the other ones that are on Page 1 of
25 the Office of Planning report have been satisfied.

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1 CHAIRPERSON HILL: Mr. Sullivan, did you put that
2 fence in there?

3 MR. SULLIVAN: Checking on that now.

4 CHAIRPERSON HILL: Okay, so the Office of Planning
5 hasn't seen the fence yet. But you're aware of the fence?

6 MR. SULLIVAN: Yes. And the fence will go in.
7 If it's not in the plans, we can do the fence.

8 CHAIRPERSON HILL: Okay, but as of now it's not
9 in the plans?

10 MR. SULLIVAN: That's correct.

11 CHAIRPERSON HILL: Okay. All right, that's one
12 thing. Mr. Mordfin, is that it for you right now?

13 MR. MORDFIN: Yes, sir.

14 CHAIRPERSON HILL: Okay. I'm just trying to jump
15 around here a little bit. But I still think we're going to
16 end up parking our cars and coming back. But just give me
17 a second.

18 So you said you have the ANC's report somewhere?

19 MR. SULLIVAN: I have one copy of it, because --

20 CHAIRPERSON HILL: Okay, that's fine.

21 MR. SULLIVAN: -- Mr. Jones handed it --

22 MR. MOY: Yes, because I don't have any in the
23 record or anything in hand.

24 MR. SULLIVAN: Okay. Do you want me to read it

25 --

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1 CHAIRPERSON HILL: So, Commissioner -

2 (Simultaneous speaking.)

3 CHAIRPERSON HILL: No, no, that's all right.
4 That's all right. So why don't you do this. Who's here
5 wishing to speak on this case? Okay. Who's here wishing to
6 speak in support on this case? Okay. Who's here wishing to
7 speak in opposition to this case? Okay.

8 So, Mr. Sullivan, why don't you go ahead and give
9 the copy to, I'm just saying we are going to take public
10 testimony, and we are probably going to have some questions,
11 so go ahead and give Mr. Moy the copy. He can make copies.
12 Go ahead and move your car. Ms. John, anybody who has to
13 move their car, go ahead and move their car. And then we
14 will come back after the parking garage has closed.

15 So if anybody's got to move their car, the parking
16 garage closes, and so we've got to move their cars. And so
17 I thought there was a Board member that also had to move
18 their car, but apparently not.

19 (Whereupon, the above-entitled matter went off the
20 record at 6:23 p.m. and resumed at 6:43 p.m.)

21 MR. MOY: The Board's back in session. And the
22 time is at or about 6:40.

23 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, we've
24 taken a look at the record basically, and understand all of
25 the relief that you guys are trying to ask for, had an

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1 opportunity to again read through your burden of proof, as
2 well as that of the Office of Planning.

3 And we did just get some feedback from the Office
4 of Planning. And the only thing, I guess they did get --
5 And, Mr. Mordfin, I'm sorry, were there conditions that, you
6 just needed further information from the Applicant. And you
7 did get that information, or were there conditions? I
8 misunderstood what you were saying?

9 MR. MORDFIN: Oh, of the conditions that we had
10 put into our report, the Applicant satisfied all of them with
11 the exception of number two, which is on Page 2 of the OP
12 report, that the rear yards of two flats abutting the
13 northwest side of the subject property on Lots 1 and 4 be
14 fenced to protect the privacy and use of the side yard of the
15 adjacent property to the northwest.

16 CHAIRPERSON HILL: Right. And the other things
17 though, where, and I'm just trying to pull your report, so
18 I apologize, what were the other items that you have now seen
19 from the Applicant?

20 MR. MORDFIN: Well, we requested a proposed
21 grading plan as required by Section 305.4, an existing
22 landscape plan which is also required. And we want them to
23 document if there are any Heritage trees on site, there are
24 no Heritage trees on site, a plan depicting the storage of
25 solid waste as required by Section 305.5, the Applicant

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1 addressed that, and then also a plan depicting the retaining
2 wall along the Morris Road frontage pulled back sufficiently
3 to allow for a six-foot wide public sidewalk, also per
4 Section 305.5. And the Applicant's resubmittals addressed
5 those concerns.

6 CHAIRPERSON HILL: Okay. So you're satisfied with
7 all those conditions?

8 MR. MORDFIN: Yes.

9 CHAIRPERSON HILL: And then in terms of the fence,
10 where or how could they show you that?

11 MR. MORDFIN: They could, well, on the site plan,
12 they could indicate where this fence would be and just
13 indicate the type and everything on the site plan.

14 CHAIRPERSON HILL: Is that something, Mr.
15 Sullivan, you can kind of pull to and then outline? You need
16 to push the microphone.

17 MR. LEE: We'd add a fence here on the northwest
18 side.

19 CHAIRPERSON HILL: Okay, and what kind of a fence
20 would you put there?

21 MR. LEE: A privacy screen that would allow some
22 transparency, but minimal transparency so we would provide
23 the residents' privacy.

24 CHAIRPERSON HILL: Okay.

25 MR. LEE: We'd do a wood fence there.

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1 CHAIRPERSON HILL: Okay. Is that along the lines
2 of what the Office of Planning would have in mind?

3 MR. MORDFIN: Yes.

4 CHAIRPERSON HILL: Okay. All right, so that's one
5 question. Okay, so then after then that, Mr. Sullivan, then
6 I see that the ANC Commissioner was here earlier today, you
7 said, and submitted something to us that we're going to put
8 into the record, Mr. Moy. Is that correct? Or how do we get
9 that -

10 MR. MOY: Yes, yes.

11 CHAIRPERSON HILL: --- into the record?

12 MR. MOY: Staff can upload it --

13 CHAIRPERSON HILL: Staff can --

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: Staff can get this uploaded
16 into the record, okay. And you can speak to the outreach and
17 the ANC 8A's meeting if you wouldn't mind, Mr. Sullivan, as
18 well as all these conditions. I'm just trying to kind of,
19 like, look through some of these. What did you tell us about
20 that meeting went with the ANC?

21 MR. LEE: Sure, Commissioner Tyon was back and
22 forth about the different conditions that we met. He was
23 satisfied with the fact that we met with him on multiple
24 occasions and did our best to meet what the residents
25 requested. A lot of their requests were based on parking

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1 which we weren't able to meet. But the rest of the height
2 relief and some other items, they were happy that we met
3 with. And they think that things that we're doing, as far
4 as the setbacks, improve the design and the area.

5 CHAIRPERSON HILL: So these items that are here,
6 this is more just as a community agreement that are in the
7 letter from the ANC. These are not, it appears as though
8 these are community agreements, not necessarily enforceable
9 conditions that, as I'm kind of reading through this, the
10 BZA, is that what you had understood it to be, Mr. Sullivan?

11 MR. SULLIVAN: To the extent the Board thinks that
12 they are appropriate for conditions, we're happy to have them
13 be conditions. But I think that was --

14 CHAIRPERSON HILL: In general --

15 MR. SULLIVAN: -- that was the understanding.

16 CHAIRPERSON HILL: And that's fine. We can kind
17 of look through this as we go through the hearing here. But
18 in general this was, again, a community agreement that you,
19 as a developer, are agreeing to, correct, Mr. Abebe?

20 MR. ABEBE: Correct.

21 CHAIRPERSON HILL: Could you say your name,
22 please?

23 MR. ABEBE: Abebe.

24 CHAIRPERSON HILL: Abebe. Mr. Abebe, so you, as
25 the developer, are agreeing to these community agreements,

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1 correct?

2 MR. ABEBE: Correct.

3 CHAIRPERSON HILL: And you will live up to them,
4 correct?

5 MR. ABEBE: Correct.

6 CHAIRPERSON HILL: Okay. All right, so does the
7 Board have any questions specifically for the Applicant?

8 VICE CHAIRPERSON HART: Yes. This is, we have
9 some testimony, and we know that you're going to have some
10 comments later about somebody that's in opposition to this.
11 I think he's a next-door neighbor. Could you talk about some
12 of the concerns that they've raised with regard to things
13 like runoff and, well, trees, and retaining walls and, you
14 know, fencing. How are you seeking to minimize impacts to
15 the neighbors?

16 This is a fairly steep site. And so I think that
17 these issues that they raised are ones that, there are
18 possibilities that they could, you know, affect other
19 properties that are adjacent to this property. But if you
20 could speak to that a little bit, I'd appreciate it.

21 MR. LEE: Designing this project was a challenge.
22 The site is difficult. There's a lot of grade change. But
23 that also presents some opportunities. This community has
24 a property adjacent that's got some issues with the retaining
25 wall. And they're dealing with that. We've chosen to --

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1 VICE CHAIRPERSON HART: And which retaining wall
2 are you speaking of?

3 MR. LEE: Adjacent property that's not related to
4 our property.

5 VICE CHAIRPERSON HART: And do you have any images
6 showing where that is?

7 MR. LEE: There is in the rendering, right? Yes,
8 the rendering, right here to the left. Oh, there it is, go
9 back. Well, that is interesting.

10 VICE CHAIRPERSON HART: I just did that, so --

11 MR. LEE: Oh, that property there. They used a
12 stepped paver to provide the grading to build up the
13 apartments up there. We're choosing to use cast-in-place,
14 poured concrete to support the project and to step and tier
15 to meet the structural requirements of the site. So we're
16 upgrading the foundations to provide a better foundation for
17 this project than what was done adjacent.

18 VICE CHAIRPERSON HART: And there are no proposed
19 retaining walls between your property and properties that
20 are, I'm trying to think of direction, that are adjacent to
21 yours?

22 MR. LEE: The northwest where we were talking
23 about the fence earlier --

24 VICE CHAIRPERSON HART: Do you have any --
25 (Simultaneous speaking.)

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1 VICE CHAIRPERSON HART: -- plan?

2 MR. LEE: So we would be putting in walls along
3 the grade to allow for the stepping on our site and not to
4 affect the adjacent neighbors, can't build on the adjacent
5 neighbors' property. But we'd be sheeting and shoring to
6 provide structure there to allow for that and to support a
7 building.

8 VICE CHAIRPERSON HART: And so the grade itself,
9 could you just show folks where that, which direction it
10 goes, you know, higher to lower?

11 MR. LEE: So the line here is the existing grade
12 beyond. So we're stepping our foundations to allow for that,
13 and to capture that dirt, and to capture that grade change.

14 VICE CHAIRPERSON HART: And in the plan itself,
15 you have retaining walls that are along the --

16 MR. LEE: Center.

17 VICE CHAIRPERSON HART: -- south of it? No,
18 north, the north side of it. I'm trying to orient myself on
19 this --

20 MR. LEE: Sure.

21 VICE CHAIRPERSON HART: -- because we have a
22 number of directions. And part of this is, I'm asking these
23 questions because you all have, it's not like it's just a
24 slope. It seems like there's kind of multiple slopes that
25 are going on. It goes, you know, kind of --

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1 MR. LEE: It'll be terraced.

2 VICE CHAIRPERSON HART: Yes, but it's also that
3 it's not just going, you know, from one direction to the
4 other. It seems like there's also another, kind of a cross
5 slope as well that you're having to work with. And that's
6 why I was trying to look at something that was a plan to
7 understand where those were. Because it's one thing to look
8 at it in section, but the plans help to show that movement.

9 MR. LEE: So we have walls here that show that
10 stepping.

11 VICE CHAIRPERSON HART: And this is going downhill
12 in that direction?

13 MR. LEE: Opposite.

14 VICE CHAIRPERSON HART: But it's also, is it going
15 downhill in this direction too some? Or is this higher than
16 --

17 MR. LEE: It's going down, so this is the high
18 side. This is the low side along Morris where you can see
19 all the tighter contours together. So you have a slight
20 slope that starts on the left and then works down to a faster
21 slope on the right.

22 VICE CHAIRPERSON HART: Okay. Thank you.

23 MEMBER JOHN: So one quick question while you have
24 this diagram up. Can you show me where Mr. Renard's or Ms.
25 Renard's property is, 1252 Talbert Street, in relationship

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1 to this diagram here?

2 MR. LEE: The property is here.

3 MEMBER JOHN: Okay. And there's no retaining wall
4 on that side?

5 MR. LEE: I don't believe so. So you have a steep
6 slope there. And that is along Talbert where there's less
7 grade change.

8 CHAIRPERSON HILL: Commissioner Turnbull, you got
9 anything, no questions today?

10 COMMISSIONER TURNBULL: No, I'm good.

11 CHAIRPERSON HILL: Okay. All right, was that it
12 for the Board for now? Okay. The person who wanted to speak
13 in opposition, could you please come forward? If you could
14 please introduce yourself for the record?

15 MR. RENARD: My name is Joe Renard, R-E-N-A-R-D.

16 VICE CHAIRPERSON HART: R-E-N-A-R-D. All right,
17 Mr. Renard, well, welcome.

18 MR. RENARD: Thank you.

19 CHAIRPERSON HILL: Thanks for staying with us here
20 for so long. I hope that it's helpful for you.

21 MR. RENARD: I got my money's worth today.

22 CHAIRPERSON HILL: Ha, ha, ha. Let's see, so, Mr.
23 Renard, as you probably noticed by now, people in the public
24 have three minutes in order to give their testimony. We do
25 have, it looks like something, is Rebecca Renard related to

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1 you?

2 MR. RENARD: Rebecca is my daughter. And she's
3 the owner of the house.

4 CHAIRPERSON HILL: Oh, okay. So then we have
5 something in writing here from her. But I'll go ahead and
6 put three minutes on the clock, Mr. Moy. And you can begin
7 whenever you like, sir.

8 MR. RENARD: Okay. I guess I should preface by
9 saying I'm not necessarily arguing against it. I just think
10 it's not ready. It's a nice idea, but quite frankly, just
11 the questions that you just asked about a retaining wall, on
12 a hill, and the inability to really answer it with some
13 integrity and some meaning, problem for me.

14 There are a lot of things that I have seen in the
15 plans as I've looked at them online. I did see the drawings
16 that they gave us back in December, the end of December when
17 presumably that was the meeting with the ANC, but there was
18 only two of us there.

19 But at that point, I raised an issue, for example,
20 of the site's been up since July. And if you look, I believe
21 it's Items 4 or Items 5. There's pictures, photographs, and
22 they're listed as 1258 and 1256. Well, 1258 is my house, my
23 daughter's house. And it's listed as 1258. I brought that
24 to the attention twice, once to the ANC and then the other
25 night to the people that we met with. And as of this

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1 morning, they weren't changed. They were still there.

2 There have been questions about the trees, for
3 example. And they did a lovely Casey Study Foundation. But
4 the very fact that where there's bordering property, at one
5 point when we moved out there 40 years ago when we bought the
6 property, that property was a bigger lot that had been
7 divided into two.

8 And the man who owned it just put a fence down.
9 Because he lived in the one house, and we lived in the other.
10 For 40 years, there was never any question of whether the
11 land, you know, where did the fence go, who the trees were,
12 or anything like that.

13 The Casey Foundation did the tree thing, and it
14 was lovely. Problem is is that based on the retaining wall,
15 no matter where you put the retaining wall, it totally
16 neglects the fact that there are trees that border on our
17 side. So if you put a retaining wall in, that retaining wall
18 is going to take out the trees on our property. And there
19 hasn't been any discussion or anything about that.

20 I made a comment about, and they're not even noted
21 on, if you look at it, you won't even see any of our trees
22 on the paper that Casey provided. If you look at the
23 drawings that are at the very beginning, the cover sheet, I
24 raised an issue. I said thank you for the very fine lawn.
25 Where is it going to go? He said, oh, well the property line

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1 stops at the house. Well, if you look at that picture, it
2 looks like there's a pretty nice lawn, maybe 10, 15 feet.
3 It's a driveway. It's a brick and concrete driveway and a
4 partial retaining wall.

5 Now, my concern, and I think the concern of my
6 daughter, and I know I'm almost out, is that this is not
7 ready. I don't even know if anybody's really looked at it
8 that knows what they're doing. The pictures are nice, but
9 they're not true.

10 Morris Road, the same thing, you look at the back
11 of it, there's no indication of a declining slope. You're
12 talking about going down a slope, where are the retaining
13 walls. How do you see that? There's a picture of a car
14 there. If I was going to buy that, I'd say, oh wow, I got
15 a car right up front. That car, you're lucky if you can get
16 three cars down Morris Road. Anybody who lives out there and
17 has lived there, driven down Morris Road, knows, if you've
18 got a bus and a car, you don't go. Because there's no
19 parking.

20 I mean, it's a nice thing, I agree with affordable
21 housing, we agree with affordable housing, but I really think
22 this needs to go back to the drawing board. And it needs to
23 be done with some type of intentionality that takes advantage
24 of a piece of property that, 40 years ago, had four houses
25 on it.

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1 It now has about 40 condominium and high rise
2 apartment-type things. And now we're getting ready to put
3 12 more on, and they don't even have parking. And they just
4 opened up an apartment building catty-corner that has four
5 or five stories on it. And the cars are all parking all
6 along Morris Road, and Mount View and Maple View. There is
7 no parking. And there's no parking available here.

8 That's not their fault. That's the way the
9 property is. So all I'm saying is I don't think this is
10 ready. And I would ask the Board to, what do you call it,
11 reschedule or redo it after we've had some time to sit down
12 and look at this more intelligently.

13 And I know six months has gone into it, but
14 sending, you know, somebody to knock on my door on a Sunday
15 afternoon and leave a note, sorry I missed you, I'm assuming
16 this is a multi-million dollar proposition, and there ought
17 to be a little bit more integrity in the way that it gets
18 discussed, and there ought to be more information about how
19 it's going to go.

20 Where are these trees? These trees don't exist.
21 They're all going to be gone. Those are my trees that
22 they're showing, if they last, where the retaining wall is.
23 So that's, I'm over, I'm sorry.

24 CHAIRPERSON HILL: Okay. No, that's all right.
25 No, Mr. Renard, thank you so much. Well, first of all, so

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1 your daughter lives there now. Is that correct?

2 MR. RENARD: That's correct.

3 CHAIRPERSON HILL: And you --

4 MR. RENARD: I bought the house, and I gave it to
5 her.

6 CHAIRPERSON HILL: And you bought it 40 years ago?

7 MR. RENARD: Forty-four years ago.

8 CHAIRPERSON HILL: Wow.

9 MR. RENARD: Yes. Well, actually, not that house.
10 There was another house. And it was almost in as bad shape
11 as the house that's being replaced at 1250 --

12 CHAIRPERSON HILL: I'm just saying, you've been
13 buying property over there 40 years ago.

14 MR. RENARD: Yes, yes, yes.

15 CHAIRPERSON HILL: Well, that's pretty good for
16 you. And, you know, pretty impressive for you. I say that
17 only, like, a lot of people aren't around here for that
18 length of time. Does the Board have any questions for the
19 Witness?

20 VICE CHAIRPERSON HART: Only that appreciate you
21 coming out, Mr. Renard. And you were talking about trees and
22 that they are ones that are on your property that are kind
23 of not shown. And typically we have landscape plans that are
24 from, that show what's on the site itself. It is not usual
25 to have trees that are on other people's property, because

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1 they don't have any real control over that.

2 I understand the point that you're making which
3 is impacts to the root zones will create problems with the
4 health of the trees, and they may actually decline and die
5 because of the impacts that have happened to them. So I
6 understand why you're bringing it up.

7 With regard to the slopes between your daughter's
8 property, or where your daughter lives, and where this
9 property is, are you thinking that there needs to be a
10 retaining wall between the two because of the slope, or
11 you're just saying that you just don't think that there has
12 been enough exploration to make that determination yet?

13 MR. RENARD: Right now, we've discussed the fact
14 that it doesn't appear as though there's been consideration
15 given to the way that the property itself, we're at the end
16 of a block, and the block goes down. Well, at the beginning
17 of the block 40 years ago, coming all the way down, it was
18 virgin woods. There were no big things there.

19 Then all of a sudden, ten years ago or so, they
20 took out the top of the hill and put up high rises. Then,
21 the next piece of land coming down the hill, they took out
22 the trees that were there, and the grass, and they put up the
23 second batch. And we've noticed in the time that there's
24 been a dramatic increase in the water flow down. Because
25 they took permeable and now it's impermeable, even though

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1 it's got the retaining walls, and the drainage, and the
2 things like that.

3 When we bought the house 40, 45 years ago, the
4 gentleman that owned it had plans to put on an apartment
5 building on that lot, both of his lots, the one that they had
6 and ours, it was he owned half the block.

7 At that time, the soil samples that were done
8 suggested that the soil would not sustain heavy brick
9 buildings, the way they built them 40, 50 years ago, and that
10 there was concern about slopes, about the water draining
11 down, the need for the retaining walls, the water backing up,
12 things like that.

13 When my daughter showed these plans to one of her
14 friends, his immediate concern was the compression and that
15 the land, and this is where these guys come in, but this is
16 where I'm saying, I don't see any evidence that it's been
17 discussed. It's the compression of the land.

18 So if you've got vacant land, and you've got a
19 house at one end, and you keep putting very, very heavy
20 buildings coming down the hill, the weight shifts somewhere.
21 Is there any study? Doesn't it make sense to say to somebody
22 at the end of the line you're not going to get pushed out
23 onto the street? You know, the soil can sustain, the
24 structures can sustain the pressure that's --

25 VICE CHAIRPERSON HART: I understand that.

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1 MR. RENARD: Okay.

2 CHAIRPERSON HILL: Okay, anyone else? Okay, Mr.
3 Renard, so just before you go, so I guess Mr. Abebe, and Mr.
4 Sullivan, and Mr. Lee there as well, but I mean, I guess this
5 is the immediate neighbor, right, to you all's project,
6 right? And so it appears as though there's a lot of
7 questions and concerns still that the immediate neighbor has
8 about the project.

9 I mean, Mr. Renard, in terms of what we're here
10 for with the Board is whether or not we believe they meet the
11 criteria for us to grant this particular project. And this
12 is where I'm also a little ignorant. Like, I mean, permits,
13 the city, engineering, and maybe Mr. Sullivan, you can speak
14 to it.

15 Like, you know, how does all this get kind of
16 approved as though it's not going to damage the property next
17 door, the retaining walls are going to work, nothing's going
18 to happen. And when I'm in the Office of Planning, I always
19 am a little confused, actually, how, I know that's not us.
20 Like, I mean, that goes through permitting, correct?

