

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JANUARY 29, 2020

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:14 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Zoning Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
ALEXANDRA CAIN, ESQ.
DANIEL BASSETT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN J. MORDFIN
CRYSTAL MYERS
MAXINE BROWN-ROBERTS
KAREN THOMAS
STEVE COCHRAN
BRANDICE ELLIOT

The transcript constitutes the minutes from the
Public Hearing held on January 29, 2020.

CONTENTS

Case Number: 20181	4
Case Name: Application of Medici Road	
Case Number: 20185	31
Case Name: Application of David Baillat and Marc Knobbe	
Case Number: 20069	72
Case Name: Application of Deidra Barksdale	
Case Number: 20187	108
Case Name: Application of Jon-Joseph Russo	
Case Number: 20065	111
Case Name: Application of Dilan Investments, LLC	
Case Number: 20178	120
Case Name: Application of Murat Kayali	
Case Number: 20183	149
Case Name: Appeal of The Residences of Columbia Heights, a Condominium	

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

10:14 a.m.

1
2
3 SECRETARY MOY: Thank you, Mr. Chairman. So the
4 Board is in its hearing session and I believe the first case,
5 if we may have parties to the table to Application Number
6 20181 of Medici, M-E-D-I-C-I, Road, and this application is
7 captioned and advertised as amended for special exception
8 under the Residential Conversion Regulations of Subtitle U,
9 Section 320.2.

10 And pursuant to Subtitle X, Chapter 10 for area
11 variances from the minimum land area requirements, Subtitle
12 U, Section 320.2D, and from the minimum full-size parking
13 space requirement, Subtitle C, Section 712.3 to convert an
14 existing one-family dwelling into a four-unit apartment house
15 in the RF1 Zone.

16 This is at 1315 Harbor Street, NW, Square 2854,
17 Lot 86. And let's see, I think the affidavit of maintenance
18 is under Exhibit 65, and that may have been submitted late,
19 but I'll leave that to the Chair.

20 This was last heard when? January 15, 2020.

21 CHAIRPERSON HILL: Okay. First, real quick, the
22 affidavit of maintenance, it was submitted and even if it was
23 submitted late, at this point, I believe we have -- the ANC's
24 here, and so I believe there's been a lot of community
25 outreach and I don't have any issues waiving the timeline for

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1 that. Does the Board?

2 Okay. All right. Then we're going to waive that.
3 If you could please introduce yourselves for the record, from
4 my right to left.

5 MR. CLUCK: Sure. Jason Cluck, ANC Commissioner
6 at 1A.

7 MR. CLARK: Sheldon Clark with the Fine Design
8 Group. Architect of record.

9 MR. HUGHES: Thomas Hughes. I'm representing
10 Medici Road, Applicant.

11 CHAIRPERSON HILL: Okay. So Mr. Hughes --

12 COMMISSIONER SHAPIRO: Mr. Chair?

13 CHAIRPERSON HILL: Oh, I'm sorry. Please, go ahead.

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
15 just wanted to state for the record that I've reviewed the
16 record and I will be participating on this case in place --
17 instead of Mr. Turnbull.

18 CHAIRPERSON HILL: Okay. Thank you, Mr. Shapiro.
19 All right. So let's see, I guess Mr. Hughes or Mr. Clock,
20 is it Clock? Was it Clock?

21 MR. CLARK: Clark.

22 CHAIRPERSON HILL: Clark. Oh, I'm sorry. Oh, and
23 Clock over there, and Houston. Okay. Let's see, so I can
24 appreciate that the ANC is here and Commissioner, we know
25 where you guys stand in that, you'd like to see it happen.

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1 And so yes, so I guess Mr. Houston or Clark, I
2 know that there was additional information that we had
3 requested from you in terms of how you believe you're meeting
4 the criteria for us to grant the application.

5 I see that there's a new PowerPoint presentation
6 that you have put forward. I'm not going to try to cut you
7 off short. You guys can go through your presentation the way
8 you would like to. However, I believe it looks like on Slide
9 8, is the one that has a lot of the financial support, or
10 also -- and also, I'm sorry, then also the letters that you
11 have from the housing program.

12 Well, I guess I'll go ahead and just walk through
13 your presentation the way you would like to and let's see if
14 -- let's see what your argument is. I know that from the
15 last hearing, the Office of Planning was -- they do not
16 believe that you had met the criteria, and to be quite
17 honest, neither did the Board.

18 And so that's why we had asked for further
19 information and we didn't get it until, I think, yesterday,
20 day before, anyway, it doesn't matter. So, Mr. Moy, go ahead
21 and put 15 minutes on the clock and you all can begin
22 whenever you like.

23 MR. HUGHES: Perfect. Thank you. And as we left
24 the last time we met, there were about three requests. One
25 of them was to really understand what does the D.C. Housing

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1 financial Agency partnership look like as well as the
2 financings and comparing the two, versus the three, versus
3 the four unit.

4 And the third one was looking at other cases where
5 there was the approval by the Board for people asking for
6 that exception for less than 900 square feet per unit, and
7 so we do have all of those for you and have shared that with
8 the Office of Planning as well.

9 So I want to just quickly run through, I know
10 Commissioner John has some very specific questions about what
11 does this partnership look like, and I just wanted to kind
12 of start with those.

13 So just, I know we didn't really run through this
14 the last time, but the idea is that, Housing Financial Agency
15 specifically partners with developers who are creating a
16 affordable and workforce for sale housing.

17 What they do is, they provide 80 percent of the
18 equity and only ask for 20 percent of the return, and that
19 allows us to hire more residents, go after larger projects,
20 et cetera. And then they also require us to either be a CBE
21 certified or increase our hiring.

22 I think, typically, it's only 30 percent, while
23 we're required to hire 50 percent minority suppliers. In
24 terms of the dollars or why we think this partnership
25 actually matters, so the plan was for us to purchase the

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1 property with hard money, because it can just move a lot
2 faster.

3 So we purchased it at a nine percent interest
4 rate, with the plan of refinancing in three months. Then
5 realized pretty quickly that we had to go to BZA, and that
6 extended that three months into a little bit longer time
7 frame, and so instead of financing in four months with the --
8 the original plan was to refinance in four months with a bank
9 partner at four percent, which is a lot different than nine
10 percent.

11 Refinancing with the bank allows, also allows us
12 to pay that monthly finance through the mortgage and pay it
13 at the end when we sell, versus with the hard money, we're
14 paying it every month.

15 And then so if BZA says no, we lose the
16 opportunity to partner with the D.C. Housing Finance Agency,
17 and then by doing that, we also lose -- that partnership
18 would also lose that bank partnership as well, and so we
19 would be required to essentially try and figure out how to
20 finance the entire thing with hard money at nine percent, and
21 those numbers don't work out to be able to do the IZ
22 affordable unit we wanted to do.

23 Oh, do you want to do the whole thing or just --
24 because that's the part specifically about the --

25 CHAIRPERSON HILL: Yes, that's okay. So I think

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1 the Commissioner has a question for you here.

2 COMMISSIONER SHAPIRO: So thank you for that
3 information and the PowerPoint presentation as well. So if
4 you move forward, it's clear, all the options that you have,
5 and what it does for the organization financially, setting
6 aside the value of the affordable housing, which is
7 absolutely clear, and it's part of the Mayor's mission, and
8 something that we're all committed to, so that's not really
9 up for question.

10 So if you can't move forward, what do you do? You
11 sell the property.

12 MR. HUGHES: Exactly.

13 COMMISSIONER SHAPIRO: Okay. And then you take
14 the money and you put it into another deal.

15 MR. HUGHES: Correct.

16 COMMISSIONER SHAPIRO: Okay. I just wanted to be
17 clear about that. So if you can't sell, it's not as if
18 you're about to take a \$900,000 hit, it just doesn't give you
19 the opportunity to further your mission in the way you want
20 to on this specific site.

21 MR. HUGHES: Correct.

22 COMMISSIONER SHAPIRO: Okay. Thank you. Thank
23 you, Mr. Chair.

24 MR. CLARK: And if I can speak to, so what the
25 project would look like then in terms of selling and doing

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1 by right, is that it would be packaged up for a two-over-two
2 condo conversion.

3 COMMISSIONER SHAPIRO: And I get that that's a
4 missed opportunity for providing affordable housing, and that
5 certainly is not the mission of your organization to do this,
6 but I just want to have a sense of what the impact on the
7 organization is and this is very helpful from both of you,
8 so thank you.

9 CHAIRPERSON HILL: Does anyone have any specific
10 questions, perhaps, for Mr. Houston? I mean, if you want to
11 go over Slide 8, Mr. Houston, and try to convince us that
12 there's some financial aspect here?

13 I mean, again, you did go through what the
14 requirements are for us to grant the application, right? I
15 mean, you know the three-pronged test that we need to go
16 through in order for us to grant this variance.

17 I mean, what you're asking for is, you have -- you
18 know, you're supposed to have 900 square feet per -- I mean,
19 you know this, but you're supposed to have 900 square feet
20 per unit, you have 454 square feet per unit. I mean, it's
21 a big difference.

22 And so we need to understand what is the
23 exceptional situation as to why that needs to be granted.
24 And again, you're not going to have any argument from anybody
25 up here in terms of, like, again, what the affordable housing

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1 goals are.

2 As the Commissioner just mentioned, it's something
3 that the Mayor is trying to also achieve, and the
4 Commissioner -- and, you know, the ANC's here also in
5 support, and they were here the last time in support, and
6 everybody's given passionate statements to it, we're just
7 kind of stuck.

8 So, you know, if you can kind of speak a little
9 bit more as to what the exceptional situation is, that would
10 be helpful.

11 MR. HUGHES: Sure. We actually went back through
12 and looked through a couple of cases that were approved by
13 the Board that had the pretty similar exceptional cases, and
14 found two. One is Case 18312, 70 percent of the Board
15 actually cited that market conditions and economic challenges
16 can show practical difficulty.

17 They approved that lot size variance of less than
18 900 square feet per unit. They also approved the four-unit
19 building as long as there weren't any specific RPP permits.
20 Only -- you had enough parking as part of the project and not
21 relying on street parking.

22 And the Board mentioned that issues like illegal
23 construction, a vacant home, the home being in disrepair
24 aren't enough to satisfy the first prong on their own, but
25 collectively, they can.

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1 CHAIRPERSON HILL: Do you have that case number
2 for the RPP one that you said again?

3 MR. HUGHES: 18312.

4 CHAIRPERSON HILL: That's all the one case?

5 MR. HUGHES: Yes. And then they recommended also
6 to not just look at lot area, but also the completed size of
7 each apartment, and so what they were referencing was the
8 idea that instances -- when recommending development use
9 existing footprint, and if the applicant is creating a space
10 that's either equal or larger to comparative elements.

11 And so yes, the lot size was smaller, but the --
12 in that particular case, the apartments that they were
13 developing weren't micro-apartments, they were the same size
14 or larger units than the rest of the neighborhood. And in
15 our case, we are creating apartments that the entire
16 footprint will be over 800 square feet, which is equal to or
17 larger than what is in the rest of the square.

18 CHAIRPERSON HILL: What do you mean over 800
19 square feet? I thought it was 400 square feet.

20 MR. HUGHES: So the lot is 1800 square feet, the
21 building is -- when we finish, will be about 3600 square
22 feet, and so with that, it's only, by right, could build two
23 units, but each floor will be over 800 square feet in terms
24 of -- do you see that math?

25 So we're building four units, and so each of them

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1 will be over 800 square feet in the existing footprint, and
2 so the Board made a reference to look at that, the size of
3 the unit, as well.

4 There was a second case, which I think speaks --

5 CHAIRPERSON HILL: Wait a minute, I apologize,
6 everything that you just spoke about, you're talking about,
7 is 18312?

8 MR. HUGHES: Correct.

9 CHAIRPERSON HILL: Okay. Thank you.

10 MR. HUGHES: And there was a second case that
11 really spoke to market conditions, which is Case 19029, and
12 the Board actually mentioned they would overrule the Office
13 of Planning if the applicant had ANC support, and the pro
14 forma could support adding one IZ unit -- or excuse me, one
15 affordable unit that followed the perpetual affordability of
16 IZ.