21 MR. SULLIVAN: Yes, it does, permitting. And in
22 fact, a property this large would go through the heightened
23 level of storm water management regulations as well.

24 CHAIRPERSON HILL: Right. So there's a lot of
25 engineering that needs to go through permitting at DCRA

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1 before you would even get your permits to be able to build
2 this.

3 MR. SULLIVAN: That's correct.

4 CHAIRPERSON HILL: Right. So that might be
5 something that you could share with the Applicant, I'm sorry,
6 the neighbor, right, so that again, you know, Mr. Renard,
7 again, they're here for is to see whether or not they'd even
8 be able to put their plans forward given the zoning
9 requirements.

10 So then after that, all these plans would go
11 through DCRA, and DCRA would determine whether or not it's
12 something that could actually be built in a safe manner, and
13 also with storm water management, and things like this.

14 I mean, I know it's a little bit like, it's not
15 my area. And also as a next door neighbor, how would one
16 know all these things that are going on, particularly when
17 there hasn't been a lot of discussion.

18 I don't think it's necessarily something they
19 wouldn't want to happen with you, but I would suggest that
20 you try to have those discussions so that you can at least
21 understand how much thought has gone into this project at
22 this point. Because also, they've already gone through the
23 Office of Planning which, again, the Office of Planning I
24 suppose would be looking into at least whether or not this
25 was feasible, correct?

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1 MR. MORDFIN: We look at it with relation to the
2 zoning regulations. For building permits, and for building
3 code, and things like that, we do not review it for that.
4 That is done when the Applicant applies for permits with
5 DCRA, and DCRA reviews it against that, and comments on that
6 to the Applicant until it's up to the requirements that they
7 have.

8 CHAIRPERSON HILL: Okay, right, meaning it's
9 possible, it's safe.

10 MR. MORDFIN: And that it conforms to all DC code.

11 CHAIRPERSON HILL: Okay, all right. So, Mr.
12 Renard, I would assume, or Mr. Abebe, could you please give
13 your information to Mr. Renard so that you can have
14 discussion?

15 MR. ABEBE: I already did.

16 CHAIRPERSON HILL: Okay.

17 MR. ABEBE: The first time we purchased the
18 property, I went and talked to him. But he wanted me to talk
19 to his daughter. His daughter was in California.

20 CHAIRPERSON HILL: Okay.

21 (Simultaneous speaking.)

22 MR. ABEBE: -- I'm sorry.

23 CHAIRPERSON HILL: I'm just saying, either way,
24 I'm just saying you can see that there's still a lot of
25 concerns going on.

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1 MR. ABEBE: Yes, we will --

2 CHAIRPERSON HILL: So please do your best to kind
3 of clarify that. You did go to the ANC. Mr. Renard, they
4 did go to the ANC and have an opportunity to go through this
5 -

6 MR. ABEBE: Six times.

7 CHAIRPERSON HILL: -- as well. Oh, six times you
8 went to the ANC.

9 MR. ABEBE: It was two full ANC, two with the ANC
10 members, only --

11 CHAIRPERSON HILL: Okay. Mr. Renard, did you go
12 to one of those?

13 MR. RENARD: I went to the last one. I wasn't
14 aware of the other ones.

15 CHAIRPERSON HILL: Okay.

16 MR. RENARD: But from talking with the neighbors,
17 the primary concern which they had and expressed was parking.
18 Because it's impossible to park on the street now.

19 CHAIRPERSON HILL: Okay.

20 MR. RENARD: So I don't know about, they wouldn't
21 have any reason to have concerns, I don't think, about our
22 property.

23 CHAIRPERSON HILL: Okay. All right.

24 MR. SULLIVAN: Mr. Chair, I would say --

25 CHAIRPERSON HILL: Sure.

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1 MR. SULLIVAN: -- one of the conditions in the
2 agreement, the Community Benefits Agreement with the ANC does
3 say that we'll continue to work with ANC 8A regarding
4 construction staging activities in an effort to reduce
5 inconveniences with most affected neighbors. Now, narrowly
6 viewed, that may just be construction staging. But obviously
7 it's important for the owner to continue to work with the
8 neighbor. And he's going to have to work closely with him
9 on these issues.

10 CHAIRPERSON HILL: Yes, that's fine. But I was
11 saying, in addition to that, it sounds like there's a lot of
12 just basic questions like, again, things that would go
13 through DCRA in terms of whether or not something's safe,
14 what's going to happen to my property, what's going to happen
15 to my trees, you know, basic things like that. So I'd keep
16 those, you know, set up a discussion with that, all right?

17 Okay, Mr. Renard, thank you so much. Oh, sorry,
18 Mr. Turnbull.

19 COMMISSIONER TURNBULL: I just had, just
20 clarifying 305.4, the requirements that are coming to the
21 Board of Zoning Adjustment on (a)(6), existing landscaping
22 and proposed landscaping plans, including the sizes and
23 locations of all trees on or adjacent to the property on
24 public or private lands.

25 And I think that's what Mr. Renard is saying, that

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1 we haven't seen how those trees, what he's got, what trees,
2 or if they're going to be impacted. And I think that would
3 be critical for us to see that. I think it's important that,
4 if he's going to lose trees it's, you know, we're losing
5 canopy as it is every year in this city. And we were trying
6 to improve it and ask for more trees.

7 But I think that it's significant that the
8 adjacent trees, if they're going to be damaged or removed,
9 what are you going to do to alleviate that? So I think we
10 need to get a better landscaping plan showing the trees on
11 the adjacent property, how close they are to your property
12 line, how you have the fences, again, I think you had a
13 drawing that shows the fence, and how the retaining walls are
14 going to impact any of his property.

15 CHAIRPERSON HILL: Well --

16 (Laughter.)

17 COMMISSIONER TURNBULL: No? I think so.

18 CHAIRPERSON HILL: Mr. Turnbull --

19 COMMISSIONER TURNBULL: You had a quizzical look
20 on your face.

21 CHAIRPERSON HILL: Well, I know, Mr. Turnbull.
22 I'm just trying to see whether or not, I mean, I'm just
23 trying to see what we think we might need in order to, and
24 I'm not questioning what it is you think you might need. And
25 so therefore, if you want a further landscaping plan --

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1 COMMISSIONER TURNBULL: I think a more refined
2 landscaping plan showing the trees on the adjacent near
3 property that could be affected by this development.

4 CHAIRPERSON HILL: Okay. So a more refined
5 landscaping plan, okay. Mr. Sullivan, do you understand what
6 is being asked?

7 MR. SULLIVAN: I think so. And that's always the
8 trick, balancing housing versus trees, and the protection of
9 trees with the provision of housing. I'm not certain, but
10 I think that does also come along in the permitting stage.
11 But I'm not 100 percent certain.

12 COMMISSIONER TURNBULL: Well, 305.4(a)(6), BZA
13 requirement to come before the Board for drawings, existing
14 landscaping and proposed landscaping plans, including the
15 sizes and locations of all trees on or adjacent to the
16 property on public or private lands.

17 MR. SULLIVAN: Okay.

18 COMMISSIONER TURNBULL: I'm not asking for
19 anything that isn't in the zoning regs.

20 MR. SULLIVAN: Okay.

21 CHAIRPERSON HILL: Okay. So there's that. And
22 then, I guess, the drawing of the fence, all right, or where
23 the fence is going to be and how the fence is going to, where
24 it's going to be laid out, right? I don't have any specific
25 questions other than that. Does anybody else?

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1 Okay. So I guess, Mr. Sullivan, if you could get
2 that into the record so that Mr. Turnbull could take a look
3 at that, as well as the rest of the Board, and then we could
4 put this forth for a decision.

5 I believe now, Mr. Renard, thank you very much
6 again. And, Mr. Abebe, please again make sure you reach out
7 to Mr. Renard. Mr. Sullivan, so again, I guess it was in
8 that, you know, whatever is 305.4(6) is what --

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: Oh, sorry, 305.4(a)(6) is what
11 Commissioner Turnbull was speaking towards. And something
12 to kind of, like, show us that, as well as the fence that
13 would then satisfy the Office of Planning, okay? Do you
14 think you might be able to give that to us by the 22nd, I'm
15 sorry, the 29th?

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON HILL: Okay. So then that means we
18 can put this on for decision on the 29th. No, I'm sorry.
19 Hold on. I'm just trying to get to a decision on the 29th,
20 Mr. Moy.

21 MR. MOY: Okay, so we could set it for decision
22 making on January 29th if the Applicant can file, make a file
23 with the additional information that the Board's requesting
24 by January the --

25 CHAIRPERSON HILL: Twenty-second, I guess, right?

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1 Because then the ANC would have seven days?

2 MR. MOY: Twenty-second.

3 MR. SULLIVAN: Yes, we can do that.

4 CHAIRPERSON HILL: Okay. All right, and then, Mr.
5 Turnbull, you're welcome to come or -- all right, then that's
6 it, correct, Mr. Moy?

7 MR. MOY: That would be it. And if the Applicant
8 files by January 22nd, then we can give any parties, the ANC,
9 to respond by, let's say, Monday, January 27th, with two
10 days. If you want to decide this on the 29th, sir.

11 CHAIRPERSON HILL: Okay. All right, decision on
12 the 29th, okay, yes. I mean, I forget, you said we had an
13 appeal on the 29th? And now we've got --

14 MR. MOY: Yes.

15 CHAIRPERSON HILL: -- nine cases.

16 MR. MOY: One, two, three, four, five, six, seven,
17 eight, yes, this would be nine. But this would be for
18 decision making, right?

19 CHAIRPERSON HILL: No, we have nine cases, because
20 we just added that --

21 MR. MOY: That's right.

22 CHAIRPERSON HILL: -- last case from the time
23 before. Then we have whatever our decision cases are in
24 addition to the nine cases.

25 MR. MOY: Yes.

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1 CHAIRPERSON HILL: And then the appeal.

2 MR. MOY: Yes. While you're thinking about that,
3 with the ANC response by January 27th, would you want to
4 include anything from the OP?

5 CHAIRPERSON HILL: I don't think the OPs going to
6 have any new to add. But if you want to add something, OP,
7 you can.

8 MR. MORDFIN: All right, thank you.

9 CHAIRPERSON HILL: All right, okay. All right,
10 we'll just stick with the 29th. Okay? All right. So as
11 promised, we're going to take another break before our last
12 case. Gentlemen, have a nice Martin Luther King holiday.
13 We will not be here. Bye, bye.

14 (Whereupon, the above-entitled matter went off
15 the record at 7:18 p.m. and resumed at 7:32 p.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, let's do
17 it.

18 MR. MOY: Thank you, Mr. Chairman. So the Board
19 is back in session and the time is at or about 7:30 p.m. --
20 p.m., yes.

21 So before the Board, if we can have parties to the
22 table to Case Application No. 20144, David Barth and Lisa
23 Kays, as amended for special exceptions under Subtitle E
24 Sections 205.5 and 5201 from the rear addition requirements
25 of Subtitle E Section 205.4, from the lot occupancy

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1 requirements of Subtitle E Section 404.1, from the accessory
2 building rear yard requirements of Subtitle E Section 5004.1,
3 and from the nonconforming structure requirements of Subtitle
4 C Section 202.2, to construct a two-story rear addition with
5 a basement to an existing, attached, principal dwelling unit,
6 and a second-story addition to a detached accessory building
7 in the RF-2 Zone. This is at 1832 15th Street, Northwest,
8 Square 191, Lot 56.

9 CHAIRPERSON HILL: Okay, great. So let's see.
10 First of all, whoever hasn't been sworn in, if you wouldn't
11 mind standing and getting sworn in by the Secretary to my
12 left.

13 That's all right. It doesn't matter, you can get
14 sworn in again. Just swear -- stand up. It's not going to
15 hurt.

16 (Witnesses sworn.)

17 CHAIRPERSON HILL: Okay, so let's see. Let's just
18 start with introductions first. If we could go ahead and
19 start from my right to left and just go ahead and go down the
20 line.

21 I'm sorry, you have to speak into the microphone.

22 MR. HANLON: Thank you. Good evening. I'm Ed
23 Hanlon, ANC Commissioner for 2B09.

24 CHAIRPERSON HILL: Welcome, Commissioner.

25 MR. HANLON: Thank you.

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1 MR. BEPLER: Good evening, I'm Peter Bepler, one
2 of the owners at 1830 15th Street, Northwest.

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

5 MR. BEPLER: Yes. B-E-P-L-E-R.

6 CHAIRPERSON HILL: And you're one of the owners
7 where?

8 MR. BEPLER: 1830 15th Street.

9 CHAIRPERSON HILL: Okay, is that adjacent?

10 MR. BEPLER: Yes, it's the abutting property to
11 the south.

12 CHAIRPERSON HILL: Okay, all right.

13 MS. BEPLER: I'm Britt Bepler. I'm also the owner
14 here with my husband at 1830.

15 CHAIRPERSON HILL: Okay.

16 MS. NICKEL: Hi, I'm Sarah Nickel. I'm one of the
17 owners at 1834 15th Street, Northwest.

18 CHAIRPERSON HILL: Is that on the other side?

19 MS. NICKEL: It's to the north.

20 CHAIRPERSON HILL: Okay.

21 MR. NICKEL: I'm Taylor Nickel, also at 1834.

22 CHAIRPERSON HILL: Okay.

23 MS. MAZO: Samantha Mazo, law firm of Cozen
24 O'Connor. I represent the Nickels and the Beplers.

25 CHAIRPERSON HILL: Okay.

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1 MR. SULLIVAN: Marty Sullivan on behalf of the
2 Applicant.

3 MR. JONES: Patrick Jones, the architect.

4 MS. KAYS: Lisa Kays, the Applicant.

5 CHAIRPERSON HILL: Can you spell your last name,
6 please?

7 MS. KAYS: K-A-Y-S.

8 CHAIRPERSON HILL: K-A-Y-S, thank you.

9 MR. BARTH: I'm David Barth. I'm Lisa's husband,
10 B-A-R-T-H.

11 CHAIRPERSON HILL: Thank you.

12 MR. LANDRY: I'm Aaron Landry, ANC Commissioner
13 in 2B04 and Secretary of the Commission as well as the Chair
14 of our Zoning, Planning, and Development Committee.

15 CHAIRPERSON HILL: Which ANC are you with?

16 MR. LANDRY: ANC 2B. I'll also remind that the
17 ANC took no action on this case. I'll be speaking as an
18 individual.

19 CHAIRPERSON HILL: Oh, I got you. Okay. And then
20 Commissioner Hanlon, are you also with the same ANC? You
21 need to speak into the microphone.

22 MR. HANLON: Yes, I'm also with ANC 2B.

23 CHAIRPERSON HILL: Okay, but you're also here
24 speaking as your own?

25 MR. HANLON: Yes, as an individual. This is my

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1 SMD. it's my district. I also live on the alley.

2 CHAIRPERSON HILL: Okay, but again, you're here
3 not representing the ANC because you guys didn't take a
4 position, apparently.

5 MR. HANLON: Right. The motion to approve was
6 voted down by the ANC.

7 CHAIRPERSON HILL: Okay. Okay. All right. Okay,
8 are any of you guys from Ohio?

9 No? Sorry, that doesn't work. I had an Ohio
10 joke, but it doesn't matter now.

11 All right, let's see. Okay, Mr. Sullivan, and
12 just so everybody knows how this is going to work, so we're
13 going to go ahead and allow the Applicant time to present
14 their case. We might even try to specify or hone in some of
15 the things that we need to talk about. Then the party status
16 in opposition would have an opportunity to ask some questions
17 of the Applicant.

18 Were any of you here actually at the very
19 beginning of the day? Oh, okay, because we basically did
20 this at the very beginning of the day. And so I was not
21 going to have to repeat it all, but I'm going to tell you a
22 little bit more.

23 So there will then be questions from the
24 opposition for the Applicant. Then the opposition will have
25 an opportunity to testify. The Applicant will have an

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1 opportunity to ask questions of the opposition. Then there
2 will be the Office of Planning giving their testimony.
3 Everyone gets basically an opportunity to ask questions of
4 everybody.

5 At the end of the day, there will be an
6 opportunity for the Applicant to rebut anything. And then
7 the way I view things is there is a conclusion that's given
8 to the party in opposition. However, that's not actually
9 listed in the regulations. It's just something that I do and
10 then also the Applicant then has an opportunity to conclude.

11 So I suppose Mr. Sullivan, you can go ahead and
12 walk us through what it is that your client is trying to do
13 and how you believe that your client is meeting the standards
14 for us to grant the application. I know that specifically,
15 in terms of 5201.3(a) through (e) is some of the things that
16 I'd be interested in hearing more about, which is basically
17 the regulations, right, in the standard. And then I suppose,
18 you know, I don't know if there is or isn't anything that you
19 already know from discussions with the opposition as to what
20 some of their concerns might be, so I suppose you could speak
21 to some of those if you'd like to.

22 Ms. Mazo has been, you know the drill in terms of
23 what's going on. I mean there's a lot of people here today.
24 I would imagine you guys would like us to actually get
25 through this tonight, okay? And so we're going to try to do

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1 this as efficiently as possible. I'm not going to stay here
2 forever and so, let's just try to be efficient, all right?
3 Thanks. So there you go.

4 So Mr. Sullivan, I'm not going to even put a clock
5 on you, just go ahead and start -- I'm sorry, Mr. Moy, just
6 run a clock so I know what we have been starting to do. And
7 can you start it -- actually, can you go up?

8 MR. MOY: Yes.

9 CHAIRPERSON HILL: No, can you go from zero and
10 go up, like how long does it go on.

11 MR. MOY: I can take it up to 60 minutes.

12 CHAIRPERSON HILL: No, I want to go up.

13 MR. MOY: What do you mean go up?

14 CHAIRPERSON HILL: I down want to go down.

15 MR. MOY: Go down to zero?

16 VICE CHAIRMAN HART: No, he wants to count. So
17 if you start from one -- you count to see how long the
18 duration.

19 MR. MOY: No, I can't do it that way.

20 CHAIRPERSON HILL: You can't do it that way.
21 Interesting.

22 MR. MOY: You want me to try that? I've never
23 down that before.

24 CHAIRPERSON HILL: Neither have I. Now start it
25 and see what happens.

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1 MR. MOY: Holy cow.

2 CHAIRPERSON HILL: There you go.

3 VICE CHAIRMAN HART: I'm not sure that's a good
4 thing.

5 CHAIRPERSON HILL: Go ahead. Start us off. Thank
6 you, Mr. Sullivan.

7 MR. SULLIVAN: Thank you, Mr. Chair, members of
8 the Board, this is 1832 15th Street, Northwest, an addition
9 is proposed and I'll turn it over to the architect in a
10 second.

11 Overview, we're asking for four areas of relief
12 from the back of the property up, I'll take them. We're
13 asking for relief from the center alley line setback which
14 is -- they're all special exceptions.

15 And then there's two areas of relief related to
16 that because there is an existing garage and we're building
17 a second story on that because -- so we also -- we need the
18 relief itself and then we need relief for expanding a
19 nonconforming condition for that; lot occupancy relief to go
20 over the 60 percent and within 70 percent. And the accessory
21 building takes up about 20 percent of that lot occupancy.
22 And then finally, rear yard relief from the 10-foot rule in
23 the back for a 13.25 foot addition.

24 Very short testimony I'd like to have from Ms.
25 Kays.

1 MS. KAYS: Hi. I'm Lisa Kays. I'm the homeowner
2 with my husband, David. We live in our home with our two
3 young children. And I'll be very brief, I know you've had
4 a long day. And to your point, I just want you to know you
5 may hear a lot of things about us and the process that we've
6 undergone. If you've read our file, you've certainly read
7 a lot of things about us. And I just want to let you know
8 that my husband and I disagree with pretty much every way
9 that we personally and that this process has been
10 characterized. And so we just hope that if you have any
11 concerns about what you hear that you'll let us give you our
12 side of the story, but we don't want to belabor that in the
13 interest of time.

14 We're excited to be here. We're excited to hear
15 what you think of our proposal. We have tried to the
16 greatest extent that we can to be transparent and to work
17 with our neighbors and yeah, we just want you to be aware of
18 that and we're happy to answer any questions that we can.
19 Thank you.

20 MR. SULLIVAN: Thank you. I'll turn it over to
21 the architect now.

22 MR. JONES: Hello. I'll just briefly get you
23 through the project. It's pretty simple in design. This
24 slide shows the front and rear facades of existing house.
25 This is the existing rear, as well as the rear views of the

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1 adjacent neighbors. This is the existing garage views from
2 both inside their courtyard as well as from the alley.

3 This is a partial block plan that shows the areas
4 from 15th Street to the existing alley and our project is
5 right, pretty much, centered in the block.

6 Our proposal is to do a 13-foot, 3-inch addition,
7 3 stories, as well as an existing garage above -- sorry,
8 existing addition above the -- sorry, it's been long -- an
9 addition above an existing garage. This is a building
10 section showing the existing versus proposed.

11 So the existing house currently has the kitchen
12 in the basement and has a small office and a small bathroom.
13 The upstairs has -- okay. All right, so the proposal is for
14 the garage is to just do an office loft space above with a
15 small wet bar and powder room. The ground floor will retain
16 the existing office. The kitchen will be converted to a
17 family room and then a guest suite in the back. The first
18 floor, we're just opening up for living, dining room, and
19 kitchen, and adding a powder room and a pantry and access to
20 the rear. And then the second floor will have three bedrooms
21 and two baths and a compact washer/dryer for day-to-day
22 stuff.

23 The proposed rear elevation, the proposed side
24 elevations from each of the neighbors' yards, the proposed
25 garage, or carriage house, elevations. This is actually

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1 asymmetric views of the block which shows the different
2 buildings on the block and their existing projections into
3 the rear yard. It's sort of a fly-by set up.

4 More of the same thing. This is a rendering of
5 the rear facade from our yard. This is the carriage house
6 rendering. This is from the alley. This is from the
7 neighbors at 1830 looking back at our addition. And this is
8 from 1834, yes, okay.

9 The shadow study -- before I go into the shadow
10 study, I just want to clarify what matter of right is, what
11 we're sort of trying to prove here. Matter of right is if
12 we were to take down the existing garage and that would
13 reduce the lot occupancy to 36.1 percent. So if were to add
14 a 10-foot addition, that would bring the lot occupancy to 46
15 percent.

16 And so we did shade studies throughout the year.
17 This is the spring and fall equinox at 9:00 a.m. The
18 proposed, outlined in red, shows the -- how do you say this?
19 Okay. Shows what added shade you would get from the
20 addition, which is actually from the garage. And there's no
21 additional shade with the matter of right.

22 At 12:00 p.m., during the spring/fall equinox, the
23 additional shade would be right there. And then if you were
24 to look at the matter of right versus the proposed, that
25 little blue outline is what would be the additional shade

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1 from the 3.25 feet addition.

2 MR. SULLIVAN: I would just add, one of the
3 reasons that we did it like this is because the ANC also
4 wanted to see the difference between existing and proposed,
5 not just matter of right and proposed. So we stepped it.
6 So if you look at the middle slide of proposed, the red
7 outline is additional shade from existing to proposed. And
8 then the blue is from matter of right of 10 feet to proposed
9 of the 13.

10 CHAIRPERSON HILL: Right, so then that proposed,
11 that's the 13-foot extension, correct?

12 MR. SULLIVAN: Correct.

13 CHAIRPERSON HILL: And then the matter of right
14 is just the ten-foot extension?

15 MR. SULLIVAN: Correct.

16 CHAIRPERSON HILL: Okay.

17 MR. SULLIVAN: With no accessory buildings.

18 CHAIRPERSON HILL: Got it.

19 MR. SULLIVAN: So then you'll see the accessory
20 buildings show up on the -- on some of these. We'll get to
21 that.

22 MR. JONES: So at 3:00 p.m., the additional shade
23 would be this area here, and then a little sliver over here.
24 And then without the garage and the ten-foot addition, you
25 would just have again a slide sliver there in addition.

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1 MR. SULLIVAN: And so this might be the slide
2 where there is the largest amount of impact shown from matter
3 of right to proposed, with the blue. Is that correct? On
4 the third slide.

5 MR. JONES: Yes. And the majority of it is
6 actually from the garage, not from the addition, per se.

7 MR. SULLIVAN: Okay, and is there a tree in that
8 area between the proposed accessory building and that blue
9 square in the middle of the yard at 1834?

10 MR. JONES: Yes, there is a tree.

11 CHAIRPERSON HILL: So the proposed, though, that's
12 with the addition to the garage?

13 MR. JONES: Correct.

14 CHAIRPERSON HILL: Okay.

15 MR. JONES: Okay, so this is the summer solstice
16 at 9:00 a.m.

17 CHAIRPERSON HILL: I'm sorry. I'm going to kind
18 of jump right in. Which neighbor is it that's -- is that to
19 the north?

20 MR. JONES: Yes, these are oriented north-south.

21 CHAIRPERSON HILL: So which ones are north? Okay,
22 and then you guys are south? Okay. All right. Keep going.
23 Thank you.

24 MR. JONES: So at 9:00 a.m. in the summer, you've
25 got a little bit of shade and then the difference is a tiny

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1 little square in the matter of right. At 12:00 p.m., you get
2 some additional shade here and then again the matter of right
3 difference is that tiny little blue square. And at 3:00
4 p.m., you get again a little bit there and then a tiny little
5 sliver there and to me, it's barely, you can barely tell, but
6 there's a tiny little blue on the matter of right between the
7 matter of right and proposed.

8 The winter solstice at 9:00 a.m., there's really
9 no change except in the alley. At 12:00 p.m., there is
10 additional shade here, as well as on their existing garage.
11 And then the difference between the proposed and matter of
12 right is this outline in blue right there.

13 And at 3:00 p.m., the only difference is --
14 there's additional shade on their garage, but the matter of
15 right and proposed doesn't impact the actual yard.

16 MR. SULLIVAN: Okay, so I can go over the relief
17 being requested more specifically. First is lot occupancy,
18 existing lot occupancy is 56.5 percent. The accessory
19 building does exist already. We're proposing to put a second
20 level to that.

21 The overall lot occupancy would be 69.75 percent.
22 And of course, the BZA -- the special exception requirements
23 apply up to 70 percent.

24 The alley center line setback is also special
25 exception relief. This is the requirement that the accessory

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1 building be set back 12 feet from the center line of the
2 alley. This is an existing building. It's in line with
3 several other existing accessory buildings. In fact, at
4 least two of the three neighboring buildings are two stories,
5 so we need the relief to put the second story on and we need
6 to relief to extend the existing nonconformity.

7 And then the rear yard relief under 205.4 is the
8 10-foot rule asking for 13.25 feet. The rear line of the
9 building is currently in line with that, so we're asking
10 essentially for 3.25 feet of relief beyond the 10 feet. The
11 rear yard at that point and the required rear yard, not the
12 entire rear yard, the required rear yard is 30 feet, so the
13 distance between the house and the accessory building is a
14 full 30 feet which is 10 feet more than is required.

15 CHAIRPERSON HILL: That's after the proposed 13.2
16 feet?

17 MR. SULLIVAN: Correct. General special exception
18 requirements, we believe we need, we stayed within the 70
19 percent lot occupancy. We think this is compatible with the
20 spirit and intent of the zoning regulations and maps. The
21 Board has reviewed several cases with this type of addition.
22 In those cases, the Board has generally determined that this
23 type of relief, this amount of relief, around three feet, is
24 minimal. And in fact, one case calling it de minimis. The
25 project will not tend to affect adversely the use of

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1 neighboring property.

2 So light and air, the shadow studies show and it
3 was the area of the blue that represents the difference
4 between the matter of right and the proposed was the 3.25
5 feet. As you might expect, the 3.25 feet has a very minimal
6 effect on the property to the north. It has no effect
7 whatsoever on the property to the south. There's no windows
8 on these additions as the Office of Planning stated. The
9 privacy is probably improved rather than impacted and so
10 privacy is not at issue here as well.

11 I've included and the Board can read these. I'm
12 not going to read through these. These are quotes from other
13 cases where the Board has ruled and made statements about
14 this type of relief and this degree of relief, the general
15 point being that in all these cases, the Board has looked at
16 the ten-foot rule as being targeted mainly towards much
17 larger additions, and additions of this size not being of
18 undue impact.

19 The jurisprudence of these cases over the last
20 three or four years has sort of developed into this that
21 three feet beyond the ten-foot rule is not undue. This is
22 the case I mentioned about de minimis. This was a few months
23 ago, a case where Commissioner Hood stated that whether it's
24 3 feet, 2.5 half or whatever, whatever that number is, to me,
25 I think it's de minimis. And that was an addition that was

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1 approximately the same height as this addition and also had
2 opposition from a neighbor.

3 Privacy will not be impacted. There's no windows
4 on the side, as I mentioned. The rear yard also has this
5 six-foot wooden fence.

6 So the requirements regarding the accessory
7 structure, this shows the accessory structure together with
8 the original building as viewed from the street, alley, other
9 public ways shall not substantially visually intrude upon the
10 character, scale, and pattern of the house as long as long
11 as subject street frontage.

12 Obviously, no addition to the front. And the
13 rear, these photos and some of the other information
14 submitted show you that the alley includes accessory
15 buildings. It includes rear additions. This is the T of the
16 alley looking into the property. And I want to go back to
17 another slide that gives us more background on this. This
18 shows the diversity of additions in the background, starting
19 with the large apartment building at the corner.

20 CHAIRPERSON HILL: Can you go back?

21 MR. SULLIVAN: Sure.

22 CHAIRPERSON HILL: What's the dotted line thing?
23 Either one.

24 MR. SULLIVAN: This one?

25 MR. JONES: That is 1828 15th Street. It was a

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1 proposed addition that was approved by the Board recently.
2 It just hasn't been built yet, so we were just sort of
3 demonstrating that addition will or has been approved by the
4 Board and you know, could be built any day now. Or could be
5 built.

6 CHAIRPERSON HILL: Mr. or Mrs. Nickel, are you
7 guys next to that one, the one that's supposedly going up?
8 Oh, okay. You're south. I got it. I got it mixed up. I'm
9 sorry. So did you come down and testify for that one?

10 MS. NICKEL: So interestingly enough, sorry, so
11 they approached us way before their plans were final, before
12 they submitted them to the BZA. And they met with us in
13 person and said hey, this is what we're thinking. You know,
14 we know this is going to impact you. Luckily for us,
15 unfortunately not for these four, to our south, we have that
16 giant apartment building that you can see there. And then
17 we've got another bump out --

18 CHAIRPERSON HILL: Okay, that's all right. That's
19 great. We can get to it later.

20 MS. NICKEL: So we approved it.

21 CHAIRPERSON HILL: So they did come before you
22 because I remember you guys coming down here.

23 MS. NICKEL: Yes.

24 CHAIRPERSON HILL: Because I kind of remember the
25 case.

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1 MS. NICKEL: And there was a dog leg that they put
2 in and they really tried their best to accommodate us.

3 CHAIRPERSON HILL: Okay. All right. Thank you
4 so much. Okay, Mr. Sullivan, keep going.

5 MR. SULLIVAN: I think that's it for the -- if the
6 Board has any questions.

7 CHAIRPERSON HILL: Okay, I guess I'll let the
8 Board ask some questions. I am going to just comment on a
9 couple of things just before we kind of get started.

10 I guess it was -- Ms. Kays -- so just so that
11 everybody knows here, we're just here to kind of get through
12 this case, right? Okay. And you weren't here at the very
13 beginning of the day and it was a pretty -- it's a case that
14 we've heard a lot about. It was kind of heated. And we get
15 a lot of heated cases, right? And so I just wanted to be --
16 just put everybody on notice that I don't think it's going
17 to get whatever it was, but whatever is in the record can be
18 in the record. I was already laughing at a couple of things
19 that I saw in the record, okay?

20 And so, you know, we're just going to go ahead
21 and present our case. Neighbors have to deal with neighbors.
22 You guys are going to have to deal with yourselves after
23 this. Anyway, and in my opinion after doing this quite a
24 bit, I don't think it's that surprising that somebody wants
25 to do something and somebody else doesn't want to see it

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1 done, right? So that's where we're at. Okay. And so let's
2 just go ahead and get through that without being -- and if
3 it gets a little rude or weird, I'm going to let you all
4 know. Okay?

5 So let's see. So that's it for Mr. Sullivan. And
6 that goes for the attorneys as well. So okay, Ms. Mazo --
7 oh, does the Board have any questions right now for the
8 applicant? I mean I'm going to have some probably, but go
9 ahead if you do now.

10 VICE CHAIRMAN HART: It's just a -- and I know
11 this is really in the weeds, but for the accessory building,
12 why are there the doors on the yard side, like folding doors
13 on the yard side? I'm just -- I was just kind of baffled by
14 that. I couldn't figure out what they were for.

15 MR. BARTH: Well, we thought we could open up the
16 garage and then use it as space, for instance, if we didn't
17 our vehicle in it when we had people over for parties or
18 other stuff. The alley outside is also a nice alley, so it
19 was just a way of trying to make it a little more expansive
20 and visible as opposed to just lolling everything in there --

21 VICE CHAIRMAN HART: I just thought you had a
22 really nice car and you wanted everybody to see. You want
23 to drive your car into the back yard? Why would you want to
24 do that? Sorry, it kind of -- once I started looking at it
25 and started thinking about it, I didn't understand what

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1 that's for.

2 MR. BARTH: We have a Honda CRV and a Honda Fit,
3 so I don't think it would do anything particularly exciting.

4 MR. JONES: Sorry, it would also would provide
5 tandem parking in the event that they needed to get two cars
6 off the street.

7 VICE CHAIRMAN HART: Interesting, okay. Thank
8 you.

9 COMMISSIONER TURNBULL: What's the material you're
10 using exterior? It looks like stucco or stipple.

11 MR. JONES: It's stucco.

12 COMMISSIONER TURNBULL: It is stucco.

13 MR. JONES: Yes.

14 COMMISSIONER TURNBULL: Did you have any
15 discussions with the neighbors about the big windows on the
16 second floor of the accessory building? Did that come up,
17 views into their property or anything like that?

18 MR. JONES: I don't think that's come up.

19 MS. KAYS: We can also already see from our house
20 currently the full yard of both neighbors, a lot of it, and
21 other neighbors as well.

22 COMMISSIONER TURNBULL: Okay. Thank you.

23 CHAIRPERSON HILL: Ms. Mazo, do you have any
24 questions for the applicant?

25 MS. MAZO: Yes, I know the time and the approach

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1 to cross, so I'm going to be pretty limited, but just
2 dovetailing on Commissioner Turnbull's question for the
3 architect, do you know how many new windows you're adding to
4 the structure both in the rear addition and on your garage
5 office addition? Just second floor, just second floor
6 windows. Well, I mean first and second floor. First and
7 second floor.

8 CHAIRPERSON HILL: She's speaking to the privacy
9 issue, so just kind of take a guess at the windows.

10 MR. JONES: Seven.

11 MS. MAZO: Well, it's 15, 19 actually.

12 MR. JONES: I consider this as a one-window unit.

13 MS. MAZO: But do you know how many windows are
14 there now on the second, on the first and second levels?
15 Four, you can see them right there. So you are substantially
16 increasing the number of windows and the views into both of
17 their backyards, both --

18 CHAIRPERSON HILL: So you're saying 19 and he's
19 saying 4, but again, it's --

20 MS. MAZO: It's the volume

21 CHAIRPERSON HILL: It's the volume.

22 MS. MAZO: Yes.

23 CHAIRPERSON HILL: So that's the question.

24 MS. MAZO: So that's the question.

25 MR. JONES: It's more about how much square

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1 footage of glazing we're adding, not window units.

2 MS. MAZO: Do you have information because that
3 would be fantastic?

4 MR. JONES: No, but I've done plenty of
5 contemporary --

6 CHAIRPERSON HILL: She's just trying to get. She
7 was trying to ask a question. Okay, so you don't know.
8 Okay. We could get to it, but I understand what the question
9 is. So yes, so we can even ask for how much additional
10 glazing they're getting or how many windows. I mean you have
11 to show me what the -- you have to show us what it looks like
12 now without whatever the back of the house looks like now.
13 But anyway, I understand your question, Ms. Mazo.

14 MS. MAZO: I think the glazing evaluation is a
15 good one.

16 CHAIRPERSON HILL: Sure.

17 MS. MAZO: And then following up on Mr. Sullivan's
18 testimony, Mr. Sullivan, you referenced a few cases, kind of
19 towards the point that -- you're talking about the 10-foot
20 rule and I understand that, but you know, is it fair to say
21 that in one of the cases you referenced, 19576, that there
22 was actually no rear addition added there, that they added --
23 that it was 13 feet existing and 13 feet proposed and kind
24 of more importantly that the lot occupancy wasn't increased
25 and that it was at 36 percent in that case?

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1 MR. SULLIVAN: So that wasn't testimony, that was
2 legal argument. And if she wants to cross me on that, I
3 don't know how that works. I mean I could take time and look
4 at that case deeper, but it seems to me she had something to
5 say about it and she can say in her rebuttal.

6 CHAIRPERSON HILL: Okay, so they're not going to
7 get rebuttal. So they're going -- no, they get it in the
8 testimony. And I always get kind of a little confused on
9 this with myself to be quite honest and OAG is there, in
10 terms of questions that are given towards the attorney,
11 right?

12 So you're, Ms. Mazo, saying that the -- I mean you
13 just made a statement, that you believe that what Mr.
14 Sullivan put forward is not accurately representative of what
15 --

16 MS. MAZO: No, it was accurately representative
17 of the ten-foot rule in those cases, but my point is that in
18 those cases, those cases were not seeking the substantial lot
19 occupancy relief that we have here.

20 CHAIRPERSON HILL: Okay.

21 MS. MAZO: So there's a difference here. They're
22 not parallel examples.

23 CHAIRPERSON HILL: They're not apples to apples.
24 Okay. So I don't know if that's a -- and this is where OAG,
25 go ahead and ask a question, because I never seem to

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1 understand this.

2 So how does this work, right? So an attorney
3 gives testimony, and then because this always happens and
4 we're just going to have a side bar here, this always happens
5 with appeals, right, because usually DCRA's attorney is
6 giving testimony, right? And then questions are asked of
7 DCRA's attorney, but DCRA's attorney says that they're not
8 actually testifying, it's the Zoning Administrator that's
9 testifying. So do people ask questions of the attorneys?

10 MS. CAIN: My understanding is that strictly
11 speaking, cross is supposed of the witnesses that testify and
12 not of the legal arguments presented by the attorneys.

13 The chair does have some discretion when it comes
14 to the scope of cross examination, however.

15 MS. MAZO: And on this question, I can -- I mean
16 I can move forward.

17 CHAIRPERSON HILL: I'm just trying to learn
18 because first of all, it's going to happen again. It might
19 even happen again today. And then secondly, my attorney over
20 here on the thing is nodding her head, and I also think that
21 there is -- I do also think there is a bit of a gray area
22 that I also usually struggle with and I'm just kind of
23 talking to you guys because you come here a lot, is that
24 every time you all testify, and then if people ask questions
25 of what you just said and everybody says no, it's not me

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1 that's testifying, it's actually the person that said
2 nothing, then there's actually nobody to ask the question of,
3 right? So I'm just trying to figure it out. And you all are
4 the attorneys, so maybe you can help me as well. You don't
5 even have to answer, nobody has to answer.

6 What's your next question, Ms. Mazo?

7 MS. MAZO: No more questions.

8 CHAIRPERSON HILL: Okay, all right. So okay. All
9 right, so Ms. Mazo, I don't know, I didn't pay attention.
10 I'm going to go with like 20 minutes is what my colleague has
11 mentioned and so we're going to go ahead with 20 minutes, Mr.
12 Moy.

13 MS. MAZO: Perfect.

14 CHAIRPERSON HILL: And do you want to change or
15 switch?

16 MS. MAZO: Please. And I have hard copies of a
17 PowerPoint that we're handing out now, as well as hard copies
18 of testimony by Ms. Nickel.

19 (Pause.)

20 Well, thank you very much. We are here.

21 CHAIRPERSON HILL: Very good.

22 MS. MAZO: Yes, here we go. I'm Samantha Mazo
23 again from the Law Firm of Cozen O'Connor. I represent both
24 the Nickels and the Beplers.

25 We have a lovely image here that shows which is

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1 which. So the Nickels' residence is outlined in blue, it's
2 1834 15th Street. And the Bepler residence is outlined in
3 purple. Nickels are to the north. Bepler is to the south.

4 We're here, I mean, 69.7 side percent lot
5 occupancy is just too large for this property and this
6 project is too large. It's an extreme special exception,
7 requires a higher burden of proof and increased scrutiny.
8 With this lot occupancy, when you compare to what could be
9 done as a matter of right, a proper matter of right which
10 I'll get to, the project is actually 106 percent larger than
11 what could be constructed as a matter of right.

12 And so with that background, I will take you
13 through. The lot occupancy is very large. It's oversized.
14 The building size is increased by 35 percent over what's
15 existing. It adds 15 new windows looking directly into the
16 neighbors' backyards, a 475 percent increase over existing.
17 The glazing evaluation we'll wait on, but it puts the
18 Nickels' garden in shade. There's no shade now. And it adds
19 two offices to the property. And I understand there is an
20 office now. I was not aware of that. But it adds two large
21 office spaces to the property.

22 There's overwhelming neighborhood opposition,
23 exactly 32 letters in opposition. I get -- I hear it a lot,
24 a lot of opposition letters are form letters. Many of these
25 are not. These are -- so many are very heartfelt and

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1 personalized letters. The Dupont East Civic Action
2 Association and Mr. DelleDonne is here. They filed two
3 letters in opposition.

4 The ANC did not take a position, but we do have
5 two ANC Commissioners who are here who can explain that
6 result, I guess. The legal test, obviously, requires taking
7 the impact on the neighbors' property into account.

8 Starting off, the addition is not in harmony with
9 the intent of the RF-2 Zone. I think one thing is important.
10 As part of the intent section of RF-2, Subsection E 400.2(e),
11 preserve areas planned as open gardens and backyards and
12 protect the light, air, and privacy that they provide. This
13 project is directly not in harmony with that. And on that
14 point, I would just point you to a prior case decision and
15 this is in 17377(a) which was another under the old Dupont
16 Circle Overlay Zone, but it specifically states this, which
17 states as one of the purposes of the Overlay Zone, the
18 preservation of areas planned for open gardens and backyards.
19 So this intent is real and the Zoning Commission was really
20 looking out for individuals like the Beplers and the Nickels
21 who live on streets where people's homes are very, very close
22 together and they have backyards and homes are small and
23 people really make their backyards their outdoor living room
24 and that's what's happened here.

25 The addition is not in harmony with the 10-foot

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1 rule. The addition is not in character with the block. You
2 know, I think one thing to identify is in prior parts of the
3 application, early in the application there was some attempt
4 to try to say oh well, this addition is going to be similar
5 to the verandas and to the addition that's to the north of
6 the Nickels. I think you can see here, I don't have access
7 to the Circle One, but you can see here that the properties
8 of the north and actually that property owner is here that
9 has beautiful verandas. It's open. It's airy. It is not
10 a monolithic block.

11 Also, I think we talked a little bit about the
12 application for 1828 15th Street which came before you which
13 did not have opposition and in that case it was a smaller,
14 they stayed within the 10-foot requirement. They did not get
15 relief for the 10-foot requirement. They ended up meeting
16 variance relief for the accessory structure, but that lot
17 occupancy was at 64 percent and the reduction in size of that
18 property and that project made a difference. There are other
19 differences between that project and the one we have now, in
20 particular, having to do with the windows on the accessory
21 building in the side.

22 The adverse effect is substantial. Under the
23 zoning regs we're saying if the word is not defined go to the
24 Webster's Unabridged Dictionary. So we went there and this
25 is what it says, the definition of undue, unsuited to the

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1 time, place, or occasion, exceeding or violating proprietary
2 or fitness. These are the synonyms, immoderate, excessive,
3 unwarranted, improper. So that's really the framework that
4 we're working in here.