17 And in our case, we're not only providing an IZ,
18 but also three workplace units as well.

19 VICE CHAIRPERSON HART: How many units were in
20 both 18312 and 19029?

21 MR. HUGHES: 18312 was four units and --

22 VICE CHAIRPERSON HART: Out of -- and it was a
23 similar zone?

24 MR. HUGHES: Yes. All are RF1, same -- not the
25 same square, but they were within a mile.

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1 MEMBER JOHN: And were these all new construction?
2 Because I know we have had situations where there's sort of
3 an existing footprint and they're just trying to make them
4 legal, so was this new construction, both cases?

5 MR. HUGHES: Both cases are actually pretty
6 similar to ours and being rehabbed of existing properties.

7 MEMBER JOHN: So conversions, pretty much.

8 MR. HUGHES: Correct.

9 MEMBER JOHN: Okay. All right. Thank you. So
10 I'm -- did you ever go back to DCHFA, did I get that right,
11 and talk about other options after you read the Office of
12 Planning's report?

13 MR. HUGHES: Correct. Yes, and --

14 MEMBER JOHN: And what was the response?

15 MR. HUGHES: The response was pretty much --
16 because we had had some of these conversations beforehand,
17 after we find out that we actually would have to come to BZA,
18 and really, what it boils down to is, by right, their program
19 is not allowed to sell to market rate. And so the only way
20 this works in doing less than four is having at least one
21 market rate unit, and their board will never approve that.

22 MEMBER JOHN: What other financing options did you
23 look at beyond, you know, the HIP and the nine percent?

24 MR. HUGHES: So we did go back to our bank and our
25 bank does gives us the option to potentially still move

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1 forward without using HIP, but we have to come up with an
2 additional \$220,000, which we could potentially try and
3 leverage, but we're also looking at purchasing a 45-unit
4 building over in Greater Deanwood, and we would much prefer
5 to put that money in affordable housing 45 units versus 4.

6 CHAIRPERSON HILL: Sure. Go ahead.

7 VICE CHAIRPERSON HART: Yes, just one other
8 question, so looking back on all of this, would you have
9 still moved forward with this project if you, kind of, know
10 now what you knew --

11 MR. HUGHES: Absolutely not.

12 VICE CHAIRPERSON HART: Because you know that this
13 is -- I mean, this is really trying to shoehorn in something
14 that is, in some ways, some of this was foreseeable, because
15 there are -- there were certain things that needed to happen,
16 and I understand that you have to, you know, kind of strike
17 while the iron is hot.

18 There were a lot of moving parts that you're
19 trying to work with, but the difficulty that we have is that
20 we have to look at each case on its own merits, and while
21 there may be other cases that may be similar, we would have
22 to really look at, well, you know, are we looking at apples
23 and apples with these, you know, previous cases.

24 There may be other extenuating circumstances that
25 made us be more, you know, willing to understand what that

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1 was in that particular case, and I just can't recall them
2 because we get a lot of cases.

3 I've probably sat on, I don't know, 1200 cases
4 since I've started at the BZA, and it's hard to remember
5 where the details on each one of them, but I was just more
6 curious as to where you stood on that, but you've answered
7 it, so I'm not sure.

8 MR. HUGHES: Yes, I just wanted to point out, one
9 of the things that we probably should have done more digging
10 up front was the house next door was doing the exact same
11 thing, where they turned it into four condos, and we found
12 out after the purchase, after we had started pre-development
13 work, as we were going and start talking to DCRA about
14 getting permits, they didn't have any permits and that was
15 all illegal construction.

16 So had we found that out up front, we would have
17 never even purchased the property.

18 CHAIRPERSON HILL: Okay. All right. I'm going
19 to -- sure.

20 MEMBER JOHN: Mr. Chairman, one more question.
21 So the cost of underpinning that small area, did you roll
22 that into the cost of doing that entire basement? I just
23 find \$120,000 just to underpin that section to be kind of
24 high. So are you looking at the cost of finishing that unit
25 as opposed to the pure cost of underpinning?

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1 MR. HUGHES: Yes.

2 MEMBER JOHN: That's the part I'm having difficulty
3 with.

4 MR. HUGHES: I would say that we agree with you
5 that it's too high. We've actually gone to other
6 jurisdictions and they're, like, a third of the cost, but
7 because of all the -- and they don't come to D.C., and so
8 everybody in D.C. can basically charge whatever they want to,
9 and the lowest we could find was \$100,000 and their
10 references weren't good.

11 And so that dollar amount is the standing -- the
12 going rate for underpinning at this time.

13 MEMBER JOHN: So that's underpinning and finishing
14 the basement.

15 MR. HUGHES: That's just underpinning.

16 MEMBER JOHN: I'm having a hard time with that.

17 MR. HUGHES: I agree with you. If the Board
18 needed, I could also share the -- we've gotten six certified
19 D.C. CBE bids, and, like that was the midpoint.

20 CHAIRPERSON HILL: Mr. Shapiro?

21 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. So
22 I don't know how to say it, but to say it, I mean, this is
23 a very, very difficult decision because I'm committed to what
24 the organization is working to do. But I don't see how they
25 have made a case that the property is affected by unique

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1 circumstance or condition that creates a practical difficulty
2 in complying with the zoning regs. I just don't see it.

3 You know, the desire to use that property for the
4 specific purpose - -you know, for the affordable housing
5 purpose, even as much as we're committed to it, that's not
6 a sufficient basis for the variance relief.

7 So beyond the fact that we all want this to
8 happen, you know, we follow the law. And I just don't see
9 how a case is made to grant the variance. You know, and
10 there isn't -- you know, if they made a really compelling
11 case around economic advantage, or disadvantage, in some way,
12 the courts have said that that's not even adequate grounds
13 for granting the relief anyhow, but they're not even saying
14 that.

15 It's really just, the only reason why this --
16 where they want to move forward and we want to move forward
17 is because we want the affordable housing, but in this
18 situation, in this case, the law doesn't support it. The
19 Zoning Commission's clear about it, and so the Applicants,
20 you know, my -- if I -- I can't be supporting this and the
21 Applicants can take the money and put it into another
22 worthwhile project, and I think that's just the way this one
23 is, at least from my perspective, Mr. Chair.

24 CHAIRPERSON HILL: Okay. All right. I'm going
25 to turn to the Office of Planning if they have any additional

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1 things they'd like to add.

2 MS. THOMAS: Good morning, Mr. Chairman, the
3 Zoning Board, Karen Thomas for the Office of Planning. Mr.
4 Chair, this is a very difficult situation for us as well
5 because I'd like to point out that the Office of Planning is
6 in support of affordable housing, particularly in this
7 neighborhood, which seems to have gone out of reach with
8 respect to family housing.

9 We did give a little bit more consideration to
10 this over the past week and in one sense, we could look at
11 it as not just each individual item on its own, but we looked
12 at it in terms of a confluence of factors all together,
13 coming together, to create an exceptional situation with
14 respect to this property.

15 If you look at the existence of the basement, and
16 the desire to pull it into -- and bring it into residential
17 use, the type of financing, which seems to be a promissory
18 finance by the District, unlike the Vacant to Vibrant
19 situation, I would like to think that if this, in fact, were
20 a Vacant to Vibrant project coming to us, we would approve
21 it, because we have done so in the past, if it was a Vacant
22 to Vibrant.

23 In this case, the unit size would actually
24 approach family-size housing, up to 882 square feet, just shy
25 of 900 square feet. So looking at that again, all these

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1 factors, not by themselves, but in -- as a group, as a
2 confluence of factors, we would see -- I could see where it
3 presents an exceptional situation, creating a practical
4 difficulty for the Applicant.

5 In our report, we support the public good and the
6 where it wouldn't harm the intent of the regulations. And
7 further in support of where it wouldn't harm the intent is
8 that where the intent of the RF is to maintain family-size
9 housing. This does not go against that.

10 It does, in fact, maintain two and three-bedroom
11 size units, so the sticking point for us in the earlier
12 instance was, we did not get a confluence of factors. I
13 don't think at that time the Applicant presented a full
14 amount of information to us and we could -- at this time, we
15 could try to, albeit weakly, pull together a confluence of
16 factors with respect to supporting the exceptional situation
17 which will carry through for the support of the variance.

18 COMMISSIONER SHAPIRO: Mr. Chair? Question for
19 the Office of Planning, so do you include the desire to bend
20 over backwards to find a way to support the production of
21 affordable housing as a piece of the confluence of factors?

22 And I don't mean bend over backwards in a
23 pejorative way, I just mean, we are -- part of what makes
24 this unique, and perhaps, contributes to confluence of
25 factors is that it's about affordable housing production.

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1 MS. THOMAS: In one sense. Yes.

2 COMMISSIONER SHAPIRO: Well, I mean, I want to put
3 you on the spot, yes or no, is that part of the confluence
4 of factors? Because I don't -- this is not a great precedent
5 if we move down this road, because, you know, so the next
6 person who comes in, even though it's not affordable housing,
7 gets to say that this same very, very shaky confluence of
8 factors is enough.

9 MS. THOMAS: I don't want to set this as a
10 precedent, and I will clearly stick with it, in this case,
11 and I will say on the record that we do not and will not
12 support, you know, applicants' presentations that will, I
13 want four units, and so --

14 COMMISSIONER SHAPIRO: And in this case, because
15 it's affordable --

16 MS. THOMAS: Affordable, and that all the units
17 will be affordable. One would be IZ and the three units
18 would be workforce housing, and the IZ would be in
19 perpetuity.

20 COMMISSIONER SHAPIRO: SO this is a piece of what
21 is part of the confluence of factors --

22 MS. THOMAS: Of factors.

23 COMMISSIONER SHAPIRO: -- is that it is
24 contributing to the broader mission of the city and the
25 desire for -- the District, the desire for more affordable

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1 housing.

2 MS. THOMAS: More affordable housing, even though
3 the regs may not explicitly call out the term, affordable
4 housing, but implicit to the intent of the RF4, the RF1,
5 would be that it maintains family-size housing and family
6 housing, and in this case, family housing in an affordable
7 manner in a very unaffordable area.

8 COMMISSIONER SHAPIRO: Thank you. And thank you
9 for that information. And, Mr. Chair, I mean, it makes it
10 even harder to oppose this, based upon that. It's just that
11 the -- you know, the Commission is clear about what the regs
12 are. So I'm curious to see where my colleagues on the Board
13 are at this point.

14 CHAIRPERSON HILL: Yes, okay. Let me kind of
15 process through a little bit with this. Sure, one second,
16 Commissioner. Do you guys have any questions for the Office
17 of Planning? The Applicant.

18 MR. HUGHES: No questions.

19 CHAIRPERSON HILL: Okay. Mr. Commissioner, you
20 had a question for the Office of Planning, or a comment?

21 MR. CLUCK: A comment, if I could.

22 CHAIRPERSON HILL: Sure. First, do you have any
23 questions for the Office of Planning?

24 MR. CLUCK: No.

25 CHAIRPERSON HILL: Okay. Great. What's your

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1 comments, Commissioner?

2 MR. CLUCK: My comment was, the ANC support was
3 conditional on them all being affordable in the first place.
4 That was the only reason why we considered four units, and
5 that they were family-size units as well.

6 COMMISSIONER SHAPIRO: Thank you for that.

7 CHAIRPERSON HILL: Okay. I don't know. I mean,
8 we can talk about this a little bit more and see where we
9 are. I mean, we could get -- I'll see where the Board --
10 well, I'll see where the Board is in a minute. I'm also very
11 much stuck with the Commissioner over here.

12 I mean, we all want this to -- we would all like
13 to see this be able to move forward. I think that given --
14 if there is a confluence of factors in a way that affordable
15 housing and even this particular, I don't know, this
16 particular, you know, site, this particular neighborhood, you
17 know, is somehow -- this confluence of factors has come
18 together so that they are meeting the criteria, or now I'm
19 just kind of speaking through this a little bit, wherein, you
20 know, this would be something for the Zoning Commission, in
21 terms of, you know, you can have this many square feet if you
22 have four units of affordable housing.