5 There's going to be adverse effect and the Nickels
6 and the Beplers will speak to it personally, but I just want
7 to give some of an overview that the impact of the Nickels'
8 garden is undue. It adds substantial shade where none exists
9 now and will impact the privacy and the use of both the
10 Nickels' and the Beplers' homes.

11 This is not semantics. It has to do with what is
12 matter of right here. And the matter of right, we have never
13 seen, there's nothing in the record that shows a plan with
14 them taking down the garage or taking off the roof of the
15 garage. So I think the only way that this Board can really
16 look at a matter of right, you have to expect that that
17 garage is going to stay. And you have to expect that that
18 garage is going to continue to be counted as part of lot
19 occupancy.

20 And so with that, what is a matter of right
21 addition, assuming that garage stays because we've never seen
22 a plan that shows the garage being taken down. No one has
23 ever showed it to us. And that means that that rear addition
24 is limited to 3 feet 6 inches to stay within the 6 percent
25 lot occupancy. The property is already at 56.5 percent lot

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1 occupancy. If you add 10 feet which they're saying is matter
2 of right, you're at 66 percent lot occupancy. So if you do
3 the math, the maximum length of the rear addition keeping the
4 garage, we have no reason to think they're going to do
5 anything else is 3 feet 6 inches.

6 I will say personally I know that there have been
7 other cases where I have been on where there have been
8 questions about what is the matter of right, the actual
9 matter of right to be evaluated for shade study. And they
10 had a question about the use and the actual volume and length
11 and height of that. And we had to go back and provide
12 additional documentation to show what the matter of right
13 impact would be and the change based on kind of another
14 evaluation of matter of right. So there's certainly
15 precedent for that and I would hope that the Board thinks
16 about this seriously.

17 This goes again to the matter of right shade
18 study, but if you use the correct matter of right with the
19 3 feet 6 inches, then the addition is much smaller, 65
20 percent smaller. The shade would be -- the shade from the
21 proposed project is larger and it puts a lot of undue. So
22 this image here is my attempt because there are no plans that
23 showed what the proper matter of right addition would be.
24 It's my attempt to show with that purple box over on the
25 matter of right of what the actual matter of right addition

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1 would be if there was a proper 3 feet 6 inch rear addition
2 and the garage remains, which I think we have to expect that
3 it will. Then it's obviously substantially larger. That
4 means that the delta, the difference between the matter of
5 right and the proposed is much, much smaller. It means --
6 I'm sorry, it's much, much larger. Here it means that your
7 matter of right project is casting a much smaller shadow than
8 your proposed project.

9 Now I really want to focus on the Beplers' garden.
10 Sarah will tell you -- what? The Nickels' garden, I'm sorry.
11 Focus on the Nickels' garden. She'll speak for herself, but
12 they purchased this house because of the garden and the
13 garden is a very central part of it. It's something that
14 they do. They're very dedicated to their garden and there's
15 no way to cut it but to show that this proposal is going to
16 add substantial shadow.

17 So this is existing conditions, okay. And this
18 is proposed conditions. I'm not including the matter of
19 right because I couldn't do that evaluation, so I am
20 comparing existing and proposed. The red box shows how much
21 more shadow is going to be passed at noon which is a critical
22 time in the spring and the fall for planting and growing.
23 What used to not be in shadow or what currently is not in
24 shadow in the spring and fall will be in shadow as a result
25 of this project.

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1 And then this is the winter, similar analysis,
2 that currently no shadow on the Nickels' garden and then
3 there will be a substantial shadow. And these -- especially
4 in light of the intent of the regs here to protect these open
5 gardens, that this type of additional shadow cannot be
6 brushed under the rug and would constitute undue.

7 Then this goes to the windows. There are 15 new
8 windows, again, we don't know the glazing, but -- and I have
9 pictures of existing to demonstrate, but essentially you can
10 see the existing windows are similar to the framing of the
11 property to the right which is the Beplers' property. So
12 there are four windows now. There will now be huge swaths
13 of windows that will allow substantial views into the
14 backyard.

15 And then really, you know, going on Commissioner
16 Turnbull's question, there's going to be this block of
17 office-like windows from an office in their backyard looking
18 directly into the Beplers' and the Nickels' backyard. This
19 will create a fish bowl with views both ways, back and forth
20 into their backyard and also these office windows allow views
21 directly into the neighbors' bedrooms, so that's not good for
22 privacy.

23 There is BZA precedence to deny special
24 exceptions. I mean I know that this is an uphill battle
25 here, but it has happened before. Those special exceptions

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1 require evaluating all the impacts and it's all encompassing.
2 So in two prior cases, multiple cases, but these are the ones
3 that I found that there was -- there were denials.

4 So now I'm going to turn it over to Sarah and
5 she's -- no, kind of hit the highlights.

6 MS. NICKEL: Thank you. This is my garden in the
7 middle of spring this year. The next one is farther in and
8 you can see a few of the plants. Next one, pictures -- very
9 proud of my tomatoes and squashes and things that we're
10 growing and hanging out in the backyard. Like you said, this
11 is kind of our living, second living space.

12 I think the next one is the change. So you have
13 my testimony. I hope you take the time to read it. I very
14 much appreciate your consideration. Our biggest concerns are
15 the light and the air flow to our backyard. This is an
16 approximation from our kitchen which we're nearing the end
17 of a renovation. We've gutted our house as the architect
18 mentioned. Houses when they were built, all of the kitchens
19 were in the basement, so we're moving the kitchen up to this
20 main floor. Previous owners had put in this gorgeous door
21 that really makes the outside part of the house so we're
22 intending to where you can open those doors, walk out from
23 the kitchen, and you're in your backyard. So that will
24 change everything and the light about that, as well as the
25 master bedroom which will be directly upstairs.

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1 I put in the testimony the goals for the garden,
2 the things -- I've signed up for an urban gardening
3 certification course. It's something that I really enjoy and
4 there's also, I think that it's been mentioned, but we have
5 a 20 plus year old Japanese maple in the back yard. It's
6 near the property line towards the back by our garage. You
7 can see it behind Taylor there. Both of us, and our
8 neighbors at 1832 benefit from the beauty and the shade, the
9 organic shade that this tree provides. So we're concerned
10 that the plans may damage that and want to make sure it's
11 protected.

12 So I guess in closing, the fact that this comes
13 so close to the 70 percent lot coverage that it affects the
14 privacy and will have really undue effect and change how we
15 use our backyard which is something we appreciate
16 consideration for. Thanks.

17 MS. BEPLER: I wrote mine down so I don't screw
18 this up. I'm a little nervous, excuse me.

19 CHAIRPERSON HILL: Please don't be nervous,
20 honestly.

21 MS. BEPLER: This is my first time.

22 CHAIRPERSON HILL: I'm going to say if you haven't
23 learned anything by now today please don't be nervous.

24 MS. BEPLER: Well, hopefully, I'll feel that way
25 after this. Okay, it will take me about three minutes.

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1 CHAIRPERSON HILL: Okay, no problem.

2 MS. BEPLER: Good evening and thank you for having
3 us, first and foremost. This is a crazy long day for you
4 all, so I'll try to make it as short as I can.

5 We bought our home in 2011. The main attraction
6 for our purchase was the unique combination of having a
7 normal size single family home along with a two-car garage
8 that was preexisting when we bought it and a backyard that
9 was already full -- this is our backyard -- full of light,
10 privacy, and air flow, something we had rarely seen over a
11 year plus search for a house we could afford in D.C. So
12 obviously, this was a gem when we found it.

13 You know, as you can see from these, we've
14 invested heavily into this outdoor space. It functions as
15 a peaceful, calm, living, inviting outdoor extension of our
16 home. We do entertain often. We've had memorable birthday
17 celebrations and other holiday gatherings. It's one of the
18 things we cherish most and love most about our home. You
19 know, the owners of 1832 have also come over to our backyard
20 for one of our birthday celebrations, so they got to see
21 firsthand how to enjoy it. It was a lovely party.

22 We're also in the midst of beginning a full
23 renovation for ourselves. We'll have a few glass doors, kind
24 of like what the Nickels have on the basement and first
25 floor. We think this will complement our use of our outdoor

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1 space significantly. It is important to note our renovation
2 won't change the footprint of our home whatsoever and will
3 remain the same size, if we're fortunate enough to adopt a
4 child in the near future.

5 Unfortunately, the green space and outdoor area
6 we love so much will be drastically and negatively affected
7 by their proposed plan. We are their abutting to the north.
8 We take our enjoyment and privacy very seriously. With these
9 15 new windows on the back side of the house, 5 new on the
10 garage, I kind of feel like I'm just going to have eyes
11 staring at me no matter what when I'm in this backyard. It's
12 creepy to feel and it's unfortunate that that could be the
13 case.

14 You know, privacy is a huge issue. The air flow
15 is also a huge issue. I don't know if you can see it from
16 this, but if you go on the far right corner of this picture
17 we do have a jacuzzi, so they'd be able to see right in which
18 I don't know if it would be a good sight for them, but it is
19 what it is.

20 And I do want to say, I want to make this very
21 clear. My husband and I, we do not oppose any homeowner from
22 renovating or improving their home. It's what we feel
23 everybody has a right to as long as it's a matter of right.
24 We know the owners -- I want to make this very clear, you can
25 see this as evidence in many exhibits I've uploaded over the

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1 months. The only outreach that these owners of 1832 did was
2 extremely minimal and all the emails, the emails are loaded.
3 They do not lie. I implore you to read through them. You
4 can see for yourself where we were generous and fair in our
5 compromise multiple times with them basically saying we're
6 not going to change the footprint or the structural design,
7 but hey, we might let you choose paint colors and materials
8 used, good luck, which obviously does nothing for us. So
9 that was inadequate and we did our very best to come to some
10 compromise. They never spoke to us in person. They never
11 called us. This was all done over email, so if they have
12 evidence of some other outreach, we're not privy to it.

13 You know, the other thing is they continuously
14 reference the plans of the BZA approved for 1828. I want it
15 known that they did not support those plans at all. That was
16 a reduced footprint and they did not write a letter of
17 support for 1828, yet, they are using that to justify their
18 own application here which I find to be incredibly
19 hypocritical. You know, throughout this entire ordeal, they
20 have been --

21 CHAIRPERSON HILL: Ms. Bepler?

22 MS. BEPLER: Yes.

23 CHAIRPERSON HILL: We're getting close to the
24 line.

25 MS. BEPLER: Okay, I'm a little excited. You

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1 know, we are a little bit sad that it's gone to this place.
2 We've all spent time that we can't get back and a lot of
3 money on these lawyers and I wished they had just had a
4 modicum of respect for how --

5 CHAIRPERSON HILL: Really, no, really, no.
6 Really, no. Come on.

7 MS. BEPLER: My God, sorry. I should read my
8 talking point.

9 CHAIRPERSON HILL: You were really mad when you
10 wrote it down.

11 MS. BEPLER: Sorry. Thank you.

12 CHAIRPERSON HILL: All right, okay. Is that it?

13 MS. MAZO: I get to do a closing, right?

14 CHAIRPERSON HILL: Yes, you can do a closing.

15 MS. MAZO: Okay, that's it.

16 CHAIRPERSON HILL: Mr. Sullivan, do you have any
17 questions of the opposition?

18 MS. CAIN: Mr. Chair? I just want to clarify your
19 question now that I've had a chance check in the regs. And
20 I apologize for any confusion in my earlier statement.

21 For regular zoning cases like this one, cross
22 examination can be of any other party, individual,
23 organization representative. The limitation to witnesses is
24 just for zoning appeals. So that's sort of where the
25 confusion, I think, comes from.

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1 CHAIRPERSON HILL: So you're saying -- this is
2 great. So you're saying that except for appeals, attorneys
3 can cross examine attorneys or people can cross examine
4 attorneys.

5 MS. CAIN: Again, the Board does still have
6 discretion, but yes. It's broader for a regular zoning case
7 like this one than it would be for a zoning appeal.

8 CHAIRPERSON HILL: Right. Mr. Sullivan, did you
9 know that?

10 MR. SULLIVAN: I'm not really up on my rules of
11 evidence, but I think there's a difference between testimony
12 and legal argument, too.

13 CHAIRPERSON HILL: There is and that might be
14 another place where we cut the hairs at some point.

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON HILL: But I was just curious. Ms.
17 Mazo, did you know about that?

18 MS. MAZO: I knew it happened in certain
19 instances.

20 CHAIRPERSON HILL: No, just what she said. That's
21 what I was just --

22 MS. MAZO: Yes, no, I was aware.

23 CHAIRPERSON HILL: All right. I wasn't aware, so
24 that means appeals -- okay. All right.

25 VICE CHAIRMAN HART: One question.

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1 CHAIRPERSON HILL: Sure.

2 VICE CHAIRMAN HART: So Ms. Mazo, I have a
3 question for you. One of the statements that you made at the
4 very beginning of your presentation was that -- and I'm
5 paraphrasing, so excuse me if I don't get it exactly correct,
6 higher scrutiny is required than a regular special exception?

7 I mean under the zoning regs, we have whatever is
8 allowed as a matter of right, whatever you have as a special
9 exception, and then anything outside of that is variance.
10 So there is no kind of gradation that I am aware of unless
11 you're aware of something that I'm not.

12 MS. MAZO: Well, no, I mean just over the years
13 in my practice it's very clear that special exceptions are
14 not all born equal. You have a special exception that is
15 asking for a minor amount of relief, maybe going from lot
16 occupancy from 60 to 62 percent, then the Board must evaluate
17 it, but there is a higher level of scrutiny for more drastic
18 special exceptions, especially a special exception like this
19 that -- if they were to add 4 feet 7 inches to this property,
20 they would be a variance.

21 I mean, you know, the reason that this building
22 is designed the way it is to skirt the variance requirement
23 which I understand, but my point is that I certainly have
24 seen it over time that in special exceptions where there is
25 substantially more relief than is allowed under matter of

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1 right, then the Board does have a responsibility to take more
2 time and to evaluate the undue adverse impact of such a
3 special exception in a more nuanced way.

4 VICE CHAIRMAN HART: And I think -- I think that
5 -- okay. So you are -- your contention is that this would
6 fall into that because there -- and you've actually raised
7 some questions as well regarding -- if the -- is this really
8 70 percent or is this actually a little bit more?

9 MS. MAZO: No, I don't have a question. I mean --

10 VICE CHAIRMAN HART: Well, you did have some
11 questions in your presentation about what is actually
12 included in the --

13 MS. MAZO: No, I had a question about what should
14 be included in --

15 MEMBER JOHN: -- lot occupancy, that's what I'm --

16 MS. MAZO: No, no, no. In what they're claiming
17 to be matter of right in terms of the sun studies. That's
18 where my questions are. I don't -- I take their architect
19 statement at face value that if they're saying that this
20 building --

21 VICE CHAIRMAN HART: I get it --

22 MS. MAZO: -- is 69 percent --

23 VICE CHAIRMAN HART: I get it. I get it. What
24 you're saying is that while a ten-foot expansion on the back
25 may be matter of right for a theoretical project, it may not

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1 be ten feet in this case because if you add in the amount of
2 lot occupancy for the accessory building that it may be
3 actually less than that and you're estimating that at some
4 number of feet less than ten feet.

5 MS. MAZO: Yes.

6 VICE CHAIRMAN HART: You're saying it's somewhere
7 around four or three, something like that.

8 MS. MAZO: Right, no, no, no, exactly.

9 VICE CHAIRMAN HART: I understand what you're
10 saying now.

11 MS. MAZO: Exactly.

12 VICE CHAIRMAN HART: Okay.

13 MEMBER JOHN: Can you tell me what you would
14 consider matter of right extension on this house? I'm having
15 difficulty with how you see matter of right because the
16 regulations allow ten feet. They wouldn't have to come to
17 us if all they did was add ten feet to that house. It's
18 cited in the rules.

19 MS. MAZO: No.

20 MEMBER JOHN: Right?

21 MS. MAZO: No, no, no. Board Member -- Mrs. John,
22 that's not correct because the application would need to
23 satisfy both the lot occupancy requirement which is 60
24 percent in the zone.

25 MEMBER JOHN: We're just talking about the

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1 addition. They could back ten feet.

2 MS. MAZO: But they can't because they -- if they
3 retain the existing garage --

4 MEMBER JOHN: That's not my question. My question
5 is in a perfect world --

6 MS. MAZO: If they took down the garage. If they
7 took down the garage.

8 MEMBER JOHN: No, no. Excuse me, you're not
9 answering my question.

10 MS. MAZO: Okay.

11 MEMBER JOHN: In a perfect world, could an
12 applicant go back ten feet? Would they have to come to the
13 Board for a ten-foot addition?

14 MS. MAZO: On this property, no, they could not.

15 MEMBER JOHN: Okay, all right.

16 MS. MAZO: In another property that didn't already
17 exceed the lot occupancy, maybe they could. I don't know.
18 It's all property specific. But on this particular property
19 where there's already an existing garage and --

20 MEMBER JOHN: That was not my question, but we can
21 move on.

22 CHAIRPERSON HILL: Okay, anybody else? I mean I
23 have a bunch of questions, too.

24 COMMISSIONER TURNBULL: Ms. John, I think what
25 she's getting at is that you're right in one way that if you

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1 were coming and going for the ten foot --

2 MEMBER JOHN: You know, the rule is you don't ask
3 the question if you don't know the answer to it?

4 COMMISSIONER TURNBULL: Right.

5 MEMBER JOHN: So we're fine.

6 COMMISSIONER TURNBULL: Okay.

7 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
8 have any questions of the party in opposition?

9 MR. SULLIVAN: No, I don't. Thank you.

10 CHAIRPERSON HILL: All right, let's go to the
11 Office of Planning. And by the way, we're at some point
12 going to take a break again. So go ahead, Mr. Mordfin.

13 MR. MORDFIN: Good evening, Chairman and the
14 Board. I'm Stephen Mordfin. And the Office of Planning
15 recommends approval of the four special exceptions that are
16 requested for this application. One is to extend the rear
17 wall beyond the ten feet that is permitted. The second one
18 is to increase the lot occupancy to 69.75. The third is for
19 the accessory building to build a second floor on that where
20 the accessory building is less than 12 feet from the center
21 line of the alley. In this case, the first floor is five
22 feet, so the second floor would also be five feet. And also
23 for enlargements or additions to nonconforming structures
24 because this is a nonconforming property.

25 The Office of Planning finds that the application

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1 is in conformance with the requirement. The applicant did
2 submit light and air studies that show the shadow. It
3 doesn't show anything going to the dark. It shows the
4 difference between what would be built if they built a
5 ten-foot addition, what would exist today, and also what
6 would exist if they built their proposal.

7 Those three, and you can see the differences. The
8 applicant did submit drawings that show the differences, so
9 it's easier to depict just what the additional shadow is.
10 And most of that additional shadow is in the winter time when
11 the sun is lower in the sky.

12 We did not find a piece of use and enjoyment of
13 the neighboring properties would be unduly compromised. It
14 does extend out from the existing house. There are windows
15 on the back of the house now. When you extend them out
16 further, you limit your views into the adjoining yards by
17 whatever the length of the addition is. In this case, it's
18 13.25 feet. Those first 13.25 feet that you could see from
19 the back windows of the house today, you would not be able
20 to see because of the extension and the distance that that
21 is away from the house.

22 The addition as viewed from the street, you will
23 be able to see it from T Street, although there are several
24 other structures there that are in the way. There are also
25 two trees as you stand on T Street that also will obscure

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1 some of the views of that, also probably depending on the
2 time of year when there are more or less leaves on the trees.
3 You will not be able to see it from the front and I don't
4 think it would be visible from the south either.

5 So therefore, OP makes no recommendations for
6 special treatment and we also find that the application would
7 not result in the introduction or expansion of a
8 nonconforming use or the introduction or expansion of number
9 of height or stories.

10 So therefore, the Office of Planning recommends
11 approval of this application and is available for questions.

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

14 COMMISSIONER TURNBULL: Mr. Mordfin, thank you for
15 staying with us the entire day. Greatly appreciate it.

16 I think you might find a little bit of an argument
17 on your analysis of B, the privacy with the windows in the
18 back. I mean I think your argument that if you move the
19 addition back, you'd get less a view of the yard, since these
20 windows are so large and voluminous on these facades, it does
21 afford a view that you didn't have with the normal windows
22 that you would find normally in the back of most of these
23 other homes.

24 This is a very contemporary-looking building.
25 Nothing said about the design. I'm not commenting whether

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1 it's favorable or not. I'm just saying because of its
2 contemporary look and its openness of the windows, you will
3 have a better view looking in.

4 I mean, we can argue it both ways, but I think the
5 neighbors on either side do have an argument that they're now
6 going to be looking up and people are going to be looking
7 down, especially from the garage also. These are something
8 that no one has ever seen in the back yards before.

9 So I'm just throwing out that your argument I
10 think in one way holds water, but in another sense, I think
11 there could be a case made that the neighbors are going to
12 feel like they're in a fish bowl in having these large
13 windows looking out at them. Just throwing that out.

14 CHAIRPERSON HILL: Okay, I have a quick question.
15 Mr. Mordfin, I always -- sometimes get a little confused.
16 As far as the lot occupancy goes like them putting the
17 addition on top of the garage, that doesn't go towards lot
18 occupancy, correct, because the garage is already there.

19 MR. MORDFIN: The garage is already there. They
20 may need relief to build a second floor occupying that same
21 lot occupancy.

22 CHAIRPERSON HILL: There's no relief -- oh,
23 there's relief to build the -- oh, that's right.

24 MR. MORDFIN: Right. If they were only doing that
25 and that was kicking them over the lot occupancy, the

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1 minimum, sorry, the maximum lot occupancy permitted, and they
2 would have to come here to get relief from lot occupancy
3 because they're already over and then --

4 CHAIRPERSON HILL: All right. Okay. Anybody else
5 for the Office of Planning? Then we're going to jump in.
6 I think I have a bunch of questions as well.

7 Anything for the Office of Planning, Ms. Mazo?
8 Oh, it doesn't matter, I'm just going to -- okay.

9 MS. MAZO: Mr. Mordfin, sorry, going back to --
10 this is confusing lot occupancy issue. In your report, you
11 indicated that they could go back to ten feet as a matter of
12 right if they removed or demolished the garage. Is that
13 correct?

14 MR. MORDFIN: That's correct.

15 MS. MAZO: Okay, but you also -- you would agree
16 that if they retain the garage, the matter of right limit
17 based on the lot occupancy would be smaller than the ten
18 feet. It would be whatever the addition would be that could
19 be a maximum of 60 percent. Is that correct?

20 MR. MORDFIN: That's correct. They have to meet
21 every single requirement and if some of them preclude the
22 others, then you have to -- you can't exceed the 60 percent.
23 And if that doesn't allow you to go ten feet back, then it
24 doesn't.

25 MS. MAZO: No more questions.

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1 CHAIRPERSON HILL: Mr. Sullivan?

2 MR. SULLIVAN: Thank you. Just a question along
3 that line, Mr. Mordfin. So the applicant can, if this got
4 denied, and they didn't want to build a four-foot addition,
5 they could raise the accessory building and build a ten-foot
6 addition as a matter of right. Is that correct?

7 MR. MORDFIN: That's correct.

8 MR. SULLIVAN: And if they did that, could they
9 two years later come here and propose special exception
10 relief to build an accessory structure that went over the lot
11 occupancy?

12 MR. MORDFIN: They could request that.

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON HILL: I forget, why is it two years?

15 MR. SULLIVAN: Well, there is no time limit.

16 CHAIRPERSON HILL: I just couldn't remember.

17 COMMISSIONER TURNBULL: I think he just threw that
18 out there.

19 CHAIRPERSON HILL: No, no, no. I mean they could
20 come back right away.

21 MR. MORDFIN: Right.

22 CHAIRPERSON HILL: They could come at any time.

23 MR. SULLIVAN: And that's the point --

24 CHAIRPERSON HILL: I'm just trying to understand
25 because the only time parameters that I remember is if you

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1 get denied, you can't come back for a year.

2 MS. MAZO: One more question, but the Office of
3 Planning and the Board is only looking at the application in
4 front of them, correct? Not some potential future
5 application.

6 MR. MORDFIN: That is correct. We really can only
7 comment on the application before us.

8 CHAIRPERSON HILL: Okay, all right. So I'm going
9 to get to ask my questions. So and then -- and actually the
10 ANC Commissioners haven't spoken at all, but one has at least
11 moved into a new chair. So are you about to say something,
12 Mr. Commissioner?

13 MR. LANDRY: If you'd like me to speak in my
14 personal capacity.

15 CHAIRPERSON HILL: Oh, yes, that's great. Because
16 I'm just trying to understand. Actually, there are -- no,
17 no, no, no, no. We're not going to do it yet, but that's
18 okay. Thank you. Is that there are people I guess that are
19 here wishing to speak in support, if you can raise your hand?
20 Okay, one.

21 And are there people here wishing to speak in
22 opposition. Okay. So then there's three. Okay, great. So
23 we're going to be here for a while.

24 So let's see. Some questions that I have. The
25 -- let's see how they just kind of -- so in terms for the

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1 architect and the applicant, you guys got to this program,
2 I mean, I understand that you're up to the 69 percent, 69
3 whatever lot occupancy, right? And then you got to the
4 program kind of how -- and I'm actually, I don't know who to
5 ask. I'm asking kind of the applicant. I'm just trying to
6 have a discussion like an honest discussion. Like I can see
7 that the accessory dwelling, inside the garage, and you are
8 kind of maybe matching the height of the garage. Like, how
9 did you get to the program? You were trying to maximize the
10 space that you had available, right, to get to the 69
11 percent. Is that accurate?

12 MR. JONES: Yes.

13 CHAIRPERSON HILL: Okay, I see the lines. That's
14 fair. And then so that's how you were trying to figure out
15 what would be the biggest solution for the need that you had
16 and the need was again more space. I'm trying to get an idea
17 as to kind of what the personal need was, not that it matters
18 because it's not necessarily before us, I'm just asking a
19 question.

20 MS. KAYS: Sure, we had our second son last year
21 and there's only two bedrooms upstairs, so we wanted to add
22 a bedroom for him up on the same level where our bedroom was
23 and that was what started this whole thing.

24 CHAIRPERSON HILL: Okay, and how long have you all
25 been there now?

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1 MS. KAYS: I think four and a half-ish years, yes,
2 2014.

3 CHAIRPERSON HILL: And to the Nickels and the
4 Beplers, and I got confused because I looked at things
5 backwards, the Beplers are to the south and the Nickels are
6 to the north, correct? Okay. So either one of you can
7 answer.

8 Ms. Bepler, how long have you all been there?

9 MS. BEPLER: Since 2011, so almost 9 years.

10 CHAIRPERSON HILL: Okay. And Ms. Nickel.

11 MS. NICKEL: We moved in in fall of 2018.

12 CHAIRPERSON HILL: Okay. I'm just kind of
13 curious. It doesn't matter. I was just kind of curious.
14 And then, so that's that one. In terms of what you all think
15 about all of this and how you kind of have gotten to all of
16 this, right, like so they could -- I guess I'm trying to
17 understand where some of the most concerns are and I'm not
18 necessarily trying to negotiate. I'm just trying to
19 understand, right? So they could go back ten feet, okay, and
20 even though it is true that what your attorney is saying is
21 that they would still have to come before us for a special
22 exception, the garage is already there, right? Okay, so if
23 they were to come back and just want ten feet which is
24 basically the matter of right that probably would not
25 necessarily get a whole lot of push back from us. I'm just

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1 kind of letting you know how that kind of goes. Or they
2 could demolish the garage, as they say, and then those
3 windows would still possibly still be there. They could do
4 the windows by right at ten feet.

5 So did you all have a -- and I'm trying to
6 understand is like one of the big things is it the windows
7 in terms of like if those windows were glazed, is that
8 something that would be like, you know, and you can each just
9 answer individually, like what are your thoughts on the
10 windows? Is that something you've thought about yet?

11 MR. BEPLER: The proposed windows, is that what
12 you're asking about?

13 CHAIRPERSON HILL: Yes.

14 MR. BEPLER: Yes, I mean they're large, first of
15 all. They provide a lot of transparency and would provide
16 a pretty unencumbered view into our backyard.

17 CHAIRPERSON HILL: But you've thought about them
18 before, that's what I'm just saying. And you have seen, and
19 I have as well, I've seen many windows like that that have
20 been done in the -- those are now -- that's kind of what
21 everybody is doing, right, they're all doing those big
22 windows so you can get a lot of light, but that's something
23 that you have thought about.

24 And you've thought about the windows?

25 MR. NICKEL: Yes, we thought about the windows

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1 because it would be essentially looking like the windows on
2 the garage, they would be looking back at the house, would
3 also be looking back into not only our backyard, but into our
4 kitchen and into our master bedroom.

5 CHAIRPERSON HILL: Right.

6 MR. NICKEL: And again, our primary concern has
7 been obviously the light impact and shade, but --

8 CHAIRPERSON HILL: Right, okay. I'm sorry, go
9 ahead.

10 MS. NICKEL: Just to add to that, like I said,
11 we're finishing up our renovation and part of the reason when
12 we bought this home was because -- and they're still pretty
13 good size houses for downtown D.C. and the yard. And part
14 of our renovation is turning it into a three bedroom, four
15 and a half bath house, because if we are that lucky it is
16 where we want to raise our kids. So preserving that backyard
17 and making it work with the house we have we think is
18 imminently possible.

19 CHAIRPERSON HILL: Sure. Just so you guys know,
20 I mean, this is something that's before us all the time,
21 right? They're not doing anything that isn't happening all
22 the time, right? And the attorneys argue it both ways all
23 the time, okay? And so, you know, they're coming here before
24 us. They're allowed to come before us to ask up to 70
25 percent lot occupancy. They're doing nothing that they're

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1 not allowed to do, right? They're trying to see -- and we're
2 trying to determine what is actually undue, right? And so
3 that's what I'm just trying to understand a little bit. So
4 to that point, the garage, the windows to that is something
5 that has been of a concern. The second story windows above
6 the garage.

7 MS. NICKEL: Yes, and if we're understanding
8 correctly that is going to be used as an office. We're
9 concerned about people -- it's different if it's your
10 neighbors looking down on you. Still not great for your
11 privacy, but we don't know anything about the use, and if
12 there would be, you know, clients or people --

13 CHAIRPERSON HILL: I see the -- sorry, the
14 applicant nodding their head as though it's not going to be
15 an office, but whether or it's an office. Oh, it is going
16 to be an office.

17 MS. KAYS: It will be an office, but it's not like
18 we're taking clients up there.

19 CHAIRPERSON HILL: Yeah, it doesn't matter.
20 Whether it's an office or not, the concern is that there's
21 going to be big windows looking in one direction and big
22 windows looking in another direction, okay? Okay, so those
23 are those concerns.

24 The tree. So the Japanese maple, right? So have
25 you guys thought about the Japanese maple and do you have any

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1 conclusion, whatever? I mean, the garage is already there,
2 right? And the maple is already there. So do you know
3 anything about what might happen to the maple?

4 MS. KAYS: I actually already spoke with an
5 arborist because we wanted to look at a bunch of other things
6 and I wanted to talk about how to protect the trees on the
7 project, and so they came out and said that generally,
8 because the tree is not on our property line, generally, if
9 they were to do our project, they're going to have to trim
10 it in certain ways, but we would, of course, need the
11 Nickels' cooperation and just permission to kind of work on
12 that to trim the tree to protect it, to build the addition,
13 but that that wouldn't be an issue as long as we had their
14 cooperation and they could get access to the top of the --
15 because they own the tree, so we would just --

16 CHAIRPERSON HILL: I'm just saying that you've
17 looked at it with an arborist and you think that --

18 MS. KAYS: There should be no issue.

19 CHAIRPERSON HILL: That's what the arborist says,
20 at least that's your testimony at this point, right, in order
21 for you to build up.

22 MS. KAYS: Yes.

23 CHAIRPERSON HILL: Right? Otherwise it just is
24 the way it is, the garage is just where the garage is.

25 MS. KAYS: Yes.

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1 CHAIRPERSON HILL: Okay. And I'm going to give
2 my little thoughts and then you all can keep talking and I
3 don't know if we're taking a break or what, but I only have
4 two more comments that I'm making. That, again, and this is
5 just more for the party in opposition. As far as the center
6 line alley setback relief, right? There already is a garage
7 there, right? So it's not really like they're asking for
8 something, that's already there. Right, okay? And you all
9 got a garage. It seems like everybody has got a garage. So
10 that's kind of not necessarily something that I think is a
11 whole lot of an argument.

12 And then I guess what I'm trying to figure out for
13 me in terms of the regulations is again the privacy and I
14 guess the shadowing and the sunlight. Like you can move the
15 garden, you know, right? Sorry.

16 MR. NICKEL: Sorry, it was actually the previous
17 owners were professional botanists and they actually did the
18 calculations in where the ideal spot for the maximum amount
19 of sunlight, the maximum amount of growth was, and that's why
20 they actually installed a permanent garden box that can't be
21 moved.

22 CHAIRPERSON HILL: Got it. That's okay. I mean,
23 I guess what I'm just trying to say you could somehow move
24 the -- I'm just thinking it could somehow be moved. It might
25 not be the ideal spot and what I'm saying is --

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1 MS. MAZO: I think that that would be undue to
2 have to make them move a planted garden.

3 CHAIRPERSON HILL: Okay. Okay. I understand.
4 The argument is that it would be undue, right. I'm letting
5 you know, I have endured a lot worse stuff than that garden,
6 okay, right? All right, just letting you know where I am,
7 right?

8 Let's see. Okay, so I guess I'm still kind of
9 talking through. Do you all have any further questions to
10 clarify what's going on? Oh, I'm sorry, one last one. I
11 apologize to my board members.

12 The home that is adjacent to the Beplers, so that
13 one again, it's kind of like that little box that got filled
14 in. I just can't recall what was going on. So they came
15 here and they got -- you were saying that they only went back
16 ten feet?

17 MS. BEPLER: Yes, with a dogleg facing our side.

18 CHAIRPERSON HILL: So they came here for the
19 relief to fill in the dogleg and they kept the -- I mean, I'm
20 just kind of curious because they don't have to come to us
21 for ten feet.

22 MR. BEPLER: Right, I think they actually came for
23 relief because they wanted to build the accessory structure.

24 MS. BEPLER: The garage.

25 MR. BEPLER: The garage, and that's what they were

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1 seeking relief for. They didn't have --

2 CHAIRPERSON HILL: So basically they did what your
3 attorney is saying would have to be done if people came here
4 to do their ten feet, right? They have a garage, they needed
5 the ten feet. And now I'm going to turn to Office of
6 Planning because I got a little messed up with this one. If
7 they, the applicant, built ten feet out, right, okay, they
8 would still have to come before us, but it wouldn't be all
9 the way up to 69 percent lot occupancy because they wouldn't
10 have the second story addition. They would just have the
11 garage. Is that, am I following that correct?

12 MR. MORDFIN: If the applicant built just 10 feet
13 out instead of 13.25, then the lot occupancy would be
14 something less than 69.75 whatever.

15 CHAIRPERSON HILL: Right, but it would over 60
16 percent.

17 MR. MORDFIN: It would be over 60 and therefore
18 we would require --

19 CHAIRPERSON HILL: They would have to come before
20 us. That's what I'm just trying to point out. That's what
21 your neighbors did. They needed the garage and they stuck
22 the ten feet to fill in the dogleg, so okay. All right, I'm
23 relatively clear. Does anybody have any questions?

24 COMMISSIONER TURNBULL: Well, I just -- I don't
25 know if you want to, but you had asked the ANC Commissioner

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1 to talk and you cut him off.

2 CHAIRPERSON HILL: I'm sorry, are you guys done
3 for now, questions, fellow board members. The transcriber
4 is saying I'm not on the record.

5 MEMBER JOHN: I was just trying to look at the
6 garden. I notice a lot of hydrangeas in the garden and I was
7 just trying to figure out where the hydrangeas were in
8 relation to the windows. One of the yards has windows on the
9 accessory structure. I don't know whose house is that?

10 MS. BEPLER: Well, that would be us. And they're
11 very shallow and it's not an office, it's just where I kick
12 him out to watch football.

13 CHAIRPERSON HILL: Okay, well, you're speaking
14 about the garage?

15 MS. BEPLER: Yes, our second level.

16 CHAIRPERSON HILL: On the second floor. There's
17 a second floor?

18 MS. BEPLER: Yes. It's very shallow. There's no
19 bathroom. It's just a two-car garage on the bottom and TV on
20 top with a couch.

21 CHAIRPERSON HILL: Right, I guess it is what it
22 is, so you guys -- now we're going to keep going down this
23 road. You guys have something above your garage, is that
24 correct? However small it is, you've got something above
25 your garage. Do you guys have something above your garage?

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1 Do you have a garage?

2 MS. NICKEL: We said from the beginning, no matter
3 what they can do as a matter of right it's going to have a
4 negative effect on our yard which I understand this. We
5 understand this. So we're not opposed to that. We're just
6 trying to minimize that undue effect and really work within
7 the regulations of this neighborhood that we moved into which
8 is protecting the green space in the back yards.

9 And so the plans for the garden -- the plants and
10 things that have -- and to answer your questions about the
11 hydrangeas, the whole northern side of our fence is planted
12 with things. So if you start right back by the garage at the
13 rear of our property that's where the hydrangeas are. We
14 have a Rose of Sharon bush there. That's all just flowers.
15 And then from about halfway down the yard up is where the
16 built-in, sunk-in garden box is and that's where --

17 CHAIRPERSON HILL: Okay, let me just, I'm going
18 to interrupt you for just one second because I want to get
19 to the ANC Commissioners. I want to get to the public
20 testimony. I think we're still going to have some questions
21 and I think I might be interested in hearing some things from
22 the applicant.

23 So I guess let's go ahead and start with
24 Commissioner, you had some testimony you'd like to give in
25 support since the other people are going to be in opposition?

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1 MR. LANDRY: Yes, thank you. My name is --

2 CHAIRPERSON HILL: Sorry to interrupt you. You're
3 here as a member of the public. You're going to get three
4 minutes. Mr. Moy, could you put three minutes on the clock,
5 please?

6 MR. LANDRY: I can do this in three.

7 CHAIRPERSON HILL: That's okay. I just have to
8 put the clock up because I'm going to have to put it up for
9 everybody.

10 Okay, so go ahead.

11 MR. LANDRY: Yeah, so I'm Aaron Landry, the
12 Commissioner in ANC 2B. I'm a Secretary of the Commission,
13 as well as the Chair of the ANC 2B Zoning Preservation
14 Development Committee.

15 Again, I'll just remind that the ANC 2B took no
16 action on this case, so I'm speaking in a personal capacity
17 and there's a lot that I want to respond to and so you
18 probably saw me editing here. I'm skipping right down to the
19 end.

20 So I met the applicants when they were seeking an
21 out from HPRB and at the time there was no issue with the
22 garage and again we were looking at this with a historic
23 lens. There was no opposition to the garage that we heard.
24 It was mostly about the rear addition and we had asked in
25 writing that the neighbors work with the applicant to

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1 potentially resolve any of these issues. So obviously that's
2 not what happened.

3 And what I think happened was completely
4 disproportionate to what the case is actually really about.
5 And so that's why I'm spending the evening with you tonight
6 is because I wanted to speak up about that.

7 So the ANC 2B Zoning Preservation Development
8 Committee examined this case looking at zoning law, examining
9 the relief sought, looked at comparable precedent and heard
10 out the different testimonies. And the committee recommended
11 to the full ANC to support all four areas of relief subject
12 to a new shadow study and subject to it showing no undue
13 impact and that the project is in harmony with the general
14 purpose and intent of the zoning regulations, zoning maps,
15 and does not adversely affect the use of the neighboring
16 properties.

17 When the ANC 2B met, we ended up hearing all sides
18 of this at length and it was a show, much more than you're
19 getting tonight, and we ultimately again did not take any
20 action. So I believe that the areas of relief the applicant
21 is requesting are acceptable, feel that they've done
22 significant effort and worked to try to work through this
23 process correctly.

24 I'm also thankful that the Office of Planning's
25 conclusions were generally aligned with our committee which

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1 I wanted to thank the volunteer committee members on our
2 committee that reached a pretty similar conclusion. And I
3 also personally agree with the Office of Planning's
4 conclusion that there's no undue impact. So I'm available
5 for questions if you have any about my involvement with this
6 case. I've been working on receiving and reading all of the
7 testimonies and hearing from all sides of this for a long
8 time. So thank you.

9 CHAIRPERSON HILL: Okay, great. Does anybody have
10 any questions for the witness? I do a little bit. So you're
11 the chair of the Zoning Commission? Or you're on --

12 MR. LANDRY: There's a Zoning Committee, yes.

13 CHAIRPERSON HILL: Right, so you're the chair of
14 the Zoning Committee. And so you guys have been going
15 through this stuff. I mean this is obviously what we do
16 every Wednesday, right?

17 MR. LANDRY: Right.

18 CHAIRPERSON HILL: And so oftentimes you guys are
19 against us, okay. Whatever it is, the Commissioner I'm
20 looking over there to you as well. I mean, I don't know
21 sometimes you're on either side of this and so you guys
22 didn't take a position.

23 MR. LANDRY: Yes. Again, it was a show --

24 CHAIRPERSON HILL: I just wanted -- by the way,
25 just to let you know, it is usually often a show here, okay.

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1 So I understand what you're saying, but I'm just letting you
2 know.

3 MR. LANDRY: Yes.

4 CHAIRPERSON HILL: So you guys didn't vote. You
5 didn't vote or didn't take a position.

6 MR. LANDRY: We did not vote to take no position.
7 What happened was is that there was a motion and then the
8 motion was amended and then the motion was voted down and
9 then there was an invitation to have another motion and there
10 was no other motion introduced.

11 So in other words, it was a way to not take action
12 from my personal point of view. So we did not --

13 CHAIRPERSON HILL: It happens a lot, by the way.
14 So you don't have to worry.

15 MR. LANDRY: I understand that you understand
16 parliamentary procedure better than I do and so I'm just
17 saying --

18 CHAIRPERSON HILL: No, I'm saying it happens a lot
19 in ANCs.

20 MR. LANDRY: Right. Yes, and so I can't put into
21 words in other Commissioners' mouths in terms of --

22 CHAIRPERSON HILL: That's okay. What I was trying
23 to get at, I'm sorry, in terms of the question was that --
24 so then your particular ANC hasn't approved anything similar
25 to this because they did then -- again, each case is

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1 different for us, but you guys did vote then on the one
2 that's on the other side of the Beplers' property?

3 MR. LANDRY: Yes.

4 CHAIRPERSON HILL: And I think you voted to
5 approve.

6 MR. LANDRY: We, and I'm speaking for the
7 Commission because it was before I was on the Commission, but
8 yes, that is true that we did do that.

9 CHAIRPERSON HILL: Right, okay. I'm sorry, does
10 anybody have any questions?

11 COMMISSIONER TURNBULL: I've got one.

12 CHAIRPERSON HILL: Sure.

13 COMMISSIONER TURNBULL: So Commissioner, you in
14 your -- you stated that you felt that there was no impact to
15 the neighbors?

16 MR. LANDRY: That is true.

17 COMMISSIONER TURNBULL: What are you basing that
18 upon?

19 MR. LANDRY: We looked at --

20 COMMISSIONER TURNBULL: We or you?

21 MR. LANDRY: So okay, I'll speak on behalf of me.
22 When I looked at this and I looked at the revised shadow
23 study that was provided to us by the applicant, I felt that
24 it was de minimis. Like the amount of shadow that was going
25 on to the neighbor to the north.

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1 COMMISSIONER TURNBULL: All right, let's get to
2 the windows on the back of the garage looking forward into
3 the homes, back to the homes, so the people have -- they have
4 never had to deal with before. You don't think that was an
5 impact?

6 MR. LANDRY: So it was interesting to read the
7 Office of Planning's report where they had an argument that
8 it might actually increase the privacy in one way because the
9 windows are further out in the property. I didn't really
10 consider that more or less window in itself, gave it more or
11 less visibility to neighboring properties. When I looked at
12 it, like it's about is there a window or not and like how far
13 out is it into their yard?