23 I mean, that's something that could be changed at
24 that level, but I don't know if it would help this Applicant
25 at this time, and/or as was just kind of mentioned, that

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1 money should be put forward into the next project that
2 they're able to do, but I don't know where the rest of the
3 Board is.

4 I suppose if the rest of the Board were even --
5 thought that they could consider this a little bit longer,
6 we could ask for a supplemental report from the Office of
7 Planning, and then take a look at those two cases that were
8 cited, and then put it off for decision.

9 However, I don't know whether that's going to
10 necessarily help these guys or not. You know, it just kind
11 see what -- you know, they still might be at the same place,
12 but a little bit later, which might not help them in terms
13 of being able to move forward with whatever the decision is
14 going to end up being, so I don't know where you guys are.

15 MEMBER JOHN: So --

16 CHAIRPERSON HILL: Sorry. Mr. Shapiro.

17 COMMISSIONER SHAPIRO: I just want to say again
18 that, I mean, and I know that we're all going to have
19 opinions about this, and I appreciate OP's directness about
20 this, but we're all trying to find a way to make this work
21 because it's affordable housing, and I wish we could, but it
22 just doesn't meet the regs and it's a difficult precedent to
23 set, because we are saying clearly, we are doing this because
24 it's affordable housing.

25 I think this is something that we should take back

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1 to the Zoning Commission and we should consider a different
2 way to do this, and along your lines, to come up with some
3 kind of way to include this as a factor when we're looking
4 at granting variances, but that's not the law now.

5 CHAIRPERSON HILL: Okay.

6 MEMBER JOHN: So I'm having a lot of difficulty
7 with this case, as everyone else is, and it is true that in
8 the case law, we have looked at financing difficulties as
9 part of the burden of proof in showing that there's an
10 exceptional situation resulting in a practical difficulty.

11 I understand that the costs have been increased
12 because of the problem with the house next door and the need
13 to have this extensive underpinning, which seems to be what
14 is driving the increase in the cost of conversion.

15 So I'm also mindful that there are other
16 situations where have allowed relief for smaller -- you know,
17 relief from the lot occupancy requirement, am I saying, lot,
18 no, it's not lot occupancy, below the 900 square feet, but
19 I'm not sure if we've gone to, like, 50 percent below. So
20 I agree with the Chairman that we should, perhaps, take some
21 time to look at this and see if we can, perhaps, get to the
22 confluence of factors.

23 And I also agree that this is something that
24 Commission should take a look at, because if it is part of
25 the Mayor's policy to create affordable housing, then there

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1 should be a way for the regulations to allow us to get there.

2 And I would hate to add -- have a bad precedent
3 where we find reasons to allow variances like this just
4 because, you know, a developer can say, it's very difficult
5 for me to finance a project absent this relief. And this is
6 where we are, because if we set this precedent for you, then
7 the next person who comes to us with the same argument, we're
8 pretty much stuck.

9 Even though, as a Board, we try to look at each
10 case individually, so I think we can take a look at it some
11 more, look at the cases that you showed us, and look again
12 at what OP said, and see if there is a way to get there, but
13 right now, I can't say that I am at the point where I can
14 approve the application. I would need to look at it some
15 more.

16 VICE CHAIRPERSON HART: Thank you all for your
17 thoughts on it. I really look at this fairly simply, in
18 that, I see that there are the two options, four units with
19 some affordable housing or two market rate units that are --
20 that would be done as a matter of right.

21 Because we have a matter of right option, I think
22 that the variance is -- I think it is very difficult to get
23 to the variance, and that's kind of where I am. I know that,
24 you know, affordable housing is something that is needed in
25 this city, but we do have -- we have to look at our zoning

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1 regs and the zoning regs don't allow this.

2 And again, and I know we've heard this before, but
3 if the Zoning Commission would like to include something in
4 some sort of special exception relief that deals with
5 affordable housing for in RF zones or other residential
6 zones, then I think that that's a way to look at this, but
7 I just don't see us -- I don't see it getting past
8 exceptional situation, you know, that leads to a practical
9 difficulty.

10 I think that there were mistakes that were made
11 as part of the process to understand this particular
12 property, and we're trying to now deal with that, but I think
13 that the zoning regs are fairly straightforward in that
14 regard, and I'm sorry that, you know, the Applicant is there,
15 but I don't think that that's necessarily our -- up on us to
16 be able to correct that mistake that happened, you know,
17 prior to this.

18 There is an option. That option is not necessarily
19 one that the Applicant likes, but that's where we are.
20 Thanks.

21 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. And
22 building on that, and Board Member John said a version of the
23 same thing, which is, you know, if we essentially take
24 another looked at their finances, it gets to the same issue,
25 which is that the loss of economic advantage is not

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1 sufficient to constitute hardship, and in any case, it's not
2 even loss of economic advantage.

3 This is going to take the two units, they'll sell
4 it, they'll take the money, they'll move on to another
5 project. And for me, it's terribly unfortunate that there's
6 not a way to figure out how to build this housing in this
7 space, but I just think that there are bigger issues.

8 So I mean, I don't know what else to say and I
9 don't see how it fits.

10 CHAIRPERSON HILL: Okay.

11 COMMISSIONER SHAPIRO: And I'm not even sure
12 taking more time is even helpful for the Applicant, because
13 it just seems pretty straightforward, and I'm with Board
14 Member John, I'm with you, that I'd like to keep finding a
15 way, I just don't see it happening.

16 CHAIRPERSON HILL: Okay. Let me work through this
17 a little bit more. Is there anybody here wishing to speak
18 in support? Is there anybody here wishing to speak in
19 opposition? Okay. So Mr. Houston, and Commissioner, and Mr.
20 Clark, thank you. You've had the benefit of the discussion
21 going on in front of you, and so I mean, I think you all see
22 where we are.

23 Like, I mean, I don't see you guys -- you were
24 here last week? Two weeks back, right? And so, you know,
25 we talked about whether or not it was going to delay your

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1 project, I mean, I think that, you know, you see where the
2 Board is. We'd love to be able to do it. And it's not that
3 it's -- you know, it's definitely, clearly, something that
4 was within, again, what we, as a Board, would like to see
5 happen, also as a city, and also, you know, the things that
6 the Mayor wants to see happen.

7 But I don't think you're going to be able to get
8 there, and so I don't see the point of, you know, wasting you
9 all's more time now so that you can get to the next project
10 where you actually help people, and further push your
11 missions.

12 And, Commissioner, you know, this is where, you
13 know, we wish we could say yes to things, and so we're just
14 kind of where we are. Is there anything else you guys would
15 like to add in conclusion?

16 MR. HUGHES: We agree with you Commissioner
17 Shapiro and we actually already started working with the
18 Office of Planning on what does it look like to obtain the
19 zoning regs to acquire affordable housing to give you guys
20 a little more leeway.

21 CHAIRPERSON HILL: Yes, we got nothing. All
22 right. Okay. I'm going to go ahead and close the hearing.
23 Is the Board ready to -- oh, I'm sorry, Mr. Commissioner?

24 MR. CLUCK: If I may.

25 CHAIRPERSON HILL: Sure.

1 MR. CLUCK: I will just say this, it's unfortunate
2 that the BZA comes with cases all the time where people build
3 things first and ask for forgiveness later, which I don't
4 really condone at all, but it is unfortunate that next door,
5 four illegal units by market rate are there. And it's
6 unfortunate that we can't have -- the affordability, in this
7 case, isn't working for us, or the fact that the building
8 next door illegally did that and they're not getting
9 reprimanded for what they've done.

10 So I just find it -- I understand where you're
11 coming from, but I also feel very bad in this situation, this
12 specific situation, I feel it should be allowed because of
13 what's happened next door to it, because of the need for
14 affordability, and to market rate is great, but I live in the
15 neighborhood in the affordable housing myself, and I really
16 can't afford the market rate apartments in that area, and
17 it's just too bad that the regulations don't help us get to
18 affordability.

19 COMMISSIONER SHAPIRO: I couldn't agree with you
20 more on everything, and in terms of the four-unit building
21 next door, I don't know, maybe they could buy the one next
22 door with the money and convert it into affordable housing,
23 but I mean, you know, I'm with you. I agree with everything
24 you said.

25 CHAIRPERSON HILL: Yes, and we're disappointed,

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1 Commissioner. All right. So I'm going to close the hearing.
2 I think we basically deliberated, so I'm going to go -- is
3 there anything else the Board would like to add in terms of
4 their deliberation? Okay. I'm going to make a motion to
5 deny Application Number 20181, as captioned and read by the
6 Secretary, and ask for a second.

7 COMMISSIONER SHAPIRO: Second.

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

10 (Chorus of aye.)

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

13 SECRETARY MOY: Staff would record the vote as 4
14 -0-1, and this is on the motion of Chairman Hill to deny the
15 application for the relief requested. Seconding the motion
16 is Zoning Commissioner Peter Shapiro. Also in support, Ms.
17 John, Vice Chair Hart, no other members present.

18 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
19 Okay. Thank you, everybody. All right. The next case, Mr.
20 Moy, when you -- give me one second.

21 All right, Mr. Moy, you can call it whenever you
22 like.

23 SECRETARY MOY: All right. The next application,
24 if I may have parties to the table, to Number 20185 of David
25 Baillat and Mark, is it pronounced Knobbe? Knobbe, Knobbe,

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1 I'm sorry for bastardizing it, it's spelled K-N-O-B-B-E.
2 Captioned and advertised for special exception under Subtitle
3 E, Section 5201 from the non-conforming structure
4 requirements, Subtitle C, Section 202.2, and pursuant to
5 Subtitle X, Chapter 10 for variance from the lot occupancy
6 requirement, Subtitle E, Section 304.1, to construct a rear
7 addition to an existing semi-detached principal dwelling
8 unit, RF1 zone.

9 This is at 727 7th Street, NE, Square 890, Lot 22.

10 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
11 Moy. If you could please introduce yourselves for the
12 record, from my right to left.

13 MR. ECKENWILER: Mark Eckenwiler, Vice Chair, ANC-
14 6E, here on behalf of the ANC.

15 MS. HARRIS: Good morning, Pat Harris with Lerch
16 Early and Brewer on behalf of the Applicant.

17 MS. ROGERS: Good morning, Elizabeth Rogers with
18 Lerch Early and Brewer on behalf of the Applicant.

19 MR. BAILLAT: Good morning, David Baillat,
20 Applicant.

21 CHAIRPERSON HILL: Could you say your last name
22 again, sir, for me?

23 MR. BAILLAT: Baillat.

24 CHAIRPERSON HILL: Okay. Let's see. So Ms.
25 Harris, are you going to be presenting to us?

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1 MS. HARRIS: Ms. Rogers.

2 CHAIRPERSON HILL: Oh, Ms. Rogers. I'm sorry.
3 Who's Ms. Harris? Oh, okay. Oh, Ms. Harris. Oh, I'm sorry.
4 Got a little confused there. All right. Let's see, so I
5 know that, you know, we've all read through the record up
6 here, and so if you want to go ahead and walk us through your
7 presentation.

8 We also saw that the ANC has weighed in and they
9 also had a pretty substantial argument in terms of the
10 variance standard that is being met, and so we can get to
11 them as well.

12 And so but if you'd like to start whenever you
13 like and go ahead and put 15 minutes on the clock, just so
14 I know where we are, Mr. Moy, and if you go over, you go
15 over, but again, you know, kind of focusing on what it is
16 that you believe and how you're meeting the standards for us
17 to grant the application of relief, and you can begin
18 whenever you like.

19 MS. ROGERS: Great. Thank you. We did put
20 together a presentation, you've probably seen most of these
21 images, but I thought for, kind of, ease of reference, we've
22 put them together in this slideshow.

23 CHAIRPERSON HILL: Sure. Go ahead.

24 MS. ROGERS: So we're here today requesting a
25 variance from the lot occupancy standards and special

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1 exception relief from the limitations on addition to non-
2 conforming structures to allow for a modest, 107-square-foot,
3 partial rear addition, to fill in the missing dogleg of the
4 existing structure.