14 COMMISSIONER TURNBULL: What about the windows on
15 the garage?

16 MR. LANDRY: That was not a subject that we
17 thought --

18 COMMISSIONER TURNBULL: So you didn't analyze
19 that?

20 MR. LANDRY: Well, it's not that we didn't analyze
21 it, it just wasn't an issue that we felt was a big deal and
22 when we talked with -- when we were talking about this, there
23 was generally no opposition to what was going on with the
24 garage.

25 COMMISSIONER TURNBULL: Well, one of the things

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1 that this Board has to do, we have to consider everything.

2 MR. LANDRY: Yes, I understand that.

3 COMMISSIONER TURNBULL: We need to consider the
4 impact of any little thing that's going to deal with these
5 properties. In order to approve what an applicant wants, we
6 want to be absolutely sure that there is no undue impact or
7 that something that can't be remedied by the applicant to
8 satisfy the needs of -- so that's all I'm saying.

9 MR. LANDRY: So from my personal perspective on
10 it, like for the use that I understand of this garage and
11 this office is that I don't think it's a -- I don't think it
12 brings undue impact for the neighboring properties.

13 COMMISSIONER TURNBULL: Okay, thank you.

14 CHAIRPERSON HILL: Mr. Chairman, just to clarify
15 because I just was trying to understand from the
16 Commissioner. I mean, Commissioner, you were saying that
17 you're on the Zoning Committee and that the Zoning Committee
18 met and the Zoning Committee recommended to your full ANC to
19 support.

20 MR. LANDRY: That is correct.

21 CHAIRPERSON HILL: Okay. All right. Okay, so now
22 I'm confused.

23 (Simultaneous speaking.)

24 MR. LANDRY: Can I give you a caveat on that is
25 that it was -- we supported it subject to the shadow study

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1 not -- or the revised shadow study from the applicant showing
2 that there wouldn't be undue impact to the neighboring
3 property.

4 CHAIRPERSON HILL: Okay, and then you guys didn't
5 go back after you saw the shadow study. It doesn't matter.
6 You all did what you did.

7 MR. LANDRY: Right.

8 CHAIRPERSON HILL: So I'm just saying that you
9 didn't then go back with the shadow study, take a vote in
10 your subcommittee and then recommend to the full ANC one way
11 or the other.

12 MR. LANDRY: That is true because the ZPD
13 Committee meets usually the week prior.

14 CHAIRPERSON HILL: That's okay.

15 MR. LANDRY: So we didn't reconvene.

16 CHAIRPERSON HILL: I don't think it would have
17 made any difference anyway, so -- but okay. So there you go
18 with that one. Anybody else? Okay, so what I'd like to do
19 actually is try to take all the testimony for everybody and
20 then believe it or not take a break if that's okay. Because
21 I've got some questions maybe. I'm just asking. I don't
22 know, see what happens.

23 So Commissioner, you had some testimony that you'd
24 like to give also personally. If you could go ahead and
25 actually that's correct, people are starting to motion things

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1 already. If people are going to speak in opposition, could
2 you please come forward. I believe there was two of you.
3 You guys can sit there. There's two spots right here. Oh,
4 there's three people. I mean can you all free up three
5 chairs? Oh, it's four. Hold on. It's all right. As soon
6 as someone is done, you can get up. So everyone is going to
7 get three minutes.

8 Commissioner, I'm going to let you go last because
9 we might have more questions for you. So if you just let
10 this gentleman go first, so if you could, sir, please give
11 your name and address? Your mic went off. That's okay.
12 Just push it once.

13 MR. BURKE: Thank you. John Burke, 1836 15th
14 Street.

15 CHAIRPERSON HILL: I'm sorry, I'm just going to
16 introduce everybody first, if I could.

17 Okay, all right. Ma'am, could you give me your
18 name, please?

19 MS. MILLER: Nina Miller. I live at 1513 Swann
20 which is -- our alley makes a T and I'm on the trunk of this
21 T.

22 CHAIRPERSON HILL: Okay. Sir, could you give me
23 your name, please?

24 MR. DELLEDONNE: Nick DelleDonne. I'm the
25 President of a Civic Association called Dupont East Civic

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1 Action Association.

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

4 MR. DELLEDONNE: D-E-L-L-E-D-O-N-N-E. DelleDonne.
5 Two capital Ds.

6 CHAIRPERSON HILL: Okay, Ms. Mazo, did you get to
7 do what you wanted to do?

8 MS. MAZO: If it was going to be helpful to the
9 Board, I was going to identify on a map where some people
10 live, if that's helpful.

11 CHAIRPERSON HILL: Okay. If you'd like to do
12 that, if you have something there, you're welcome to go ahead
13 and put up whatever you like. Let's see, so Mr. Burke,
14 you're going to have three minutes to testify and please, if
15 you want to go ahead and begin whenever you like.

16 MR. BURKE: Can I talk about multiple points --

17 CHAIRPERSON HILL: You can do whatever you want
18 with your three minutes.

19 MR. BURKE: Okay. I guess the first thing I have
20 to say to the ANC member with all due respect to this being
21 a show, we live in these houses, okay, and it's important
22 that people understand that they have a right to renovate and
23 people also have a right to their homes that are existing,
24 the neighborhood that they bought into, the openness of the
25 area. So I just wanted to put that as a -- if you don't live

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1 in that block area, it's kind of hard to give your
2 perspective on it because you're not living there every day
3 with it. Just bear with me on this, I'll make this all make
4 sense.

5 I think the big thing, I think this is a very
6 simple thing. It's --

7 CHAIRPERSON HILL: Mr. Burke, by the way, I just
8 want to let you know. Just direct your questioning -- or
9 your testimony --

10 MR. BURKE: To you.

11 CHAIRPERSON HILL: -- up to us. That's right.

12 MR. BURKE: It seems very simple. This is all
13 about the 60-40 rule. On our house when we renovated, we
14 extended our porch, but we understood that there was a 60-40
15 rule that you couldn't go beyond 60 percent of your property.
16 We do not have a garage.

17 I think the big, contentious issue is that not
18 only do they want a garage, a two-level garage, but then they
19 also want to bring out the property to the point of the
20 lawyer here, that it's excessive. That the renovation is
21 excessive and we can show you pictures, I'm sure, that would
22 prove that point.

23 There's also a statement that was made that
24 there's been renovations and additions in this block period.
25 Am I not making sense about --

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1 CHAIRPERSON HILL: No, I'm sorry. I'm listening
2 to you.

3 MR. BURKE: Okay, in that Swann T 15th alleyway,
4 to my awareness, there aren't any houses that break that
5 60-40 rule. If they've had an addition, they don't have a
6 garage. So to my awareness, unless somebody else can tell
7 me that I'm incorrect, I don't think any of those houses have
8 exceptions.

9 The other thing is that when they have their
10 renovation done, even though we're next to Sarah and Taylor,
11 we look at a brick wall, like there's been a lot of
12 conversation about windows, but those two sides that are
13 brick walls, are brick walls that weren't there. They were
14 open back yards and again, everybody has a right to do some
15 renovating. We've done renovating, but we didn't go outside
16 of the existing, you know, rules of the -- or asked for
17 exception.

18 And then my other question would be what is the
19 point of the 60-40 rule if there's always exceptions to the
20 rule that make it further? In other words, couldn't -- if
21 you make an exception here, and an exception there, wouldn't
22 there get to be to the point where there's no open spaces in
23 these backyards? And you're just looking at wall after wall
24 after wall because these aren't going to be the only cases
25 that you have.

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1 And then the other thing is there's talk about
2 matter of right. What about the matter of right for the
3 owners that have lived there? We've lived there 19 years
4 before anybody was here. And I don't mean that to sound --
5 and I'm sure you hear I'm a little impassioned about the
6 whole thing, but the fact of the matter is is that it does
7 matter to us. And when Sarah and Taylor moved in, they just
8 recently bought their house with the idea that this
9 neighborhood had an openness of back yard and some spatial
10 elements and some nature to it. And I think that the 60-40
11 rule stands for a very good reason. People did not want all
12 of these yards chopped up to the point --

13 CHAIRPERSON HILL: Mr. Burke, I'm sorry, you've
14 gone over your time.

15 MR. BURKE: Oh, I didn't know that.

16 CHAIRPERSON HILL: That's okay.

17 MR. BURKE: Okay, I'm done. Those were all my
18 points.

19 CHAIRPERSON HILL: Okay. Thank you very much.

20 MR. BURKE: I'm sorry.

21 CHAIRPERSON HILL: You don't have to apologize.
22 I'm just trying to let you know.

23 And we might have some questions for you, but I'm
24 going to go run through the testimony first. So Ms. Miller?

25 MS. MILLER: Sure.

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1 CHAIRPERSON HILL: Oh, okay. Mr. Moy has the time
2 going.

3 MS. MILLER: I'll try to be very quick. My point
4 is similar to the one that was just made. I moved to my
5 address on Swann Street in 1996, so I've seen most of these
6 properties on the alley be renovated. And I'm speaking at
7 least for Swann, we all made a choice. Every house made a
8 choice to either extend out or to extend up. Nobody did
9 both. And there are no garages on my side of Swann or the
10 Swann side of the alley, rather.

11 Obviously, houses have to be renovated and making
12 some extensions and expansions are fine, but I think choices
13 do have to be made. Compromises have to be made and one
14 thing that concerns me is that properties in our immediate
15 area have become intensely desirable. I get cold calls by
16 realtors almost daily asking if I want to sell my house.

17 Everybody -- the line on what's allowable under
18 -- let me rephrase that. What I'm concerned about is the
19 sort of creeping Manhattanization of our area where the line
20 keeps getting pushed further and further and more the 60-40
21 rule becomes 70, 80, and pretty soon we're just entirely
22 built over.

23 So that's basically the point I wanted to make.
24 I wasn't really planning on speaking, so. Yes, I mean I'm
25 just -- would hope that all of us would be willing to

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1 compromise living in such close quarters on what we want to
2 do.

3 CHAIRPERSON HILL: Okay. Thank you. Stayed here
4 this long. Oh, no, you didn't stay this long. You stayed
5 here at some point for a while, might as well speak. All
6 right, Ms. Miller, thank you. If you guys can turn off your
7 microphones, because if there's more than on, it kind of
8 feeds back.

9 Mr. DelleDonne?

10 MR. DELLEDONNE: That's correct.

11 CHAIRPERSON HILL: Like the basketball player.
12 That's great.

13 MR. DELLEDONNE: Exactly right. I want to talk
14 about three things. One is who we are. DECAA, Dupont East
15 Civic Action Association, was established and dedicated to
16 historic preservation and preserving the character of our
17 neighborhood.

18 And that includes not just the facades, but the
19 alleys, the space in the alleys, the openness of the alleys,
20 the back yards, the Comprehensive Plan, which is under a lot
21 of controversy right now calls for open green spaces
22 throughout the city and they include the little postage stamp
23 that you have in front of the rowhouse and the back yards.
24 The back yards were intended to be living spaces and you want
25 a little privacy there and so on. So that's something that

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1 when this came to our attention, we called a meeting. It was
2 publicly noticed and we invited the applicant and they did
3 not show up to the meeting. So we had a full discussion of
4 the topic and we decided that without opposition that we
5 would contest the request for the variances.

6 Let me talk a little bit about the -- de minimis
7 is not applicable here. This is a serious invasion of the
8 60-40 rule. They're way over their proportion of what
9 they're entitled to and they have the garage and they're
10 going to have 13 feet of additional room space which would
11 make their yard smaller. It would put the -- both of the
12 neighbors will be looking at a wall that's 24 feet high from
13 the basement to the roof and of course, the windows are an
14 object as well.

15 Let me say something, just a word about the
16 garden. You would think that a garden is ephemeral. No
17 farms are built in the woods. You cannot grow tomatoes and
18 lettuce in the shade. And this was designed particularly to
19 capture the most lighted part of their yard and it really
20 cannot be moved without -- unless you're going to plant shade
21 plants and that would not be a tomato.

22 So we appreciate the opportunity to speak and to
23 express that today.

24 CHAIRPERSON HILL: Okay. Thank you. I guess at
25 some point I just want to make a couple of comments. Like,

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1 I mean, I have been here since '86, right, in this area since
2 '86. And I've been in this whole -- even the area that is
3 whatever, you know, we talk about and a lot of things that
4 come here since '86. These are all just such lovely areas.
5 We are all just so lucky and fortunate to be there, right?
6 So we're just trying to figure out how and what we're able
7 to do while we're there. I'm just trying to share as some
8 of the people that have been here longer and I don't even
9 know who I'm looking at, 10 or 15 years ago, it was a whole
10 different kettle of fish in terms of whether or not anybody
11 was trying to buy your house on the phone, right? Okay, so
12 whatever that's worth.

13 Mr. Commissioner, go ahead -- and Mr. DelleDonne,
14 you were just representing yourself, right? Because --

15 MR. DELLEDONNE: No, no, no, no, no. I'm
16 representing our association. We are dedicated to --

17 CHAIRPERSON HILL: No, I understand. I don't
18 think I have a letter from anybody. Oh, is there a letter
19 in the record?

20 MS. MAZO: There are two letters in the record.
21 One is Exhibit 59 and that is a summary of their meeting.
22 And then there was a second letter in the record at Exhibit
23 87.

24 CHAIRPERSON HILL: Okay, I think Mr. DelleDonne
25 was confused because you testified previously on another case

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1 and that was when you weren't representing your group. But
2 thank you very much.

3 Commissioner, again, you're just representing you.
4 So you'll again have three minutes and you can begin whenever
5 you like. Mr. Moy?

6 MR. HANLON: Thank you very much. Thank you for
7 staying here so late for this project.

8 CHAIRPERSON HILL: We don't have a choice.

9 MR. HANLON: Well. My name is Ed Hanlon. I am
10 the ANC Commissioner for 2B09. I am the ANC Commissioner for
11 this neighborhood. This project is in my neighborhood. In
12 fact, this project is on the alley that I live on. I have
13 lived in my house on this alley since 1995. Between myself
14 and Nina, who testified a few minutes ago, we've lived there
15 50 years approximately.

16 I would like to address briefly the ANC Committee
17 meeting, the Zoning meeting. Without getting into a swearing
18 contest, I would simply say I was at the same meeting and
19 that ANC Zoning Committee could not come to a decision about
20 what to do because there was significant opposition in the
21 neighborhood to this project. In fact, I would tell you that
22 there is near unanimous opposition in the neighborhood to
23 this project, and it was standing room only at the Zoning
24 Committee meeting.

25 When it came before the ANC, the other

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1 Commissioner, Mr. Landry, made a motion, put a resolution on
2 the table to approve this project. That is to recommend to
3 this Board that it approved this project. There was near
4 unanimous opposition from the community members who were
5 there. Many of them stood up opposed to this project. The
6 lawyers for both sides were there. The architect was there.
7 There was plenty of time to listen to the questions.

8 And I will say that even though I'm nearly 70, my
9 memory is good for what happened last month. But I also
10 listened to the videotape and watched the videotape of this
11 meeting all one and a half hours of videotape about this
12 project at last month's meeting. I watched it this morning,
13 so it's fresh in my mind what happened.

14 There was unanimous, near unanimous opposition.
15 Not one neighbor or community member stood up and spoke for
16 this project other than the applicant.

17 Now, the ANC Commissioners then debated and
18 discussed extensively this project. The ANC Commissioners
19 voted down the motion to approve this project. The ANC
20 Commissioners voted down the motion to recommend that you
21 approve this special exception. There is -- our ANC has a
22 history of voting for most development projects and most
23 renovations, as you may be familiar. So for our ANC to vote
24 down this motion and for the community to be united in its
25 opposition to this motion I hope tells you something about

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1 why you should not approve this project.

2 As I said, I have lived there for 25 years. Oh,
3 may I --

4 CHAIRPERSON HILL: No, no, somebody was just
5 coughing. I'm the only one here who gets to stop you.

6 MR. HANLON: All right. I've lived there for 25
7 years. The unique thing, the nice thing about this alley is
8 the rear yards. Many of us have gardens. I have a garden.
9 This summer in my rear yard I grew mandevillas that climbed
10 14 feet up into the air. Many of us have beautiful gardens.
11 We live in our backyards. I have a gazebo. I have a grill.
12 So do many of my neighbors. That's the beauty of this
13 alleyway is you can enjoy your backyards. It is an oasis
14 from everything else around us.

15 I've stood in Sarah and Taylor's back yard. I
16 stood there at 11 o'clock, at noon time, and in the
17 afternoon. No one standing in their backyard cannot say that
18 this structure is going to have a significant adverse impact
19 on their backyard. It's going to throw it into shade. The
20 architect at the meeting, the ANC meeting, admitted that at
21 the equinox at noon, 30 percent of this backyard is going to
22 be put into shade by this project.

23 CHAIRPERSON HILL: Okay, now I am going to try to
24 get you to wrap up, Mr. Hanlon.

25 MR. HANLON: I will simply say if you have

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1 questions for me at this point, I'd be happy to answer them.

2 CHAIRPERSON HILL: Okay. All right. I neglected
3 a couple of different things. So we're going to have some
4 questions and I can see that my colleague has questions. I
5 forgot to ask if Ms. Mazo, did you have questions of the
6 witness presenting for -- in support?

7 MS. MAZO: My only question is to ask Commissioner
8 Landry if he can clarify that the ZPD Committee did not --
9 the ZPD Committee itself did not recommend approval of the
10 project, correct, at the end of the meeting? At the end of
11 the ZPD Committee meeting.

12 MR. LANDRY: So the way that the ANC 2B's
13 committees work is that we actually deliberate, we try to get
14 to a draft conclusion. And it was my understanding fairly
15 clearly in that meeting that there was a consensus that there
16 was not an issue with any of the variances being -- or
17 exceptions being sought for except for wanting to see that
18 shadow study. And there were some specifics about the shadow
19 study that we requested.

20 MS. MAZO: Okay. I did not attend that meeting
21 because my clients were trying to be judicious with their
22 time, but my understanding from hearing it from other people
23 and from yourself was that at the end of that meeting, and
24 I've been to many ZPD meetings and normally you get a
25 decision out of the ZPD meeting.

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1 MR. LANDRY: Right.

2 MS. MAZO: So my understanding out of that
3 meeting was that there was no decision on this application
4 from the ZPD. They may have said oh, we're waiting for
5 additional information, but that there was no decision from
6 the ZPD at the end of that meeting, correct?

7 MS. MAZO: So I wouldn't --

8 CHAIRPERSON HILL: Let me just cut this. I
9 thought this was the answer the last time. At the end of the
10 ZPD meeting, there wasn't an official recommendation to the
11 ANC -- this is what the question is. Was there an official
12 recommendation to the ANC to approve, and not that this
13 matters a whole lot, we're just trying to get the answer,
14 right? Was there an official recommendation to approve? And
15 the answer that I got from you before was that there wasn't
16 an official recommendation to approve. There was an official
17 recommendation to approve based on looking at the shadow
18 studies, so there was still something that had to happen.

19 MR. LANDRY: Right. And I need to clarify
20 something about the committee, too.

21 CHAIRPERSON HILL: Sure.

22 MR. LANDRY: There is no voting that happens at
23 that committee. It is a discussion. And what came out of
24 the discussion was that recommendation. And there was --
25 from the committee members there was no opposition to that

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1 conclusion that we came to.

2 CHAIRPERSON HILL: Okay, all right. Ms. Mazo?

3 MS. MAZO: No more questions.

4 MR. LANDRY: Thank you.

5 CHAIRPERSON HILL: Okay, Mr. Sullivan, do you have
6 any questions for any of the witnesses?

7 MR. SULLIVAN: No, thank you.

8 CHAIRPERSON HILL: Okay, all right, does the Board
9 have any questions for the most recent witnesses?

10 VICE CHAIRMAN HART: Yes, I do have one question
11 and I don't know which ANC, but because Mr. Hanlon just
12 brought this up, so I understand that you are stating that
13 the motion that the Zoning Committee, the ANC Zoning
14 Committee brought forward was not whatever, approved, or
15 whatever. It wasn't voted -- they didn't approve that motion
16 to -- or recommendation to approve this recommendation --
17 sorry, approve this project.

18 My question is really why wasn't there a motion
19 -- if there was such a unanimous opposition to this, why
20 wasn't there was a question to reject it, to deny the
21 application? I mean, it seems like it would be a simple
22 thing to do if there was that much -- and so I just don't
23 understand that.

24 MR. HANLON: I do want to make one correction with
25 your permission. It was not the committee that voted on the

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1 motion. It was the full ANC that voted at a public meeting.

2 VICE CHAIRMAN HART: I know.

3 MR. HANLON: Okay.

4 VICE CHAIRMAN HART: I know.

5 MR. HANLON: Because this debate went on for more
6 than an hour and a half, it ended after 10 o'clock at night.
7 We were supposed to be out of the room at Johns Hopkins at
8 10 and so that ended and the meeting was adjourned within 90
9 seconds or 60 seconds of the vote.

10 And I believe the Chairman announced at one point
11 near the end that we were supposed to be out by 10, so there
12 was nothing else was put on the table at that point.

13 VICE CHAIRMAN HART: Okay.

14 CHAIRPERSON HILL: So they just ended. So they
15 were just like -- okay, right.

16 MR. LANDRY: If I could just make a clarifying
17 comment.

18 CHAIRPERSON HILL: Whoa, hold on one second.
19 Okay, sorry.

20 MR. LANDRY: I believe Hart, you're referring to
21 the ZPD meeting --

22 CHAIRPERSON HILL: No, he was talking about the
23 full ANC. He was saying from the testimony that the
24 Commissioner had given was that everybody was fully opposed
25 and the only thing that got passed was not to approve. And

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1 so ---

2 MR. HANLON: The motion to approve was voted down.

3 CHAIRPERSON HILL: Sorry, right, the motion to
4 approve was voted down. And what the Vice Chair was asking
5 here was why didn't somebody throw out a motion to deny and
6 the answer that you're giving is that you were supposed to
7 be out of there by 10 and it was 10:30.

8 MR. HANLON: It was after 10.

9 CHAIRPERSON HILL: Right.

10 MR. HANLON: It wasn't 10:30, but it was after 10.

11 CHAIRPERSON HILL: Okay. All right, I don't know
12 what you want to say, but okay.

13 MR. LANDRY: All I'm saying is that our chair,
14 Chair Warwick, offered the opportunity for anyone else to
15 introduce a motion and I believe he did it three times. My
16 memory might not be as good as Mr. Hanlon's.

17 CHAIRPERSON HILL: Okay.

18 VICE CHAIRMAN HART: That's fine. I was just
19 trying to understand that aspect of it. I think I got my
20 answer.

21 CHAIRPERSON HILL: Okay. So let's see -- I do
22 want to take just a couple minute break to kind of like
23 figure out a couple of things and then just to let you know,
24 I checked with the Secretary, the record is 11 o'clock,
25 right. So we're not going to make it. No, no, no, no.

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1 We're not going to make it. The record is 11 o'clock. I
2 thought if the record was 10, I was going to go for the
3 record. I'm just letting you know, okay, right? Okay.

4 So we'll see you in just a couple of minutes.

5 (Whereupon, the above-entitled matter went off the
6 record at 9:29 p.m. and resumed at 9:37 p.m.)

7 CHAIRPERSON HILL: All right, Mr. Moy. Let's try
8 to begin again and -- let's see. All right. So, where we
9 are in this is we have the Office of Planning. Through the
10 Office of Planning we took public testimony.

11 There is going to be a rebuttal from the
12 Applicant, and then there's going to be a small conclusion
13 from the opposition, as well as a small conclusion from the
14 Applicant.

15 When I say small conclusions, I want to say that
16 this is what I think we're going to end up doing today. It's
17 really late and I don't think we're going to have a decision
18 probably today because it's just too late.

19 And so, I am unclear about a couple of things, but
20 I'm going to wait until the very end, when this is over, to
21 see if there's anything the Board requires or wants from the
22 Applicant. So, Mr. Sullivan, do you have any rebuttal that
23 you'd like to give?

24 (Pause.)

25 MR. SULLIVAN: Nothing that I don't think I could

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1 simply include in my --

2 CHAIRPERSON HILL: In the conclusion.

3 MR. SULLIVAN: Yes.

4 CHAIRPERSON HILL: Okay. So, I'm just going to
5 say, like, I mean, what, three-minutes conclusion sounds good
6 to everybody? Five minutes? I mean, what do you-all want
7 to -- okay. The three minutes is fine.

8 Okay. Ms. Mazo, we're going to go with three
9 minutes conclusion and then you guys can go. And then,
10 again, just so everybody knows here, because you guys do come
11 here often, the conclusion for the opposition isn't part of
12 what is in the regulation. I just do it because it helps me
13 kind of focus in as to what's going on, right?

14 And so, otherwise it's usually just normally the
15 Applicant that gets to conclude. So, you can -- I'll give
16 you a minute there to get kind of all squared away, and then
17 you can begin whenever you like.

18 (Pause.)

19 MS. MAZO: Thank you very much for your
20 significant time and interest in this case. This is an
21 important case. It is not just a case of a ten-foot rule or
22 a case of a lot occupancy.

23 This is a situation where these neighbors have
24 decided that they are going to make their rear addition as
25 big as possible and keep it under the variance test.

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1 Everybody knows the variance test is much more stringent, and
2 so they wanted to keep it under the variance test in a very,
3 very minor way.

4 But through this addition, they are adding two
5 offices, they're adding three bedrooms, four bathrooms,
6 numerous play areas and sitting rooms, areas that are really
7 far-expanding their house beyond what it is now and what is
8 contextual with the neighborhood.

9 The project is significantly larger than what
10 would be allowed as a matter of right, and it's significantly
11 larger than what would even be allowed if they took down the
12 garage and they added the ten feet without a special
13 exception. And one thing that -- the project has
14 overwhelming neighborhood opposition. I believe that's very
15 clear in the record.

16 When you go through the special exception test and
17 you tick off the different factors, first, the application
18 is not in harmony with the intent. And I really go back to
19 the fact that the intent of the RF-2 Zone, the old Dupont
20 Circle overlay, it has this requirement, preserve areas, plan
21 as open gardens and backyards.

22 And that's different from the intent of the
23 general RF Zone or the general RF-1 Zone. It doesn't have
24 that specific. And it was done in order to preserve areas
25 in Dupont with the small houses, small lots where people live

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1 in their backyards and that's something that needs to be
2 taken into account.

3 Then when you go to the definition of what is
4 undue, undue is not just, oh, you can move a few plants, it's
5 okay if these plants die, it's okay if people can somewhat
6 look into your backyard. That's not undue. Undue is
7 unsuited to the time, place or occasion. So, the test is not
8 is it impossible, the test is undue. And here we have
9 clearly demonstrated that -- through the shadow studies, that
10 what is being proposed, the shadow on, especially the
11 Nickel's garden, is going to be substantial and undue.

12 It will put a substantial portion of their garden
13 that is not movable, that was placed there for a specific
14 purpose and for which they purchased their house, it will put
15 that in shade and it will make it very difficult for them to
16 be able to utilize it in the way that they always have in
17 addition to putting other shade on their property, which was
18 identified in the shade study.

19 Then going to the issue of privacy and going back
20 to the question of the windows, there are substantial windows
21 that are going to create a fish bowl effect here on -- by
22 allowing views directly into the backyards both from the
23 front and the rear.

24 And these windows have always been a part of the
25 project and have always been questioned by the opposition.

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1 And they will absolutely create an undue impact on the
2 privacy of these backyards that these neighbors have spent
3 significant time in creating backdoor oases for themselves
4 and places where they love to have people over because -- I
5 live in a small house. I know it is hard to have people
6 over. It's hard to entertain. It's hard to even enjoy
7 yourself in a small house. And so, you do it in your
8 backyard. And so, I very much appreciate that and I hope
9 that the Board really understands the gravity here that this
10 is a case where they are asking for 69.75 percent lot
11 occupancy.

12 And, you know, to a statement that was made
13 earlier that this type of lot occupancy is granted all the
14 time, that's really not the case. When I went back through,
15 I couldn't find many other special exceptions that had
16 granted similar lot occupancy.

17 Now, I know there was a case here earlier that had
18 a large amount of lot occupancy, but that was very different.
19 But that was a case where they were decks. That's what was
20 contributing to the lot occupancy. This here is going to be
21 a structure that goes out 13-1/2 -- 13 feet 3 inches and will
22 create undue adverse impact on the shade and on the privacy.

23 And this is a case where these neighbors are very,
24 very committed to this. They will take it to the next level
25 and we want to make sure that whatever decision comes out of

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1 the Board is one that is a considered one. Thank you very
2 much.

3 CHAIRPERSON HILL: Okay. Thanks, Ms. Mazo. You
4 went five minutes. Just real quick, and I'm just curious,
5 and it's okay because it just is what -- what does it mean
6 they're going to take it to the next level?

7 MS. MAZO: I'm saying that they -- whatever the
8 next level is in terms of appellate work or, you know, really
9 digging in and --

10 CHAIRPERSON HILL: That's okay because I just want
11 to be clear.

12 MS. MAZO: Yeah.

13 CHAIRPERSON HILL: So, that was an appeal threat
14 that you just kind of mentioned.

15 MS. MAZO: It's not a threat. It's just a fact
16 that they are very committed to this project --

17 CHAIRPERSON HILL: Okay.

18 MS. MAZO: -- and I wanted it to be clear to the
19 Board in that --

20 CHAIRPERSON HILL: Okay.

21 MS. MAZO: -- this is something that -- this is
22 not a fly-by-night decision for these individuals and --

23 CHAIRPERSON HILL: Okay.

24 MS. MAZO: -- this is serious business for them.
25 They love their homes. They love their backyards. Thank

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1 you.

2 CHAIRPERSON HILL: Okay. Mr. Sullivan, they went
3 five minutes. You can go five minutes.

4 MR. SULLIVAN: Thank you, Mr. Chair.

5 Of course, as the Board knows, there is no higher
6 level of scrutiny for lot occupancy as long as you're under
7 70 percent. There's the variance level and then there's the
8 special exception level. The criteria is the same.

9 And saying that it's just too large or that the
10 Applicant is just trying to build the biggest addition
11 possible or that it's too close to 70 percent, in this case
12 it's just not a technically persuasive rebuttal to the shadow
13 studies which show, as you would expect from 3.25 feet of
14 relief, very minimal impact. That's what's shown on the
15 shadow studies.

16 For the first time today I saw a competing shadow
17 study that seemed to imply that there was some shade on the
18 garden area. It's not in our shadow studies. And just on
19 that note, I want to clear up the matter of right versus
20 proposed argument here. In every situation -- in almost
21 every case where there's special exception relief or area
22 variance relief, the Board would like to know what can you
23 do as a matter of right.

24 They inquire into that because the delta between
25 what you can do as a matter of right and what you are

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1 proposing, that's where the impact is. And the question is,
2 what's the impact of that.

3 And if this were denied, the Applicant could
4 simply raise the garage or take off the roof of the garage,
5 even, lower the lot occupancy and do a ten-foot addition.
6 And so, this is -- we are -- Ms. Mazo says that's not valid
7 because it's a theoretical proposition. So, when has the
8 Board had anything other than a theoretical proposition when
9 they ask the question what you can do as a matter of right.

10 I can only submit one proposition to you. So, of
11 course the matter of right proposition is theoretical. And
12 in this case it's not just theoretical, it's realistic,
13 because a person would rather have indoor space than
14 accessory space. They could always put a roll-up door and
15 still park their car in the backyard.

16 So, calling it overwhelming neighborhood
17 opposition, saying this case has a lot more gravity, that
18 doesn't change the criteria -- or having 32 votes from the
19 community doesn't change the criteria.

20 The criteria is the same. The precedent is the
21 same. We've submitted our PowerPoint, four cases with
22 similar relief being requested where board members spoke very
23 specifically on the nature of what they thought three feet
24 of relief is and whether or not it's undue or not.

25 The question of what is undue is, frankly, not a

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1 Webster's definition province, it is a judgment call. And
2 the Board has made that judgment call several times in the
3 past, and they've been very clear about that judgment that
4 this amount of space is not significant and it's not undue.

5 Regarding the windows, windows can change
6 regardless of how far an addition goes back or what the lot
7 occupancy is. I noted in one of their slides that one of the
8 neighbors has floor-to-ceiling windows looking out on their
9 backyard.

10 Regarding the windows coming in from the accessory
11 building, I happened to notice that yesterday as I was
12 reviewing the PowerPoint and thought that that might be a
13 question and would like to say, for the record, that we would
14 propose a change to that. Could put small windows up high
15 to get light in or something else, but the windows are not
16 important. They actually weren't given much thought. So --
17 but I get that when it comes to the privacy issue.
18 Otherwise, the -- I don't think the windows looking out or
19 back are much different.

20 A note that one of the neighbor opponents does
21 have second-floor windows looking back at the yard, too, but
22 they're not necessary for this proposal. So, we can make a
23 change to that.

24 I would just ask the Board to focus on the
25 criteria in the zoning regulations rather than the passion

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1 we've heard here today. Thank you.

2 CHAIRPERSON HILL: Okay. Great. Thank you.

3 All right. So, I guess I don't know what the
4 Board wants to do and so we'll see what happens, because I'm
5 not exactly sure what I want to do at ten o'clock at night
6 given that we've been going now for 12-1/2 hours.

7 So, I guess I just wanted to have kind of a little
8 bit of an open discussion here with my colleagues, as well
9 as the people that are here, but what's probably going to
10 happen is we're going to either go to a decision or we might
11 have a limited scope hearing, but I don't know, right?

12 It depends on what we end up doing because there
13 might have been some suggestion for a new design that just
14 was kind of mentioned.

15 I think that, again, what the Applicant is here
16 for is what the Applicant is allowed to be here for. Okay.
17 So, I'm just going to be straightforward with everybody here
18 that's opposition, right? It's in the regulations, they're
19 allowed to try to do this, they're trying to do this, right?

20 The things that allow them to do it, or the
21 criteria that we have to figure out, is, again, all in 5201.3
22 A through E, right?

23 And basically it's just -- as you've all looked
24 at it, I'm sure at least some of you have, you know, the
25 light and air available on neighbors, privacy, enjoyment, you

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1 know, street and alley public way, pattern of housing, I
2 mean, things that we always are kind of looking at, it's a
3 special exception, meaning it's a much lower standard than
4 a variance. Variance, basically you're changing the rules,
5 right? You're changing the zoning code, right?

6 So -- and the attorneys, again, as they're
7 supposed to, they argue whatever it is that they're supposed
8 to argue for their clients and they do a very good job about
9 it, okay? And so, I'm just trying to clarify where my head
10 is at so you know where I am right now, okay? Right?

11 So, the -- as I started again with the windows,
12 right, you know, they could put those windows there anyway.
13 It would just probably be like three feet back from the --
14 it wouldn't be three feet as far back, right, you know. And
15 so, that's how they're getting to the 69 whatever percent.

16 In terms of the area that is above the garage, you
17 know, it seems like there's other people that have areas
18 above the garage, right?

19 And so, it's, again, the undue impact on the light
20 and air which is basically shadowing -- and I guess I'm
21 looking at you guys more than anything else because you're
22 the ones that end up -- and, again, we all -- well, most of
23 us live in the city and most of us live in dense areas. And
24 when things change, no matter whether it's five feet, ten
25 feet, it's change and you're not happy about it, right?

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1 And so, I'm just trying to give you the analysis,
2 which is that undue is a very, like, you know, not vague, but
3 it's kind of like, you know, the Office of Planning has to
4 kind of like figure out what is undue, right? And they give
5 their recommendation to us, right?

6 Sometimes undue could be shockingly -- it was
7 like, you know, it could be 23 feet or 28 feet or -- I mean,
8 it's all independent about how deep the lot is. You never --
9 I'm just saying each case is an individual case.

10 So, I'm telling you all that because we've seen
11 these types of cases before and they're asking for what
12 they're allowed to ask for. Okay. So, that's whatever
13 that's worth.

14 So -- and as far as the Applicant goes, I don't
15 know -- and this is where I'm kind of stuck and I don't know
16 what the Board is going to help me do with it again being --
17 I'm just a little stuck, right, is that, you know, obviously,
18 again, you're trying to do exactly what you can do, right?
19 You're taking it all the way up to the 69 percent.

20 It, again, doesn't seem terribly unreasonable in
21 terms of how your logic is, right? You're, like, somebody
22 has the garage and I don't know how much, if there would be
23 any kind of flexibility or some way that gets the -- you guys
24 kind of closer together one way or the other, right?

25 There was just a mention about the windows from

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1 the rear, you know. If there's any kind of privacy or
2 anything, I don't know.

3 And again I'll make a statement -- and, I'm sorry,
4 because I just got to make a statement -- it's such a
5 beautiful neighborhood. I mean, it's such a beautiful place,
6 right?

7 And to the people that were here and staying with
8 us, I've been here my whole life as well, right? It's
9 beautiful, right?

10 And unfortunately -- I shouldn't say unfortunately
11 -- this is within the regulations. Things change within the
12 regulations, right? It's as if -- you know, so they're
13 allowed to try, right? And people are allowed to try and do
14 things and that's why they're in the regulations.

15 And so, my point was it's just such a beautiful
16 neighborhood, okay? I understand that and they're just
17 trying to do what they can do and things change and -- for
18 whatever that's worth. I say all that because I don't know
19 what I'm doing -- or I don't know where I'm sitting. I don't
20 know where my decision is sitting, is what I mean by that.

21 So, I don't know what the Board -- I don't know
22 if there's anything you guys know that you've had to --
23 discussions with -- and the ANC, apparently, had, you know,
24 a show with this one. Okay. And the ANC probably also --
25 it's, again, things that are continuing to go down this road,

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1 right? There's are things that are going to continue to
2 change, going to continue to happen.

3 And we see stuff that, like -- I mean, there's a
4 neighborhood in -- there's some stuff that's going on in
5 Trinidad that, like, this whole row is just -- it's just
6 crazy. And so -- and, again, this is happening because the
7 city is a beautiful place to live, right? Because people
8 want to be here. Because we need more housing. Because we
9 need more affordable housing.

10 I don't know. So, I'm just kind of stuck. I
11 don't know what I'm trying to see and I'll end it with this:
12 Have you guys thought of anything that might get you closer
13 -- I heard the window thing now, okay, from the garages.

14 Were there any additional things that you have
15 thought about that you had gotten to someplace with the
16 neighbors in terms of this program, the design?

17 MS. KAYS: Well, the reason that we did offer to
18 talk about the paint color and what we could offer was that
19 all that we could get -- the neighbors, we offered to try to
20 sit down with them. They refused.

21 And so, without understanding fully what the
22 concerns were -- the concerns have changed over time. The
23 neighbors have told us, from the beginning, we will allow you
24 to build an extension on the first floor and that is all.

25 And so, with that, it didn't get us what we need,

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1 which is a bedroom upstairs. And so, that kind of --

2 CHAIRPERSON HILL: Hold on. When you say the
3 extension on the first floor, you're saying going back --

4 MS. KAYS: The basement.

5 CHAIRPERSON HILL: -- the 13 feet?

6 MS. KAYS: They said, yeah, you can build 13 feet
7 back on the basement level.

8 CHAIRPERSON HILL: On the first floor, right, not
9 on the other floors.

10 MS. KAYS: And then they said, you can have a
11 party deck on top of that and that's it.

12 CHAIRPERSON HILL: Right. So, that's where the
13 negotiation was.

14 MS. KAYS: And that --

15 CHAIRPERSON HILL: Right. Hold on. Give me a
16 second. You guys will -- you can, you know. So --

17 MS. KAYS: And then we tried to have conversations
18 with them and we offered to have them over and to talk about
19 it and --

20 CHAIRPERSON HILL: Okay. All right. Okay.

21 MS. KAYS: -- it didn't work.

22 CHAIRPERSON HILL: So, I don't know whether -- I
23 mean, the -- you guys, the attorneys are not -- well, when
24 it gets kind of this heated, it's kind of difficult to sit
25 down and talk about stuff and the attorneys you have to pay.

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1 So, I don't know what to tell you-all, right? And so -- but
2 I'll let you know right now that, for me, the 13 feet and,
3 like, the garage, like, that's kind of -- I'm kind of okay
4 there. Okay?

5 I'm kind of just here with kind of -- you know,
6 I'm just going to -- we see a lot of these projects, right?
7 And so -- you know, and we see a lot of things that people
8 are trying to do, right? And I keep repeating they're just
9 trying to do what they're allowed to try to do, right?

10 And so, neighbors working together -- and
11 sometimes it takes this to get to where neighbors kind of
12 work together -- is the best thing, obviously, right, in
13 terms of coming to some kind of resolution.

14 But nonetheless, you-all haven't -- and, by the
15 way, this is kind of a test-ish case for your ANC, right?
16 So, that's why it's gone on for -- it went on for an hour and
17 a half and things are going on.

18 And also, by the way, what usually happens, which
19 is terrible, is that somebody does their renovation right
20 after somebody else did their renovation, and then they would
21 have gone out the extra 13 feet, you know.

22 Well, okay, whatever. And I'm just saying that's
23 -- so, this long story is that I don't know, from the Board,
24 if -- I don't know what we're going to see. I don't want to
25 continue the hearing because, like -- but I don't even know

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1 what to do. So, you-all got some suggestions?

2 VICE CHAIRPERSON HART: Well, I think Commissioner
3 Turnbull asked -- was having some questions about the window
4 issue and I think that that may be something to look at.

5 And I would not just look at the privacy issue
6 from the accessory building, but also from the back of the
7 house just to understand what that might be.

8 I mean, we've, in the past, looked at possibly
9 having some sort of -- if the windows were the same size,
10 having them be -- or at least a portion of them be
11 translucent. So, you'd have some light that comes through,
12 but not being able to look through. And so, you are able to
13 do that. I don't know what the actual answer is, but it's
14 just a -- it's a suggestion to be able to at least see
15 something.

16 With regard to the lot occupancy issue, it seems
17 as though there is a -- disconnect is not the right word, but
18 I'll use disconnect between what is -- there's kind of a
19 theoretical matter of right that adds the ten feet, but
20 removes the accessory unit. And there is a piece that looks
21 at the -- if you keep the accessory building and then have
22 an addition to the house, what is that -- what is that impact
23 for -- and I don't know what you call that. I guess, matter
24 -- there's two matter of rights, I guess.

25 So, there's a matter of right with the accessory

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1 building, and a matter of -- yeah, accessory building, and
2 then a matter of right without the accessory building.

3 And I think right now what we have is a matter of
4 right without the accessory building, which just shows what
5 the ten-foot rule would be if there wasn't any -- because you
6 have to -- because you're limited to the amount of square
7 feet -- I'm sorry, you're limited to the lot occupancy in one
8 part of the regs, and the ten-foot rule is kind of another
9 part of the regs, so it's just understanding what those are.

10 And I think what I'm asking for is just what is
11 the lot occupancy with the accessory -- what's the matter of
12 right with the accessory building there? How much, you know,
13 more can you go back? I just don't know what that is.

14 I know Ms. Mazo --

15 SPEAKER: Ten feet.

16 VICE CHAIRPERSON HART: Well, that's what -- it's
17 three feet something, I think, but --

18 MR. BARTH: I think it's about four feet. It's
19 between three and four feet. I think we're -- it's a 100-
20 foot lot. So, each foot back is a percentage. So, I think
21 we're at 56 something.

22 So, it would be about 3-1/2-ish feet. And the lot
23 is about 18 feet wide, so --

24 VICE CHAIRPERSON HART: Okay.

25 MR. BARTH: -- it's not enough space to build

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1 another bedroom upstairs without taking -- I mean, I just --
2 we haven't found a way to make it work. So, that's not a
3 theoretical scenario, I guess, that we've entertained as --

4 VICE CHAIRPERSON HART: Well, yeah --

5 MR. BARTH: -- solving our problem.

6 VICE CHAIRPERSON HART: -- it was just trying to
7 understand the -- I guess, what we're looking at for the
8 shadow study is that the shadow study helps us understand
9 what the -- and I say theoretical because I'm not sure that
10 you-all are really thinking about removing the accessory unit
11 -- or the garage. So, it becomes this, well, you know, what
12 is that really showing me? And I'm just trying to kind of
13 understand that so --

14 MS. KAYS: We actually will -- that was the first
15 scenario when this became very difficult and our architect
16 said, you know, worst-case scenario, we take the roof off.
17 And we've looked at scenarios -- we talked -- he talked to
18 HPRB about it. We know that there's not an issue with it.
19 We will remove the garage and build back the ten feet as the
20 worst-case scenario for us. That's not our desired outcome,
21 but --

22 VICE CHAIRPERSON HART: Yeah. And I'm not even
23 sure -- I guess, part of my problem is it is a little late
24 and --

25 MS. KAYS: Yeah, I got it.

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1 VICE CHAIRPERSON HART: -- I'm still trying to
2 think of what would be helpful for us as we look to --

3 MS. KAYS: Yeah. But I'm just saying, I mean, if
4 you want to think about the by right at 10 feet versus the
5 13, that's a very realistic scenario is that we need the
6 bedroom, so we'll take the roof off the garage.