5 The property is situated on the edge of
6 residential neighborhood. It backs right up to the busy 8th
7 Street commercial corridor, and immediately abutting the
8 property to the north is a service alley, and all of the
9 backup house operations of those commercial establishments.

10 As demonstrated by our burden of proof and our
11 supplemental statements that we're submitting to the record,
12 this property is affected by several extraordinary situations
13 and conditions that make this property unique.

14 We understand from the letter submitted by the ANC
15 yesterday into the record, that they are concerned about
16 setting precedent here, and for the reasons we'll discuss,
17 we don't feel that that is an issue in this case.

18 The letter also appeared to indicate that the ANC
19 didn't have an issue with the improvements themselves, just
20 the relief that was being requested, or triggered, by the
21 improvements. These are just some existing conditions. So
22 the photo is showing you the alley and the front view.

23 A visual inspection of the house, the exterior,
24 will reveal that it's unlike any other house on the street.
25 The residence is shown, it's the yellow house on the far end,

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1 it's a wood-frame structure that has wood siding and is only
2 approximately 21-feet tall.

3 While all of the adjacent and surrounding dwelling
4 units are of a classic Victorian-style brick, approximately
5 30-feet tall. A lot of the other houses in the neighborhood
6 also have rear additions that extend much further into the
7 rear yard than this property does.

8 In fact, this is a picture of the base atlas map
9 that the ANC included in their letter, which we felt
10 highlighted the substantial disparities between this property
11 and the surrounding residential dwellings back at the time
12 of initial construction, is when this was supposedly taken,
13 so this is from 1920s.

14 What can't be seen from these exterior photos is
15 that this property does not have a habitable basement. It
16 only has a cellar that's about 5-1/2-feet tall, 6-feet at the
17 tallest point, whereas, all of the other surrounding
18 dwellings have full basements.

19 This gives them a whole additional floor, a
20 liveable space, that this residence does not have. These
21 physical disparities, both from the exterior and the
22 interior, support the Applicant's understanding and belief
23 that this property was originally constructed as a commercial
24 establishment back circa 1910.

25 Furthermore, the orientation of the property, as

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1 it relates to the existing improvements on the property, make
2 this property unique. The missing dogleg is located on the
3 northern portion of the property, immediately abutting the
4 commercial establishments.

5 Most end unit rowhomes abutting a commercial
6 district don't have doglegs, and where they do, the doglegs
7 are located internal to the lot, not on the commercial side.

8 This characteristic is actually evident in all of
9 the exhibits that were included in the ANC's letter, and this
10 distinction is really important. Here, the presence, if you
11 want to look at the bottom image, of the dogleg basically
12 leaves a 5-foot 8-inch narrow strip of land that's
13 effectively unusable, because of its adjacency to those back-
14 of-house operations.

15 Any planting or screening that would be necessary
16 to allow the Applicant to peacefully enjoy that portion of
17 their property would essentially consume all of that portion
18 of the yard, rendering it effectively unusable, unless it
19 could enclosed.

20 Conversely, the other end unit row dwellings that
21 abut the commercial zones can provide meaningful planting or
22 screening that would screen the remainder of their yard,
23 rendering it all usable.

24 It's these confluence of factors that we believe
25 creates an exceptional and unique situation for this

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1 property. Additionally, there are substantial practical
2 difficulties that are unique to this Applicant and
3 unnecessarily burdensome.

4 We're asking for 107-square-foot partial addition.
5 It's only 57-square-feet larger than what could be approved
6 by the Board through special exception, but that 57-square-
7 feet is meaningful. It's more than half of the addition that
8 we're proposing to construct.

9 Without the requested variance relief, we really
10 only have three options to add habitable space to this
11 structure. The first would be to excavate the basement,
12 which presents its own structural challenges. It's also
13 excessively cost prohibitive. The footings are likely not
14 deep enough to allow us to excavate down in order to get the
15 additionally headroom that we would need to make that space
16 habitable.

17 And additionally, because the footings are not
18 deep enough, it would require costly underpinning and other
19 structural -- present other structural challenges to that
20 option.

21 Second would be to construct a third-story
22 addition on this structure. Because this is a wood-frame
23 structure, unlike the other surrounding homes that are all
24 constructed of brick, the structure itself, and the frame,
25 is likely not strong enough to support a vertical addition.

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1 And again, going back to the footings, they're
2 also not likely sized large enough to support that third-
3 story addition.

4 There are also design and construction constraints
5 with a vertical addition, such as the code requirements to
6 ensure that the adjacent property's roof structure could
7 support the snowdrift with a vertical addition that render
8 this option infeasible.

9 And lastly, the final option we would have is to
10 demolish a portion of the existing carriage house that is on
11 the rear of the property. This also has its own design and
12 structural challenges.

13 The carriage house is actually not wide enough to
14 park two cars side-by-side, so the cars are parked tandem in
15 the garage. Therefore, if we had to shave off a few feet of
16 that existing carriage house in order to get our lot
17 occupancy down to 70 percent with this proposed addition, we
18 would lose one parking space.

19 And we feel this would actually have a greater
20 impact on the surrounding neighborhood by taking off --
21 taking away one of the existing onsite parking spaces.

22 The proposed addition will not have any detriment
23 to the public good, it won't affect the character of the
24 surrounding neighborhood, we're preserving the relationship
25 with the -- we're not extending the rear yard, so we're

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1 preserving that relationship with our neighbors.

2 And we're also, obviously, then not impacting
3 their light and air. It will be in keeping with the existing
4 architectural character of the home, and really, only visible
5 if you're standing in the rear of those commercial
6 establishments to our north.

7 The adjacent neighbors have written letters of
8 support. When I looked through the record this morning, it
9 looks like one of the neighbor's letters was no longer there.
10 There was an Exhibit 13 that was missing, so I do have 12
11 copies of that if I could submit that back into the record,
12 but we -- there's a second neighbor's support in the record
13 as well.

14 And so with that, I think that kind of summarizes
15 -- highlights the points that I wanted to cover, but we're,
16 of course, here to answer any questions you may have, and we
17 appreciate and agree with the Office of Planning's
18 recommendations.

19 CHAIRPERSON HILL: All right. If you want to submit
20 that to the Secretary, that would be great. Thank you.
21 Okay. Does the Board have any questions for the Applicant?

22 MEMBER JOHN: Can you point out where the dogleg
23 is in your exhibits?

24 MS. ROGERS: Sure. So if you look here, this --
25 and I can go back, this is the dogleg here. Can you see my

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1 cursor if I do it? No, you can't. If I touch on this one,
2 you can see it?

3 MEMBER JOHN: Can you point to a photograph of the
4 exhibit?

5 MS. ROGERS: Sure. So the dogleg is that -- do
6 you see that? It's that dark portion right there. You know
7 what might be helpful here, let me -- this is also a picture
8 of the existing, so the dogleg is right here.

9 MEMBER JOHN: So in exhibit -- oh, gosh, I don't
10 have it. There's an exhibit with storage -- 4. Can you go
11 to that exhibit? So is that the commercial area? Exhibit
12 4, the color photographs? If you scroll down. Okay.

13 MS. ROGERS: In my slideshow or --

14 CHAIRPERSON HILL: No, it's not in your slide
15 deck.

16 MS. ROGERS: Exhibit 4.

17 CHAIRPERSON HILL: The Board Members, in the
18 actual record.

19 MEMBER JOHN: In the record.

20 MS. ROGERS: Oh.

21 MEMBER JOHN: I'm trying to understand what these
22 photographs are showing me. Is the storage you're showing
23 on the commercial side? I don't know what these photographs
24 represent.

25 MS. ROGERS: The photographs are representing --

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1 they were submitted, these photos, the majority of them are
2 representing the back-of-house commercial operations that
3 face -- are they these photos, is what you're referencing?

4 MEMBER JOHN: Yes.

5 MS. ROGERS: Yes. So those are all just showing
6 you what's on the opposite side of the alley facing this
7 property, so it's all of the trash enclosures of the
8 commercial establishments. It's immediately across from the
9 -- so if our dogleg is right here, all of those are right
10 here, where I drew that line. They're immediately on the
11 other side of the alleyway.

12 MEMBER JOHN: Thank you.

13 VICE CHAIRPERSON HART: So, Ms. Rogers, okay, if
14 you were to remove a portion of the garage, you would remove
15 a portion of it and then you would have to -- it seems like
16 that would be somewhat difficult, only because there are,
17 kind of, two doors on it, and there's the side door on the
18 alleyway that's on the north.

19 It seems as though there's a large, like, you
20 know, I-beam that's over that doorway so that you'd have to
21 then, I'm assuming you'd have to then close off that door all
22 -- I mean, you'd have to, you know, basically, take all that
23 out, brick it over, and then -- I mean, it seems significant
24 to be able to do that.

25 MS. ROGERS: There are significant, kind of,

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1 practical construction constraints to doing so, as you're
2 mentioning, based on how it's constructed, also, how the
3 walls connect with the roof structure. We'd have to rebuild
4 the roof structure itself as well as the membrane.

5 And because the structure's existed for so long
6 on that property, as I'm sure you're aware, any kind of
7 adjustment to a portion of it can have rippling structural
8 effects on the remaining portion that we were trying to keep,
9 so there are significant challenges in addition to the loss
10 of the parking space.

11 VICE CHAIRPERSON HART: Thank you. And you're
12 also looking at the addition that -- the addition that you're
13 talking about would bring the building to, similar to what
14 the building is to the south of it. Back as far.

15 MS. ROGERS: That's correct. It would not extend
16 --

17 VICE CHAIRPERSON HART: About that.

18 MS. ROGERS: Yes. And just further south of that,
19 they have much larger -- extend much further into the rear
20 yard.

21 VICE CHAIRPERSON HART: And you also discussed
22 about this, because -- I think it's actually very easy to see
23 the -- that there is no, kind of, walk-in basement, or at
24 least the basement is, I don't know, fully below grade. I
25 don't know how to describe it that way, but you are able to

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1 go up? Did you actually think about -- I know that there was
2 a discussion in the application about going -- about
3 increasing the height, but could you talk about that a little
4 bit more?

5 MS. ROGERS: Sure. So that was something that the
6 Applicant had discussed with the architect, both from a cost
7 perspective, vertical additions, obviously, are much more
8 costly than a horizontal addition, but here, there are
9 challenges that would probably preclude that altogether as
10 an option, even if cost was kind of off the table.

11 Because it's a wood-frame structure, the architect
12 said that you'd have to, basically, kind of, rip up all of
13 the interior walls to shore-up the existing framing to be
14 able to support the additional load of another story.

15 Additionally, there are code regulations that
16 require us to show that our adjacent neighbor's roof could
17 support the snowdrift, so we would have to get access to
18 their property, open up and cut holes into the roof to
19 document, kind of, what load that they could carry, and in
20 his experience, there's only about 20 percent of the cases
21 where, 20 to 30 percent, that roof structure actually is
22 strong enough to support the additional snowdrift.

23 And obviously, then, that would require us
24 rebuilding their whole roof. So there's a whole, kind of,
25 cascading effect that made any kind of vertical addition,

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1 really, unrealistic in this instance.

2 And I think it would have a much greater impact
3 on the surrounding neighborhood, obviously, visually, you'd
4 be going up one whole additional floor, as opposed to, you
5 know, this rear addition, which won't be perceived by anyone
6 except for if you're standing in the rear of those commercial
7 establishments.

8 VICE CHAIRPERSON HART: Thank you. And one last
9 question, is the -- what is the size of the accessory
10 building with respect to the other accessory buildings in the
11 -- along the block?

12 MS. ROGERS: The size of the carriage house in
13 respect to --

14 VICE CHAIRPERSON HART: Yes.

15 MS. ROGERS: I actually don't have that
16 information. We hadn't looked at that. I mean, I think --
17 I'm going to look from a -- the majority of the -- I think
18 it's pretty comparable, is what I would say, without having
19 hard data to support that. I mean, I think a majority, you
20 can kind of see a few of them here, of the properties have
21 those structures; the rear carriage house.