7 VICE CHAIRPERSON HART: Well, that's helpful to
8 at least --

9 MS. KAYS: And I don't want to do that, but I
10 will.

11 VICE CHAIRPERSON HART: Okay. Thank you.

12 MS. KAYS: Like, I need the bedroom more than my
13 car to be not snowed on.

14 VICE CHAIRPERSON HART: So, I was going to look
15 for some other information. But if that is not theoretical,
16 if that's more than theory, then maybe that is the option
17 that we're kind of looking at. So, that's -- and, I mean,
18 it's helpful to understand. So, I'm not asking for that
19 information.

20 CHAIRPERSON HILL: We're just talking, first, real
21 quick and -- hold on a second. The -- and, I'm sorry, sir,
22 we already took public testimony, and so we don't take any
23 comments from the public at this point, but -- let me see
24 what I was going to say.

25 The -- right. So, you were just talking about

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1 matter of right, right, in terms of the ten foot, right,
2 okay, as to what that -- I mean, this is where you just kind
3 of get into weird hypotheticals and everything. I mean,
4 because then if you get to the matter of right again with the
5 ten feet, then you get all the windows back, you know.

6 And so, it gets into this discussion again, right,
7 if y'all wanted to figure -- one second, Ms. Mazo -- if you
8 wanted to figure out how to get us closer together, which is
9 what I'm kind of trying to figure out a little bit.

10 Ms. Mazo, you have a question or a comment?

11 MS. MAZO: I just wanted to clarify that the
12 matter of right with the ten feet involves removing the
13 garage addition.

14 CHAIRPERSON HILL: Yeah. No, what they said was
15 that they were going to remove the garage. They're going to
16 get rid of the garage.

17 MS. MAZO: Well, no, I mean, whether the -- well,
18 yes, they could remove the garage or they could take the roof
19 off the garage, but it also would eliminate the garage
20 addition --

21 CHAIRPERSON HILL: Yeah.

22 MS. MAZO: -- the second story of the garage.

23 CHAIRPERSON HILL: Yeah. That's what they're
24 saying. That's what they're saying.

25 VICE CHAIRPERSON HART: Fully understand that.

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1 CHAIRPERSON HILL: That's what they're saying.

2 MS. MAZO: Right.

3 CHAIRPERSON HILL: And so, they're just going to
4 go back -- they're just going to do what they can do matter
5 of right, right? And so, what Mr. Hart is talking about is
6 whatever the shadow study is difference between the matter
7 of right scenario and what they're actually doing, which is
8 three additional feet, which is actually kind of nominal, I
9 think, okay, or what's going to end up looking nominal in
10 terms of the shadow study, right?

11 So, I mean, this is all just -- probably getting
12 to the point where we're going to actually end up just
13 deciding, but I want to give those -- I still would prefer
14 that there's an opportunity to try to see if there's
15 something that can be worked out, okay? And so, I'm just
16 trying to be very forthright with -- which is where I am, so
17 that there's no shocking surprise. It was like -- so --

18 MEMBER JOHN: Mr. Chairman --

19 CHAIRPERSON HILL: Yes.

20 MEMBER JOHN: -- can I be forthright?

21 CHAIRPERSON HILL: Sure. Why not? It's ten
22 o'clock.

23 MEMBER JOHN: So, the Applicant is below 70
24 percent, which is the maximum lot occupancy for a special
25 exception. So, that's where I'm starting. And so, the

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1 difference with the addition is the difference between -- and
2 I'm looking at the ten-foot rule which we have all the time
3 and which we struggle with all the time in -- on lots like
4 yours because they're all over the city.

5 Some of them are 16 feet wide, some are 17, some
6 are 18. Everybody lives in their backyard because these are
7 small houses, and we have people coming in with large
8 families and they need to build additions. In this
9 particular case, the backyard is 30 feet with the addition,
10 with the 13 foot. So, that's sort of where I start looking
11 at all of the other development standards.

12 And then I look at the difference between 10
13 feet, right, 10 feet, which is the 10-foot rule, and 13.25
14 feet. For me, that 3.25 is de minimis. So, if, in whatever
15 scenario that they could come to where they would only do a
16 ten-foot addition, there still would be shadow in the
17 backyard and you still would have the problem of having to
18 move the garden or planting something else.

19 It doesn't mean you can't use the garden. Instead
20 of sunny plants that like sun, you'd be planting plants that
21 have shade. You could still entertain. That's sort of how
22 I'm looking at it. I would think it would be unreasonable
23 to tell this homeowner to remove their garage. I would never
24 suggest that. They're not asking for a variance.

25 There's another neighbor who has a second story

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1 in the accessory structure. The rules allow it. So, I would
2 have a hard time denying this application. I'm telling you
3 where I am right now. What I agree with is that there might
4 be something to be done with the windows that look into the
5 backyard and from the accessory structure. I think in terms
6 of the windows that look into the backyard from the main
7 house, that's a fact of life in the city. Everybody lives
8 in this fish bowl and you see everybody in their backyard.

9 Whether it's a 10-foot addition or a 13-foot
10 addition, you're going to know when the neighbor takes the
11 dog out for a walk, you know. And that's why there are these
12 huge fences so that people in the alley can't see you. It's
13 a fish bowl. So, that's sort of where I am.

14 And if the Applicant is willing to do something
15 about the beautiful windows, which are amazing, then, I mean,
16 that might be one way to look at it. That's sort of where
17 I am.

18 CHAIRPERSON HILL: Okay. All right.

19 COMMISSIONER TURNBULL: Can I add something?

20 CHAIRPERSON HILL: Sure. Of course, Mr. Turnbull.

21 COMMISSIONER TURNBULL: I'll take a different
22 approach a little bit different from Ms. John.

23 If we looked at all these specific requests, the
24 rear extension, accessory building, the enlargement to a
25 nonconforming structure, if those came in on a case one at

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1 a time, it's easy to look at it and you can say, oh, yeah,
2 13.25, eh, it feels de minimis. 60 percent, ah, we're going
3 to this, eh, it's de minimis, we don't care. Accessory
4 building going up another story, eh, that's -- but my problem
5 is this is all coming at once and you've got four special
6 exceptions that they're looking at.

7 When I look at the overall aspect of that and the
8 impact of what that has -- now, some of you may feel it's not
9 a lot, but I think that if you look at the whole thing, I
10 think it is. I think it really is too much. I think that
11 there's -- and my comment, and Mr. Hart was leading to this,
12 is what options can the Applicant offer?

13 Because right now, I'm not on board with approving
14 it the way it is and I said, what options could -- and their
15 one option was, well, we'll take off the garage, you know,
16 and get through ten feet. Well, that's an interesting
17 scenario. I could live with that.

18 The other option, what is the minimum amount that
19 they need to go to the back of the house to get a bedroom?
20 I mean, they had a huge walk-in closet. How much can you cut
21 back to make it actually work and get a livable bedroom and
22 the space that you need? I mean, those are the things that
23 I'd like to see.

24 I mean, I think these -- we're in a neighborhood
25 now where everybody is talking about this one project. And

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1 with these -- with the conditions that are on here and the
2 approvals that they want and the -- sounds like the Applicant
3 is more than willing to look at options, I think that's
4 something that we should consider.

5 I think it's something -- because right now I
6 can't agree on -- I can't agree with all four, granting
7 special exceptions on all four. The cumulative effect of all
8 four, to me, is an impact on the two neighbors on either side
9 and I think it affects -- it's beginning to affect the
10 overall effect of the alley.

11 So, I think if you look at them individually, yes,
12 you could approve them, oh, yes, that's not bad, but I can't
13 do that. They want the whole kit and caboodle, and I'm not
14 ready to give the caboodle. So, what I think you need to do
15 -- and I think the Applicant has come very straightforward
16 and said, we could look at some options.

17 They gave a very big option, either removing the
18 garage or taking off the top story and going only two feet.
19 I don't know if that's going to be acceptable to the others,
20 but that gets closer to maybe me beginning to accept
21 something.

22 MEMBER JOHN: Mr. Turnbull, in the time I've been
23 here we've never looked at the number of -- the number of --

24 COMMISSIONER TURNBULL: Special exceptions?

25 MEMBER JOHN: -- the number of relief -- the

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1 amount of -- the aggregate -- the relief in the aggregate
2 unless there's something that would change the mass so that
3 -- well --

4 COMMISSIONER TURNBULL: I think this does change
5 the mass of the lot.

6 MEMBER JOHN: But not where it's to the point of
7 a variance. So, the only issue we're looking at here is
8 light and air and privacy. I've never seen a case, since
9 I've been here, where we have said you're asking for too much
10 relief because you're asking for relief in all of these
11 areas.

12 COMMISSIONER TURNBULL: Well, I'm only one --

13 MEMBER JOHN: I see the Chairman shaking his head,
14 but --

15 CHAIRPERSON HILL: No, I'm just --

16 MEMBER JOHN: -- that's my recollection.

17 COMMISSIONER TURNBULL: Well, I'm just saying that
18 --

19 MEMBER JOHN: And we do this all the time when --

20 COMMISSIONER TURNBULL: There are certain ones of
21 this -- I mean, the Chairman may say that 13.25 is -- the
22 3.25 de minimis. I don't always agree with that.

23 CHAIRPERSON HILL: Okay. So, this is good. We
24 got -- and not only is it good, it's on either side of me.
25 So, this is helpful to know that there's definitely a lot of

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1 opinions up here. So, that means there's a lot of room to
2 talk about it, right? Okay. And you've seen the -- we have
3 somebody maybe thinking that it's okay, and somebody maybe
4 thinking that it's not okay, right?

5 And so, for me, again, you know, I still just
6 don't know, right? Like, I mean, you know, the -- what --
7 and this is where, like, we don't get into this, but -- we
8 do get into it actually, oddly enough, when it's the last
9 case and it's around ten o'clock at night. We talk a lot
10 more freely because there's nobody here and we get a chance
11 to kind of, like, speak a little bit more clearly about
12 what's going on.

13 And I think that, again, where I am at is I don't
14 know, right, like, you know. There's the, you know, no
15 addition on the garage, right? There's the going back 13
16 feet, no garage. There's, you know, you still have to go
17 back. There's going back 15 feet and no garage. I don't
18 know. I mean, then you're going back just a whole other
19 discussion as to what you're trying to do to get to the, you
20 know. But then this is what you have now and you don't
21 really want to go back to the drawing board and you have what
22 you have, right?

23 So, I would suggest working with your neighbors,
24 I suppose. I don't know. And I look at the attorney here
25 at this point -- working with your neighbors, coming up with

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1 a couple of different designs, or if you actually get to a
2 design that somebody -- I mean, this is where I don't know
3 if you're going to get anywhere. And if you don't, I guess
4 then you're just back here and we'll just see what happens,
5 you know.

6 And so -- because, at the end of the day, we do
7 have to take a vote. We're not like your ANC. No offense,
8 right, okay. Like, we actually do have to vote, right, okay.
9 And so, the -- we can just see what happens. So, I don't
10 know if you-all got a suggestion now as to how they can kind
11 of come together and it not be as difficult as it seems to
12 have been. I don't know. Ms. Mazo, Mr. Sullivan.

13 MS. MAZO: I'm happy to host a meeting at our
14 office or at Marty's office. I mean, I agree with you. I
15 think trying to let --

16 CHAIRPERSON HILL: Okay. So, that's --

17 MS. MAZO: -- calmer heads prevail is --

18 CHAIRPERSON HILL: That's fine.

19 MS. MAZO: -- a great idea.

20 CHAIRPERSON HILL: So, you guys can see, right,
21 if that's something that your clients are interested in,
22 right? So, then what I would propose is you come back to us
23 with something, okay, right. Whatever that is, right? If
24 you end up coming back with the exact same thing, just see
25 what happens, right? And so -- but I think when -- oh, dear,

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1 when can we -- I love when I turn to Mr. Moy and I suddenly
2 realize we have to put this off for another time.

3 And so, when can we -- we're definitely not doing
4 this on the 29th, okay? So, that is the appeal -- oh, Mr.
5 Turnbull, when are you back?

6 COMMISSIONER TURNBULL: The 12th.

7 MR. MOY: Sometime in February.

8 CHAIRPERSON HILL: The 12th of February.

9 COMMISSIONER TURNBULL: February 12th.

10 CHAIRPERSON HILL: So, that gives you guys a lot
11 of time to try to figure out whether or not -- and then you
12 have time with the architect. And then I guess -- I mean,
13 I don't even know if you wanted to try to get to the ANC.
14 I mean, this is all where it kind of just -- and, Mr.
15 Sullivan and Ms. Mazo, you can kind of, like, figure it out,
16 I suppose. I don't know whether it's worth going back to the
17 -- I mean, so let me work backward. So, what day did Mr.
18 Turnbull say he was here again -- or you said Mr. Turnbull
19 was here?

20 MR. MOY: The 12th.

21 CHAIRPERSON HILL: The 12th of February. So, if
22 you work back, Mr. Moy, from the 12th of February, when would
23 be the last time we'd be able to get submissions from people
24 or stuff?

25 (Pause.)

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1 MR. MOY: Okay. I'm presuming that this would be
2 a continued hearing -- tell me if I'm wrong -- given the
3 discussion that you're having right now.

4 CHAIRPERSON HILL: Yeah. It would be a continued
5 hearing just on anything that happens based off of the -- and
6 I'll clarify that in a minute, but from the new drawings.

7 MR. MOY: Right. Right. So, my advice -- today
8 is the 15th. If the Board giving the Applicant and the Party
9 enough time to have a kumbaya, let's say the Applicant can
10 file -- can make a filing the end of January. So, I'm
11 looking either by January 29th, which is a Wednesday, or the
12 Friday, January 31st. One of those two days. Then probably
13 have a week after that for any responses.

14 If there's a come togetherness, then we probably
15 wouldn't need a response, in any event, and then have the
16 continued hearing on February 12th.

17 CHAIRPERSON HILL: The Commissioner has something
18 to say. When is your meeting date? Is that what you're
19 going to tell us?

20 MR. HANLON: February --

21 CHAIRPERSON HILL: You have to speak into the
22 microphone.

23 MR. HANLON: I'm sorry. The next ANC meeting
24 date monthly meets February 12th. We meet the second
25 Wednesday of every month.

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1 CHAIRPERSON HILL: And when did we say Mr. --

2 MR. MOY: 2/12.

3 CHAIRPERSON HILL: Oh, he's back on the 12th. Oh,
4 that won't work. So, I'll tell you what. Just give me a
5 second. So, I think what let's do is -- I don't know if it's
6 going to be necessary to go back to you guys, okay?

7 So, if the Applicant thinks that -- because it's
8 your application. Just to let everybody know, again, this
9 is their application, okay?

10 So, if the Applicant thinks that it would be
11 worthwhile to go back to the ANC -- and, again, the reason
12 why that would be worthwhile, again, is that you could
13 possibly get a summary order rather than a full order, okay?

14 And there's like, you know -- you don't know. I'm
15 just saying. I'm doing all this time right here in the hopes
16 that -- that's the whole point, right? Otherwise, let's vote
17 today, okay? And so, you know, if there were a chance that
18 -- otherwise, then, there's no point in going back to the
19 ANC, is what I'm trying to get at.

20 I got what I need from the ANC, okay? And so
21 unless they want to do another hour and a half and whatever
22 it is, right? So -- pardon me? So, you can go ahead then.
23 So, those dates then, again, Mr. Moy, could you repeat,
24 please.

25 MR. MOY: Okay. The continued hearing, limited

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1 scope hearing on February the 12th.

2 CHAIRPERSON HILL: We're back here on the 12th.

3 MR. MOY: And have the Applicant make their filing
4 on --

5 CHAIRPERSON HILL: Where they're at.

6 MR. MOY: -- by, let's say -- I'm just going to
7 say Wednesday, January 29th.

8 MS. MAZO: Can we do Friday the 31st to give us
9 a couple more days?

10 MR. MOY: Sure.

11 CHAIRPERSON HILL: Okay. So, the 31st for
12 filings? Okay. All right. Well, the filings are going to
13 come from the Applicant, but, yeah. So, what -- that's fine.

14 So, the 31st are the filings and then that gives,
15 still, the ANC or anybody how much time to submit anything
16 into the record, Mr. Moy?

17 MR. MOY: Let's say February -- let's give it
18 February the 7th, which is a Friday.

19 CHAIRPERSON HILL: Okay. The ANC can submit at
20 any time, just to let you-all know. I mean, not that you
21 knew that. Now, you won't be able to submit a full vote.
22 You'll be able to submit something, okay, if the ANC decides
23 to submit something, okay? So, Mr. Sullivan, do you
24 understand?

25 MR. SULLIVAN: Yes.

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1 CHAIRPERSON HILL: Okay. So, just to be clear on
2 a couple of things, as I don't know when you guys are going
3 to be heard on the 12th, okay, so we'll see what happens.
4 I don't know. I mean, we'll maybe try to do you earlier
5 because you guys were the last ones today, okay, but I don't
6 know. It depends on a lot of things. So, that's No. 1.

7 No. 2, it's just -- and I'm only clarifying
8 because people really don't understand this. This is just
9 a limited scope hearing based upon whatever happens between
10 here and the next time we're here, right?

11 We're not going to go back and talk about anything
12 else. We're not going to have any kind of discussions,
13 testimony about anything else, just what happens from that
14 time there to this -- you know, from now until then, okay?

15 And then to the Applicant -- I'll wait for Mr.
16 Sullivan -- to the Applicant, as well as to the parties in
17 opposition, I really got to tell you I don't know where you
18 guys are, okay, right?

19 So, you know, if you can figure out what to do,
20 then try to figure out what to do, right? And when I say
21 that, I'm saying that I don't necessarily think anybody has
22 a particularly huge, stronger hand than anything else, right,
23 except that to say the regulations are what the regulations
24 are, okay?

25 So, that -- I don't know what the exact words say

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1 either, but that I think you should try to all kind of work
2 together. And then, at the end of the day, it's just going
3 to be whatever you want to try to come forward with, okay?

4 So, you get to decide at the end because it's your
5 application, right? So, if you decide that, hey -- if you
6 decide that we want to go back with the original design,
7 we're going to see how that goes, that's totally up to you,
8 okay, and who knows. All right. So, does anybody have any
9 final questions?

10 MS. MAZO: Just to clarify, are you going to close
11 the record except for these filings? And if so, I just want
12 to make sure I can file my PowerPoint in the record.

13 CHAIRPERSON HILL: Sure. We'll keep the record
14 open for your PowerPoint presentation. And then, yeah, the
15 record is closed for anything except for the -- basically,
16 I guess, whatever happens at the -- in the discussion. Mr.
17 Sullivan, it looks like you want to say something.

18 MR. SULLIVAN: Yeah. The PowerPoint presented
19 documents and evidence that was not submitted at the deadline
20 when they were supposed to submit.

21 And -- well, I don't think it's -- I think we
22 responded to what we responded to. So, never mind.

23 CHAIRPERSON HILL: Okay. So, I don't mind this
24 because, like, you guys are here a lot. And so, I want to
25 kind of understand also just how this kind of works.

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1 I'm going to go ahead and allow that into the
2 record, Ms. Mazo, but the reason why I'm hesitating is
3 because there was something that happened not too long ago,
4 and I can't remember what it was, but somebody argued about
5 the PowerPoint presentation not being allowed into the
6 record. So -- and we didn't allow it into the record.

7 And actually now what my colleague is saying is,
8 Mr. Sullivan, it was one of yours. We didn't allow one of
9 your PowerPoint presentations into the record and it wasn't
10 because of -- it wasn't -- it was this current opposition
11 that was argued against? Was an Appeal? You don't remember?

12 MR. SULLIVAN: I vaguely remember, yeah.

13 CHAIRPERSON HILL: I think it was an appeal and
14 I don't think it was Cozen O'Connor. And so, I think we're
15 still all good there in that one.

16 MS. MAZO: My associate tried to file it today,
17 but it was after 9:00. So, we were doing --

18 CHAIRPERSON HILL: That's okay. I mean, I'm
19 really asking -- I'm really clarifying, again, with my board
20 members here because we didn't allow it into the record the
21 last time, okay, and it was Mr. Sullivan.

22 MEMBER JOHN: I voted to allow it in.

23 CHAIRPERSON HILL: And you voted to allow it in.

24 (Off-microphone comments.)

25 CHAIRPERSON HILL: Okay. And you're speaking off

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1 the microphone.

2 MEMBER JOHN: I was overruled.

3 CHAIRPERSON HILL: You were overruled -- I don't
4 know if you were overruled. I think you were outvoted,
5 right? Okay. So, all right. Anybody else?

6 MS. MAZO: We're clear we can allow it in this
7 time.

8 CHAIRPERSON HILL: Yes, you can put in your
9 PowerPoint presentation.

10 MS. MAZO: Thank you.

11 CHAIRPERSON HILL: And best of luck to all of you.
12 Thank you for staying here. I hope it was an enjoyable day.

13 Mr. Moy, does the Board have anything else in
14 front of us today?

15 MR. MOY: Not at all. We're done.

16 CHAIRPERSON HILL: Okay. Great. All right. The
17 Board stands adjourned. Thank you.

18 (Whereupon, the above-entitled matter was
19 adjourned at 10:24 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: Board of Zoning Adjustment

Date: 01-15-20

Place: Washington, D.C.

was duly recorded and accurately transcribed under
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