22 VICE CHAIRPERSON HART: But the size. That's what
23 I'm asking about.

24 MS. ROGERS: Oh, the --

25 VICE CHAIRPERSON HART: The size of --

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1 MS. ROGERS: Like, the depth of it?

2 VICE CHAIRPERSON HART: Yes.

3 MS. ROGERS: I mean, the best I can go on to
4 answer that question right now, is, kind of, if I'm looking
5 back, kind of, historically at those, kind of, rear carriage
6 houses that were constructed, ours would be much deeper than,
7 kind of, what those are, assuming that they are largely
8 comparable to what they were.

9 Also, if you look at the aerial map, the one you
10 can see most evidently is kind of on the south portion, that
11 grey structure, which is obviously a lot more shallow than
12 ours, which is closer to 34-feet deep.

13 VICE CHAIRPERSON HART: Thank you.

14 CHAIRPERSON HILL: Anyone else? All right.
15 Commissioner, I suppose, do you want to ask questions or
16 would you like to go ahead and make your presentation?

17 MR. ECKENWILER: Just one question, Mr. Chair.

18 CHAIRPERSON HILL: Sure.

19 MR. ECKENWILER: And I apologize. I was trying
20 to look up something here.

21 CHAIRPERSON HILL: That's all right.

22 MR. ECKENWILER: So question for the Applicant.
23 I think you may have just said, and I may have not heard it,
24 do you have a depth dimension for the garage; front to back?

25 MS. ROGERS: We do. Front to back from the

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1 exterior walls is approximately just under 34 feet, I
2 believe.

3 MR. ECKENWILER: Okay. Just one follow-up
4 question then, I'm looking at your plat, which is Exhibit 2
5 in the case file, and you have an area figure there, looking
6 below the drawing, of 560-square-feet for the garage. And
7 if you divide 16.25, the lot width, into that, I actually get
8 about 34-1/2, so I'm just curious how confident you are about
9 the actual dimension of that building.

10 MS. ROGERS: Sure. I have the dimension --

11 VICE CHAIRPERSON HART: So is the question whether
12 or not it's 34 or 34-1/2?

13 MR. ECKENWILER: I'm just trying to figure out if
14 they know, because there seems to be some slipperiness to the
15 numbers here.

16 MS. ROGERS: I'm showing it's 34 feet 4 inches.

17 MR. ECKENWILER: Thank you. Nothing further, Mr.
18 Chair.

19 CHAIRPERSON HILL: Okay. All right. So,
20 Commissioner, go ahead and please give your presentation to
21 us and you can begin whenever you like.

22 MR. ECKENWILER: Sure. Thank you, Mr. Chair. So
23 as you saw in our letter, the ANC voted unanimously to oppose
24 this. Just clear out some of the underbrush here, our
25 opposition had nothing to do with the -- there's, of course,

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1 this ancillary special exception request because this is
2 already a non-conforming structure in terms of the lot
3 occupancy.

4 We really didn't care about that at all. That was
5 not where the concern lies. The concern lies exclusively
6 with respect to the request for variance relief. So as you
7 know, there are three prongs to a request for a variance.
8 The property has to suffer from some exceptional or
9 extraordinary situation or condition.

10 This doesn't even meet that prong, but then we go
11 to the other two prongs, which are, the strict application
12 will result in a peculiar and exceptional practical
13 difficulty owing to that supposed condition, and then third,
14 the relief can be granted without substantial detriment to
15 the public good or the zone plan.

16 So let's walk through those in order. First, the
17 condition. This is not some oddball-shaped lot. This is a
18 standard rectangular lot. These are more or less within the
19 norm, as dimensions for a lot on Capitol Hill. If anything,
20 this is pretty long. It's 116-foot long lot.

21 Strictly retaining -- there is no topographical
22 change that's been noted in the record. The photographs
23 don't reveal anything. This is certainly unlike the case,
24 I think it might have been Vice Chair Hart mentioned, there
25 was a case earlier in your meeting agenda that had a 40-foot

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1 drop in the back. This is not that.

2 This is garden variety rectangular rowhouse lot
3 on Capitol Hill. So the physical condition really is not any
4 different from, you know, any of the other surrounding
5 properties. Now, the Applicant has focused here on its
6 adjacency, the lot boundary, and the back of house for these
7 commercial properties fronting onto H Street.

8 But as we've made clear on pages, I think it's,
9 3, 4, and 5 of the ANC's letter, just looking within our part
10 of the H Street corridor, so just within ANC-6C, not even
11 going east, and not even looking at the District more
12 broadly, there are all kinds of properties that back up to
13 commercial buildings.

14 This is, in no way, exceptional, in no way
15 extraordinary, let alone unique, as the Applicant has
16 suggested. And while it's true that there are some impacts
17 from being next to a commercial zone. I mean, certainly, in
18 my SMD, which lies just to the west of this, we have issues
19 with, you know, trash sometimes, we have rats all over
20 Capitol Hill, including in the alleys behind these commercial
21 properties.

22 So I have no doubt that, you know, there are
23 impacts, but those are impacts that are widely felt,
24 especially on these kind of zone boundaries, and therefore,
25 there is nothing exceptional or extraordinary about this

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1 condition that would warrant relief.

2 I also want to point out here, and this may verge
3 a little bit, you know, into the, you know, practical
4 difficulty argument. The Applicant has rested much of its
5 argument on, well, this dogleg, it's right next to the alley,
6 and there's no screening, and therefore, it makes that
7 functionally unusable. I want you to think about the
8 implications of that argument, because that argument goes to
9 the entire backyard.

10 If you really buy that argument, this whole
11 backyard is next to an alley and whatever the impact is on
12 that dogleg is felt equally elsewhere on this property. So
13 by that logic, they should be able to build out to, it's not
14 quite 100 percent lot occupancy, because there's a little
15 setback, I think, from the alley at the rear, from the
16 garage, but frankly, that argument proves too much.

17 And, you know, the rest of the arguments here,
18 really, it's just kind of flimsy. These are make-weight
19 arguments that are kind of similar to saying, well, my house
20 is a frame house and the house next door is a brick bay
21 front. These are distinctions without a difference, and so
22 it is not, in any way, exceptional or extraordinary.

23 And I do want to point out that some of the
24 arguments here have rested on this garage being, you know,
25 original to the 1910 construction. As we pointed out in the

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1 base atlas, it's clearly not so. It was constructed sometime
2 after 1921, although I was not able to locate a construction
3 permit for that.

4 So that's the lack of extraordinary on that first
5 prong for a variance test. The second prong is exceptional
6 practical difficulty. I've already mentioned that -- this
7 argument that, you know, portion of the dogleg is, you know,
8 allegedly unusable, you know, owing to the adjacent
9 conditions. It really, it proves too much.

10 But also, the Applicant's -- I mean, this is an
11 existing condition. This is, I think, contrary to the
12 Applicant's claim, always been a residential property.
13 There's no indication that I've seen that this was ever
14 commercial. This has always been next to a commercial strip,
15 H Street had been that since forever, and the truth of the
16 matter is, they bought a house that's at somewhere around 67
17 percent lot occupancy right now, and they're trying to make
18 a virtue of that vice.

19 Trying to say, well, my house is already over lot
20 occupancy and therefore, I should be able to go up above 70
21 percent. And let me tell you, there are a lot of houses on
22 Capitol Hill that are way over 70 percent. I'm guessing my
23 house is probably somewhere between 85 and 90 percent, that
24 really is -- that is a road to madness if we start granting
25 variances, people want more lot occupancy because they

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1 already have so much.

2 And as we pointed out here, notwithstanding the
3 fact there may be some complications at shortening that
4 garage, let's be honest, this is not some tall, beautiful
5 carriage house, it's got a dwelling upstairs, and you're
6 going to, you know, upset the apple cart if you, you know,
7 start tinkering with it, it's a one-story shed structure with
8 a simple sloped roof and modifying that is not, you know, the
9 heavy lift that it's being made out to be.

10 Frankly, at, you know, 34, you know, and some
11 change, feet long, you can certainly shave off a few feet of
12 that. You can still have a side entrance, if they really
13 want to maintain, you know, two vehicle parking spaces, so
14 this argument about how the practical difficulty here is that
15 they might have to give up one parking space, I think, really
16 does not hold water.

17 And in any event, even if it did have to go down
18 to one parking space, I just don't see that as a -- that's
19 not something that can justify relief here.

20 But third, and last, I want to come to this, you
21 know, sort of, you know, public -- the detriment to the zone
22 rules, and this goes to something Commissioner Shapiro said
23 earlier, Ms. John echoed, and that is, once you start down
24 this road, if you give this relief to this Applicant at 72
25 percent, what are you going to say, and frankly, the ANC's

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1 asked itself this question, what would we say to the next
2 Applicant who comes to us for 75, or 80, or however much it
3 is that they want?

4 And we do, in fact, have exactly those cases in
5 the pipeline, similar lots, rectangular lots, you know, every
6 lot is a little different, but nothing so extraordinary as
7 to warrant variance relief, and we just don't think it's
8 appropriate to go down that road.

9 There is nothing magical about 70 percent. You
10 obviously wrestled with that a lot, you know, earlier today,
11 you've wrestled with that in earlier cases, but that's what
12 the rule is. And the test is supposed to be higher for a
13 variance, and it should not simply be, these seem like nice
14 people, this probably isn't going to do any harm to the next
15 door neighbors, there's also a question of equity.

16 And I would urge you, just on those grounds, to
17 deny the application. I've already signaled in our letter.
18 I think we would have no problem whatsoever if they wanted
19 to go up to 70 percent. And I think they could get there
20 pretty easily. It's not my job to rewrite the application
21 for them, nor is it the ANC's.

22 We're not here in the business of trying to make
23 things difficult for people who want to adjust their living
24 circumstances, but this really does violence to a pretty
25 clear rule on what is profoundly insubstantial justification

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1 in our view and so I'll rest there and happy to answer any
2 questions.

3 CHAIRPERSON HILL: Okay. Great. Does the Board
4 have any questions for the Applicant -- I mean, for the ANC?

5 VICE CHAIRPERSON HART: Thank you very much, Mr.
6 Eckenwiler, Commissioner Eckenwiler, for coming down, as you
7 do. So you don't think that the fact that they -- and I
8 don't know the rest of the block, so maybe you could kind of
9 give me a little bit more information on that, the fact that
10 they don't really have a basement, they're not looking to go
11 up, they're looking to go back, they don't actually have a
12 two-story, kind of -- the dogleg is not a two-story dogleg,
13 it is just the one story that's there.

14 It seems as though the neighbors, again, I'm just
15 looking at the -- didn't do a very thorough look at all this,
16 but just in looking at the -- what has been provided to us,
17 it seems as though this building is actually smaller, and I
18 don't know exactly how much smaller, but smaller than the
19 other houses that are around it, and it has this, you know,
20 no basement.

21 The dogleg is only a portion of one floor,
22 whereas, the other residences seem to -- on the block, seem
23 to have that -- seem to have -- they don't have that same
24 characteristic. They have basement space. They have, you
25 know, a full -- it seems like they have more constraint in

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1 terms of the amount of space in the house, and did you all
2 take that into consideration in looking at the rest of the
3 neighborhood or are you just saying that, well, that's just
4 kind of like, you know, there are ten houses that you can,
5 you know, think of that are similar?

6 MR. ECKENWILER: I think it's probably closer to
7 500, frankly, Mr. Vice Chair. I mean, these are, again, to
8 me, distinctions without a difference. We have houses all
9 over the Hill, all over ANC 6C, that have varying conditions.
10 Some have doglegs, some don't. Some have basements, some
11 have none.

12 I mean, like, just thinking about my block face,
13 some of the houses have basements, and then you go down and
14 suddenly they simply stop having basements. They come in all
15 shapes and sizes, but the variance test is about something
16 that is exceptional, and there really is nothing exceptional
17 here about this.

18 I do want to touch on your comment about, you
19 know, the primary dwelling, or the primary structure, being
20 somewhat smaller. I think the aerial view that we see here,
21 you know, up on the display, suggests that that may be true
22 for this house and its immediate neighbors, but again, I
23 think that's -- it's mistaken to focus on that.

24 This is about lot occupancy overall and you've got
25 this enormous, enormous garage, 35-feet deep, frankly, I

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1 can't think of many buildings on the Hill where there's an
2 outbuilding that big.

3 And so, you know, in some ways that makes this an
4 oddball, but it also means that, you know, there's a pretty
5 simple solution here that's not going to impact them. If
6 they want to tradeoff garage space for habitable space, that
7 seems like a pretty clear, you know, route to success for
8 what these applicants would like to do.

9 VICE CHAIRPERSON HART: Thank you.

10 CHAIRPERSON HILL: Okay. Let's see, so the only
11 question I have for you, Commissioner, and by the way,
12 Commissioner Eckenwiler, I mean, yes, so I was going to
13 mention was that, the case that you -- we don't -- because
14 at times, not necessarily just your ANC, but the ANCs in
15 general think that we kind of just don't focus on all of the
16 different issues before us necessarily and they make
17 statements like, this happens all the time.

18 The case that was before you guys, again, was for
19 affordable housing, that we denied, that we really wanted to
20 say yes to, so I'm just kind of clarifying that, you know,
21 we do say no to things that we really want to say yes to.
22 I'm just kind of making a statement.

23 I do have a question, which is that --

24 MR. ECKENWILER: Mr. Chairman, I just want to say,
25 I hope I didn't, you know, give the appearance of implying

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1 otherwise. I understand you take, you know, every case as
2 it comes.

3 CHAIRPERSON HILL: Okay. I appreciate that. And
4 did Ms. Rogers, did she come to present to you guys in terms
5 of the ANC?

6 MR. ECKENWILER: So the Applicants themselves, not
7 the counsel, came to our committee meeting on January 2nd,
8 because the committee vote was unanimous on this, and I
9 should emphasize, even the Commissioner for this SMD sits on
10 that committee with me, we put this on our consent calendar
11 for the full ANC, so that was dealt with by summary vote in
12 the full ANC. There were no presentations.

13 CHAIRPERSON HILL: Got you.

14 MR. ECKENWILER: And I was not aware that anyone
15 from the Applicant was there. In fact, it's my understanding
16 that they were not there, but there was -- you know, they had
17 no reason. We weren't going to hear from them anyway.

18 CHAIRPERSON HILL: The reason why I ask is, again,
19 I think that in terms of the confluence of factors that have
20 been presented to us, that's not something that you had heard
21 then, it was just the Applicant meeting with your group?

22 MR. ECKENWILER: Oh, no, we had their original
23 written -- the initial burden of proof, that's Case Exhibit
24 6, I think --

25 CHAIRPERSON HILL: Okay.

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1 MR. ECKENWILER: -- so yes, we've already seen
2 that, and we understood that they were trying to cobble
3 together these various, you know, alleged, you know,
4 distinctions and differences.

5 CHAIRPERSON HILL: Come on, like, cobble together
6 alleged, and so, like, I'm just -- we're just here trying to
7 figure it out, right? So but --

8 MR. ECKENWILER: I'm telling you what we think,
9 Mr. Chairman.

10 CHAIRPERSON HILL: Okay. Right. I know, and I
11 understand, and I'm letting you know, again, it's very clear
12 what you guys think, and that it's very clear what the
13 Applicant thinks, they have an opinion as well, as does the
14 Office of Planning. The adjectives you're using is --

15 MR. ECKENWILER: I don't want to leave you with
16 a misimpression, Mr. Chair, that we did not have, you know,
17 a full appreciation of the argument that they were attempting
18 to construct.

19 CHAIRPERSON HILL: Okay. Great. Thank you. All
20 right. So, Ms. Rogers, do you have any questions for the
21 ANC?

22 MS. ROGERS: I don't.

23 CHAIRPERSON HILL: Okay. All right. I'm going
24 to turn to the Office of Planning. Or does anyone have any
25 more questions for the Commissioner? Okay. Going to turn

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1 to the Office of Planning.

2 MS. MYERS: Hello. Crystal Myers with the Office
3 of Planning. I just want to start off by saying that the
4 Office of Planning looks at every case individually and in
5 this case, we noted that the Applicant is requesting a really
6 small, modest-sized addition.

7 We don't necessarily agree with all of the
8 arguments that the Applicant submitted in their two burden
9 of proofs, but we did agree with the argument that because
10 -- that the situation, the exceptional situation, is that
11 there is very little habitable space compared to the other
12 houses in the area.

13 And as it is a relatively small house, it is
14 reasonable to want to do a modest expansion. Most of the
15 houses in the area, as you can see from the photos here, are
16 taller, have more habitable space, and this one does not.
17 So we thought that Applicant made a convincing argument that
18 the other matter of right options to increase their habitable
19 space were impractical and would actually have a negative
20 impact on the immediate neighbors or in the general
21 neighborhood.

22 We felt that that is the variance argument and was
23 a suitable variance argument for the size that they were
24 requesting to do, and did not feel that there was any impact
25 on the public good or would have a substantial harm to the

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1 zoning regulations.

2 So we were in -- or we are in support. I would
3 also add that we didn't note this from the Applicant's aerial
4 here, it's difficult to see, there is a carriage house two
5 houses south, but it's covered by a tree right now, but there
6 is another one even closer to the Applicant's property.

7 Again, I don't know the full size, but that was
8 another thing to note, was the fact that their garage
9 carriage house is -- fits in with the character of that
10 alley, and there is, like, a garage carriage house, almost
11 on every lot to the south, so the closest one that we noted
12 was about two houses down.

13 So with that, we will rest on the recommendation
14 of the staff report and, you know, here for questions.

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

17 COMMISSIONER SHAPIRO: Just one, Mr. Chair. Did
18 you consider or explore in your analysis at all, what would
19 be involved in slightly shrinking the size of the garage so
20 that the lot occupancy issue would go away?

21 MS. MYERS: Yes, I mean, the Applicant's second
22 burden of proof was in response to our concerns and
23 questions, and one thing that we noted and were understood
24 after understanding this second burden of proof, is that, it
25 would have an impact on parking on the site. Yes, there's

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1 only one required parking space on this lot, however, having
2 two, clearly, has a better impact for the neighborhood, and
3 so reducing the size of the garage would have an impact on
4 the parking.

5 And we thought that seeing as this is a relatively
6 small addition, it would be impractical to actually reduce
7 the size of the carriage house, therefore, reducing the
8 parking on the site in order to do a relatively small
9 addition.

10 So we thought that that was a practical difficulty
11 to require that.

12 COMMISSIONER SHAPIRO: I'm just -- let me take
13 that one step further, I don't know if you did the math, or
14 maybe the Applicant, or the ANC, or somebody, I'm just trying
15 to wrap my head around how many linear feet of garage do you
16 need to tandem park two average-size cars?

17 MS. MYERS: I did not do the math, but I, you
18 know, as I said, I thought they made a convincing argument,
19 but I didn't crunch the numbers.

20 COMMISSIONER SHAPIRO: Okay. All right. Thank
21 you. Thank you very much. Thank you, Mr. Chair.

22 CHAIRPERSON HILL: Okay. Thanks. I'll give you
23 a chance, Mr. Commissioner, just give me one second, what was
24 it, so you guys have some questions for the Office of
25 Planning?

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1 VICE CHAIRPERSON HART: Yes, I do. Good morning.
2 So the ANC is basically saying that they just don't think
3 that the prongs have been met. They just think that this is
4 just kind of an ordinary place in the community. You've made
5 an argument that, well, it is somewhat -- it has some unique
6 characteristics, could you just talk about that a little bit
7 further?

8 MS. MYERS: Sure. And we respect the ANC's
9 argument, and like I said, we don't agree with every argument
10 that the Applicant supplied. One main one is that, we agree
11 that the lot is a standard-size lot. However, our concern,
12 and where we think the argument is made, is about the
13 structure itself, the house itself, is not suitable for any
14 expansion as a third story or as the Applicant has made the
15 argument, of going further into the basement.

16 So we think that the house itself is exceptional
17 for this area and the limited amount of habitable space, but
18 the lot size, no, that itself, we agree with the ANC on that.
19 We just disagree that the analysis has to be just on the lot.
20 We look at the structure as well as the lot.

21 VICE CHAIRPERSON HART: And are you also looking
22 at the fact that the -- well, I'm assuming you're looking at
23 the fact that the garage structure, the accessory carriage
24 -- the carriage house, is as large as it is in the rear yard?

25 MS. MYERS: Yes, we did look at, obviously, the

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1 carriage house, the structure, but, you know, as I said
2 earlier, we feel that that structure isn't significantly out
3 of character for that neighborhood. Like I said, there's
4 quite a few carriage houses, garages, on this lot, and we
5 actually think it's a benefit to have additional parking on
6 the site.

7 And for the size addition they're asking to do,
8 when you, I guess, balance, you know, the impact on the
9 Applicant to reduce their carriage house and take down, or
10 reduce the size of their parking spaces in favor of making
11 a little bit of room for the expansion, our view was that,
12 this size structure and this size addition, did not merit
13 that level of, I guess, destruction on the site.

14 So we were -- we respectfully disagree with the
15 ANC on that. And I also want to point out that we understand
16 that there's a special exception option, but the special
17 exception option would only result at about, I think, 50
18 square feet, which is, it's not meaningful, and we understood
19 that, which is why we were supportive of a very modest
20 increase in the lot occupancy by a variance, just to do 107
21 square feet. We were okay with that.

22 VICE CHAIRPERSON HART: Thank you.

23 CHAIRPERSON HILL: Okay. Does the Applicant have
24 any questions for the Office of Planning?

25 MS. ROGERS: No, I don't.

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1 CHAIRPERSON HILL: Okay. Does the Commissioner
2 have any questions for the Office of Planning.

3 MR. ECKENWILER: Yes, Mr. Chairman. Just a
4 couple.

5 CHAIRPERSON HILL: Sure.

6 MR. ECKENWILER: So, Ms. Myers, looking at Page
7 2 of the OP report, looking at this square, so Square 890,
8 you have a drawing here. I assume this is from D.C.
9 PropertyQuest? Okay. In your experience, that's pretty
10 accurate, depicting the existing conditions, footprints, of
11 structures?

12 MS. MYERS: I mean, roughly, I wouldn't, you know,
13 confirm 100 percent.

14 MR. ECKENWILER: But you're relying on it here,
15 obviously, you're presenting it to the Board.

16 MS. MYERS: It's an illustration to help the Board
17 understand where we -- the location.

18 MR. ECKENWILER: So looking at this, would you
19 agree with me that there are no other carriage houses on this
20 square with a garage as big as the one on this lot?

21 MS. MYERS: Not the, obviously, exact size,
22 however, as I mentioned, the one, two houses down, as you can
23 still see on the map here, looks like it is very close to
24 that size. Again, I do not know for sure, I didn't measure
25 it, but it is very close to that size, just from looking at

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1 it from the picture.

2 MR. ECKENWILER: Thank you.

3 CHAIRPERSON HILL: Okay. Great. Is there anyone
4 here who wishes to speak in support? Is there anyone here
5 who wishes to speak in opposition? Okay. I got one more
6 question for the Commissioner, actually, so, like, I mean,
7 they -- I understand the position of the ANC and I appreciate
8 the opinion of your ANC in terms of the variance, and that
9 you don't believe that this one has been met.

10 I'm a little curious in terms of the argument
11 that, you know, in terms of them shaving some, you know, off
12 the garage, and we get people here all the time yelling at
13 us about parking, so, you know, you'd lose a parking space,
14 possibly, and if you did, so my question -- I don't know, I'm
15 just saying, if you did lose a parking space, do you think
16 that would have changed the opinion of the ANC in terms of
17 the detriment to the public good, or, you know, them meeting
18 the variance standard?

19 MR. ECKENWILER: So to your answer question
20 directly, Mr. Chairman, not one iota. But more broadly, I
21 think that's not a correct assumption. This building is
22 34-feet long and change, so let's do the math here. Let's
23 imagine that you want to have a garage that's, say, 21 feet
24 front to back. I think that's about what mine is.

25 I mean, your typical car these days, unless you're

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1 driving an enormous SUV, can fit in about an 18-foot space
2 front to back, especially you're going, you know, straight
3 in. So let's say you give yourself, you know, 20 or 21 feet
4 for that building that's parking east-west.

5 You give yourself another 8 or 9 feet for the
6 building that's coming in -- the word, tandem, has been used
7 here, but really, this is kind of a T, sort of,
8 configuration. The, you know, vehicles are --

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

11 MR. ECKENWILER: -- perpendicular to each other.
12 Yes.

13 CHAIRPERSON HILL: Just because I got to --

14 MR. ECKENWILER: The point is --

15 CHAIRPERSON HILL: The point was no. You guys --

16 MR. ECKENWILER: But the point is --

17 CHAIRPERSON HILL: -- it wasn't going to change
18 your thing, whether or not --

19 MR. ECKENWILER: But the point is, they got
20 another 2 or 3 feet --

21 CHAIRPERSON HILL: They still might get it in
22 there, is what you're saying.

23 MR. ECKENWILER: They absolutely can still have
24 two parking spaces here.

25 CHAIRPERSON HILL: Okay. That's fine. I was just

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1 asking if it was going to change you all's opinion and the
2 answer was no. Okay. All right. Does anybody have anything
3 else? Okay. Going to close the hearing. Is the Board ready
4 to deliberate? Okay. Who'd like to start?

5 MEMBER JOHN: So, Mr. Chairman, I support the
6 application. I believe the Office of Planning's analysis,
7 both the written analysis and the live testimony was very
8 persuasive in describing how the Applicant meets the
9 requirement for a variance based on the confluence of
10 factors.

11 I think this is really a very small house. It has
12 no -- there's no opportunity to expand for living space in
13 the basement. I believe the Applicant has made a pretty good
14 argument on that basis. We've had a case this morning where
15 we explored the cost of underpinning and how expensive that
16 whole activity is, plus, this is a frame house.

17 The other option is that I'm not so persuaded by
18 the location being in the commercial area, but, you know, on
19 balance, this is really a very small addition. We have folks
20 coming in all the time on Capitol Hill asking to fill in
21 doglegs, and sometimes close to the 70 percent and sometimes
22 not.

23 This is a one-story addition, and so I think it's
24 a very modest addition, and so for all of those reasons, as
25 well as -- oh, and let me say, I do appreciate ANC's comments

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1 and considerations, and I have given, you know, thought to
2 that position.

3 But I'm also required to give great weight to the
4 Office of Planning, and I believe that their recommendations
5 -- and I believe that the Office of Planning has made a very
6 credible case for approving the application.

7 VICE CHAIRPERSON HART: So I think that this is
8 a fairly straightforward case. I understand that the ANC is
9 not in support of the case, while the Office of Planning is
10 in support of the case, and are recommending for the BZA to
11 approve the application for the, you know, reasons that are
12 given in the Office of Planning report.

13 The ANC brings up some concerns that are really
14 about the -- how the BZA would look at cases just in total
15 and understand how this might impact those cases in the
16 future. Given that I actually agree with my colleague about
17 this being a fairly modest project, that is kind of one
18 consideration, but I look at the -- while I understand that
19 the ANC has stated that they didn't believe that, you know,
20 this is -- well, they believe that this is a rectangular lot,
21 and there really wasn't an acceptable situation that was
22 included in it.

23 I think that the actual size of the building, the
24 issue with the basement, or their having to really dig out
25 the basement to create a livable space, and the large size

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1 of the carriage house in the back, accessory building in the
2 back, do actually create an exceptional situation in this
3 case.

4 And I would be voting in support of the
5 application. I do understand the ANC's point and, you know,
6 I think that we, as we will have to do, is look at each of
7 these projects as they come in and have to, you know, listen
8 to them and then vote accordingly.

9 But in this case, I think that I'd be able to
10 support the application, given the -- what the Office of
11 Planning report has stated. I'd be in agreement with that
12 as well as what the Applicant has put forward.

13 But again, with Board Member John, I didn't
14 necessarily have a -- I don't think that this being next to
15 a commercial use was a -- was something that I would be --
16 that I was using to make that determination. I'm really
17 relying on this being more the issue about the building
18 itself and the size of the building being as small as it is,
19 so that's all.

20 CHAIRPERSON HILL: Okay. I'm actually kind of
21 stuck a little bit. I thought that the argument that the
22 Applicant is making, I think, is the confluence of factors
23 that they put together in terms of -- I also wasn't, as far
24 as the commercial side, I didn't think that that was
25 necessarily going to be at play.

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1 I do think that the size, the habitable basement,
2 the wood frame not being able to support a vertical addition,
3 that those are things that I was taking into account in terms
4 of a confluence of factors for the first prong of the test.

5 I do think that, however, garage, and this is
6 where I'm a little stuck, is that, the shaving off a little
7 bit of the garage in order to get to 70 percent, you know,
8 that is something that could be done, however, the cost of
9 that as well as whether or not that is, you know, feasibly
10 possible, and/or if they would lose a parking space, and
11 these are, again, we're taking the testimony from the
12 Applicant as well as the Office of Planning, in terms of
13 losing the parking space.

14 Now, the ANC has made a point that that, possibly,
15 isn't going to affect the community, which, it wouldn't
16 affect their vote, so that they still would have been voting
17 no, however -- and that they could possibly still fit two
18 cars in the garage, but that's where I'm kind of leaning a
19 little bit more in favor in terms of just, kind of, the
20 confluence of factors in that, it is a small house.

21 But I guess I'm just kind of torn again in terms
22 of the variance test, insofar as it being a small addition,
23 is not necessarily -- so sometimes when we have these
24 discussions, the fact that it is modest tends to work in the
25 favor, and also then sometimes -- and now it's really, since

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1 the ANC has made such a strong argument about their concerns
2 about how this might affect future cases.

3 And again, what we're always stuck with is that
4 it's the case that's before us that actually matters, but
5 that the argument that it's such a nominal difference, is
6 that an argument enough to actually grant the variance, is
7 what I sometimes just kind of struggle with.

8 I do believe that I will be voting in favor. I
9 believe that the Applicant has made the case. I do also
10 think that the ANC has made a very strong case as to how this
11 isn't necessarily that unique, but I would probably be in
12 agreement with the Office of Planning and vote in favor of
13 the application.

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
15 echo your comments and what I heard from the fellow Board
16 Members. Yes, I'm in a bind as well. I think the difficulty
17 that I'm -- what I'm struggling with is that where I end up
18 at the end of this bind is, you know, perhaps I don't even
19 have enough information.

20 You know, if I had a little bit better sense of
21 what it means to shave off some of this garage and whether
22 -- because the additional parking space actually does matter
23 to me, and I'm still giving great weight to the testimony of
24 the ANC, but even if the ANC, it doesn't change their view,
25 it helps inform my view.

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1 But I also don't want to drag this on anymore.
2 I'm not inclined to support this because I feel like there
3 is another option, and I'm not even inclined to spend a whole
4 lot of time arguing any more about it, and, you know, we vote
5 the way we vote.

6 CHAIRPERSON HILL: Okay. All right. Well, I also
7 think that I don't know if that additional information that
8 you may or may not receive, Mr. Shapiro, would be helpful to
9 either you or I --

10 COMMISSIONER SHAPIRO: I agree.

11 CHAIRPERSON HILL: -- in getting to a decision,
12 however, I do believe that I can vote in favor of this
13 application due to the testimony that was given, as well as
14 that of the Office of Planning. So I'm going to make a
15 motion to approve Application Number 20185, as captioned and
16 read by the Secretary, and ask for a second.

17 MEMBER JOHN: Second.

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

20 (Chorus of Aye.)

21 CHAIRPERSON HILL: All those opposed.

22 COMMISSIONER SHAPIRO: Nay.

23 CHAIRPERSON HILL: Mr. Moy, the motion passes.

24 SECRETARY MOY: Staff would record the vote as
25 3-1-1, and this is on the motion of Chairman Hill to approve

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1 the application for the relief requested. Second to the
2 motion is Ms. John. Also in support, Vice Chair Hart.
3 Opposed to the motion is Zoning Commissioner Peter Shapiro.
4 No other members present.

5 CHAIRPERSON HILL: Thank you, MR. Moy. Thank you
6 all very much. Thank you for coming down. We're going to
7 take a break and then we're going to come back and figure out
8 what we're going to do next, when lunch may happen. Thank
9 you.

10 (Whereupon, the foregoing matter went off the
11 record at 11:47 a.m. and went back on the record at 12:07
12 p.m.)

13 CHAIRPERSON HILL: Hey, Mr. Moy, okay. Let's get
14 back here. We're going to move some things around, if the
15 people are here, we'll see what happens. My hope is that
16 we're going to get through everything before the appeal and
17 then have lunch. And so we'll see what that means.

18 I think that we're going to hear next, Mr. Moy,
19 20069. That's the only thing we're going to take out of
20 order at this time and you can call it when you like.

21 SECRETARY MOY: Thank you, Mr. Chairman. The
22 Board is back in session and my time is about -- shows about,
23 at or about, 12 o'clock p.m. And I'm going to call to the
24 table, Application Number 20069, Deidra Barksdale, and I'm
25 also going to ask for a confirmation from the Applicant, the

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1 relief, but I believe that it's been amended.

2 And what's before us is request for special
3 exceptions from the general penthouse requirements, Subtitle
4 C, Section 1500.4, and Subtitle C, Section 1504, from the
5 penthouse setback requirements at Subtitle C, Section
6 1502.1c, to construct a new rooftop access penthouse on a
7 existing semi-detached flat in an RF1 zone.

8 This is at 100 S Street, NW, Square 3104, Lot A04.
9 And I believe -- I'm just checking, Mr. Chairman, to be sure
10 that I'm looking at the right case. No, okay. That's it.
11 Strike what I said earlier, but we're good.

12 CHAIRPERSON HILL: Okay. Great. Could you please
13 introduce yourself for the record?

14 MS. BARKSDALE: Deidra Barksdale.

15 CHAIRPERSON HILL: Okay. Ms. Barksdale, I assume
16 you're representing yourself?

17 MS. BARKSDALE: I am.

18 CHAIRPERSON HILL: Okay. So we moved you up
19 because I knew you had some issues that we're trying to deal
20 with, so I'm going to try to be as efficiently as possible
21 with this.

22 MS. BARKSDALE: Thank you so much.

23 CHAIRPERSON HILL: Okay. So you have already
24 built this. This is there.

25 MS. BARKSDALE: Yes.

1 CHAIRPERSON HILL: Okay. Have you worked through
2 the Office of Planning and do you understand what their
3 issues are with it?

4 MS. BARKSDALE: I don't really because some of the
5 stuff is verbal. I mean, I was really blind-sided by the
6 report when Maxine sent it to me because her and I had been
7 working together and I do appreciate all the work that she's
8 done, but I really think that this is a rather unique case.

9 CHAIRPERSON HILL: Okay. Give me one second. I'm
10 just kind of pointing out that the Office of Planning's
11 report is in opposition.

12 MS. BARKSDALE: I know.

13 CHAIRPERSON HILL: And then this is something that
14 has already been built.

15 MS. BARKSDALE: Yes.

16 CHAIRPERSON HILL: And so we have to kind of --
17 you know, we're going to be looking at this as if it hasn't
18 been built, just to let you know. And so then you also have
19 to go through -- the relief that you're requesting is also
20 -- you're going to have to go through all the standards with
21 which we can grant the relief, correct, and you understand
22 those standards?

23 MS. BARKSDALE: I think that there was a new
24 standard that was just introduced that I'm not quite sure of
25 because it was identified during the Office of Planning

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1 report, and that's one of the concerns that I have, is that
2 -- one of the concerns that I have with this overall process
3 is, what you just mentioned, in terms of that it having to
4 be evaluated on the basis that it has already been built.

5 I mean, that it has not been built, when it
6 actually has already been built.

7 CHAIRPERSON HILL: Right. But that's the whole
8 point.

9 MS. BARKSDALE: Right.

10 CHAIRPERSON HILL: Like, you're not supposed to
11 have built it until you got permission to build it.

12 MS. BARKSDALE: Right. But it was an error on the
13 part of DCRA, in terms of, they issued the permit for it to
14 be built, and that's why it was built, so it's really their
15 error in terms of them issuing the permit. And then also,
16 I guess in terms of the report that Maxine issued, the other
17 issue that I would like to really point out and make sure
18 that the Board is aware is that, another error of the DCRA
19 in terms of the relief that was required, in the report that
20 she stated, she's actually asking me to go back and revise
21 my application.

22 This is, again, pointing out another error of the
23 DCRA in terms of them not identifying up front before I even
24 started this process, the applicable relief that was needed
25 in the beginning.

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1 CHAIRPERSON HILL: So is it your contractor that
2 didn't understand?

3 MS. BARKSDALE: No, it's DCRA. They were the ones
4 that did an evaluation and made me come to this process. In
5 terms of the community support that I received, and really,
6 my opposition in coming her is because --

7 CHAIRPERSON HILL: Yes, that's okay, Ms.
8 Barksdale, I'm going to interrupt you just one second --

9 MS. BARKSDALE: Okay.

10 CHAIRPERSON HILL: -- because I want you to go
11 ahead, I've asked you a bunch of questions, but you still
12 have to walk us through your presentation --

13 MS. BARKSDALE: Okay.

14 CHAIRPERSON HILL: -- and how you think you're
15 meeting the standard for us to grant the application.

16 MS. BARKSDALE: Okay.

17 CHAIRPERSON HILL: So I'm going to put 15 minutes
18 on the clock and you can begin whenever you like.

19 MS. BARKSDALE: Okay. So in terms of I guess I
20 just would like to get some background in terms of how we
21 kind of got here. I was in the process of renovating my
22 house, we realized that we didn't have any storage space, and
23 space for mechanical equipment, and we asked -- we went and
24 worked with DCRA and was issued a permit to build what was
25 essentially a penthouse.

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1 At that time, and I can go into some other details
2 in terms of just arduous process we had to go through in
3 terms of, there's one particular neighbor, and I think we all
4 know who that person is --

5 CHAIRPERSON HILL: I don't know who that person
6 is and you don't need to mention who that person is, but
7 please go ahead with your report.

8 MS. BARKSDALE: Okay. And so that person started
9 to really launch, like, what equated to harassment in terms
10 of us building it and in terms of us renovating our property.

11 And I guess one of the things that I learned in
12 terms of DCRA and their process, is that, it's a
13 complaint-driven organization.

14 CHAIRPERSON HILL: Ms. Barksdale, that's not true,
15 and I'm not here to kind of discuss how DCRA, kind of, works.
16 I'm just trying to figure out what it is that you -- do you
17 understand the standard you're trying to argue?

18 MS. BARKSDALE: Yes.

19 CHAIRPERSON HILL: Okay. Please just argue the
20 standard.

21 MS. BARKSDALE: Okay. So in terms of -- so I
22 guess I'll just use the Office of Planning report in terms
23 of going through the various standards. So the standard in
24 terms of the square footage was just identified as --
25 actually, I just -- I was verbally told about it, I think,

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1 a few weeks ago, and then it was something that Maxine had
2 said that she was going to put in the report.

3 In the report, she states that the Zoning
4 Administrator notified me of that. I have not had any
5 conversations with the Zoning Administrator regarding the
6 particular square footage issue.

7 So that is something that is new that was just
8 brought to my attention.

9 CHAIRPERSON HILL: Okay. I'm sorry, Ms.
10 Barksdale. So your caption and what is before us as far as
11 you're concerned, and what you understand, are these special
12 exceptions. The Office of Planning is pointing out that you
13 need an area variance as well.

14 MS. BARKSDALE: Exactly. Yes.

15 CHAIRPERSON HILL: In addition, and so you haven't
16 made that argument yet because you didn't know about it until
17 just now, is that what you're telling me?

18 MS. BARKSDALE: I knew about it a few weeks ago,
19 but it was something that Maxine said that she was going to
20 address in the report, not knowing that in the report it's
21 actually saying that I should have -- what she's requesting
22 is that I actually go back and modify my application, that
23 was not done because I thought that it was going to be
24 addressed, actually, to the affirmative in her report.

25 CHAIRPERSON HILL: Okay. So as of now, you're not

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1 arguing -- do you even understand, I'm just saying, what a
2 variance is and the argument that you need to make for a
3 variance?

4 MS. BARKSDALE: I kind of do.

5 CHAIRPERSON HILL: Kind of do. Right. So were
6 you here this morning?

7 MS. BARKSDALE: I was here this morning.

8 CHAIRPERSON HILL: Everything we've been talking
9 about have been variances.

10 MS. BARKSDALE: Right.

11 CHAIRPERSON HILL: And they're very hard to --
12 there's three prongs, it's a very difficult bar to reach,
13 it's not easy, and so you've seen everything that took place
14 to get us to that point, and so I'm just kind of pointing
15 that out, that now, if you do need a variance, you're going
16 to have to go back and try to figure out an argument to
17 present to us because, currently, the Office of Planning --
18 well, and I can turn to the Office of Planning in a little
19 bit, currently, they do think you need a variance, and if you
20 do need it, then you have to make an argument for that
21 variance.

22 And as of now, you've only made arguments, I
23 suppose, for the special exceptions that are before us, and
24 then you might have to go back and -- you know, we'll have
25 to see what happens in terms of if you need to add that

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1 variance to your application.

2 MS. BARKSDALE: Right. And I guess if I need to
3 add the variance to the application, then what I'm saying is
4 that, DCRA should have added it to their referral memo to
5 refer me to this office.

6 CHAIRPERSON HILL: All right. We can talk through
7 the DCRA issue, I'm kind of curious also, with the Office of
8 Planning.

9 MS. BARKSDALE: Right. Like, why would I need to
10 -- in terms of how I got here was a memo from DCRA stating
11 the relief that was needed.

12 CHAIRPERSON HILL: I'm going to interrupt you, you
13 got here -- you already built something, right?

14 MS. BARKSDALE: Right.

15 CHAIRPERSON HILL: And so then when were you then
16 made aware that what you built --

17 MS. BARKSDALE: After it was built.

18 CHAIRPERSON HILL: Right. No, no, I'm saying, but
19 who made you aware that you needed relief?

20 MS. BARKSDALE: DCRA.

21 CHAIRPERSON HILL: Okay. Right. So DCRA, but
22 you're saying that DCRA issued you permits for what you
23 built.

24 MS. BARKSDALE: Yes, they did.

25 CHAIRPERSON HILL: Okay. Does the Board have any

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1 questions for the Applicant?

2 VICE CHAIRPERSON HART: Well, the Zoning
3 Administrator submitted a memo that's Exhibit, I think, 2,
4 and in that memo, and there isn't another memo, if I'm
5 correct.

6 MS. BARKSDALE: No, there's not. It's just one.

7 VICE CHAIRPERSON HART: And so that memo actually
8 -- which is dated February 2017, states that you -- states
9 the relief that you're required to have for us, so between
10 February of 2017 and now, which is about three years, you
11 proceeded, and I'm not exactly sure what that timeline is,
12 but you proceeded to build this to get the permitting to
13 actually get this --

14 MS. BARKSDALE: No, that's incorrect. So I
15 received the permit way in advance of that, and that's when
16 --

17 CHAIRPERSON HILL: In advance of what? I'm sorry.

18 MS. BARKSDALE: In advance of the memo, okay. So
19 I was in the process of renovating my entire home, and so the
20 permit was -- an addendum to build the penthouse was an
21 addendum to the original permit.

22 COMMISSIONER SHAPIRO: When did you build the
23 penthouse?

24 MS. BARKSDALE: It was in 2016.

25 COMMISSIONER SHAPIRO: Thank you.

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1 VICE CHAIRPERSON HART: Yes, I don't have any
2 other questions.

3 MEMBER JOHN: I have a question. The photograph
4 of the penthouse shows that it's not complete. There's no
5 siding on it. Is that the current condition?

6 MS. BARKSDALE: It is.

7 MEMBER JOHN: Okay. And what did the original
8 permit authorize you to build? What was the size of the
9 penthouse that you were authorized to build?

10 MS. BARKSDALE: It was the exact size that is on
11 -- in the picture, and the exact size that we built.

12 MEMBER JOHN: And do you have drawings, staff
13 drawings, from DCRA showing that you're authorized to build
14 a penthouse of that size?

15 MS. BARKSDALE: Yes.

16 MEMBER JOHN: Is that in the record?

17 MS. BARKSDALE: I don't know -- I don't think that
18 that was in the record, but it was part of the -- what was
19 issued for the permit.

20 CHAIRPERSON HILL: So you built it in 2016?

21 MS. BARKSDALE: I did.

22 CHAIRPERSON HILL: And so how come it hasn't been
23 finished?

24 MS. BARKSDALE: Because what happened was, I was
25 in the process of renovating my entire home, and so what they

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1 did was, they did a stop order just on the --

2 CHAIRPERSON HILL: The stop work order?

3 MS. BARKSDALE: Stop work order just on the
4 penthouse, not on the rest.

5 CHAIRPERSON HILL: When did they issue you the
6 stop work order?

7 MS. BARKSDALE: Probably around the time of that
8 date of that memo, or, like, shortly before that. So the
9 stop --

10 CHAIRPERSON HILL: So three years back.

11 MS. BARKSDALE: Yes.

12 CHAIRPERSON HILL: Ms. Barksdale, how come it took
13 you so long to get to us?

14 MS. BARKSDALE: That was kind of what I was
15 getting into in terms of the complaint of one person in our
16 neighborhood that --

17 CHAIRPERSON HILL: I see, so you were just going
18 to leave it and just hope that it went away?

19 MS. BARKSDALE: What do you mean?

20 CHAIRPERSON HILL: No, I was going to say, like,
21 so --

22 MS. BARKSDALE: No, we were in the process of
23 trying to get back in our house. We had already been out of
24 our house for three years.

25 CHAIRPERSON HILL: So I'm just trying to

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1 understand, the stop work order --

2 MS. BARKSDALE: Right.

3 CHAIRPERSON HILL: -- your stop work order was in
4 2017.

5 MS. BARKSDALE: Right. And so we proceeded to
6 build the rest of the house, notwithstanding -- we weren't
7 allowed -- I wasn't allowed to touch the penthouse, but I was
8 allowed to build the rest of my house.

9 CHAIRPERSON HILL: What I was trying to understand
10 is, why didn't you come back before us to try to figure out
11 how to resolve the stop work order issue until now?

12 MS. BARKSDALE: Because I was dealing with trying
13 to renovate the rest of my house and to get my two kids back
14 in the house.

15 CHAIRPERSON HILL: Okay.

16 MS. BARKSDALE: We have been out of the house
17 trying to build the house, for nearly six years, because of
18 various issues, you know, in terms of the neighborhood and
19 different things, this particular person that I was referring
20 to, and so just trying to get my house -- getting my kids
21 back in the house.

22 CHAIRPERSON HILL: Okay.

23 MS. BARKSDALE: We've moved three times, so I
24 mean, we were just --

25 CHAIRPERSON HILL: I'm just trying to understand

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1 --

2 MS. BARKSDALE: Yes, so I'm just saying.

3 MS. BARKSDALE: -- the penthouse, because what you
4 just told me is that, three years ago, you got a stop work
5 order, and that's been sitting there like that for three
6 years.

7 MS. BARKSDALE: Yes.

8 CHAIRPERSON HILL: And so that's what I'm saying,
9 it's an -- it seems like a very long time to me --

10 MS. BARKSDALE: Yes.

11 CHAIRPERSON HILL: --because you try to start to
12 figure out how to deal with that penthouse.

13 MS. BARKSDALE: Right.

14 CHAIRPERSON HILL: And that's okay, I'm just
15 trying to understand.

16 MS. BARKSDALE: No, that's fine. It's a fair
17 question, but I mean, I was so exhausted and so financially
18 strapped after finished the rest of the renovation that I was
19 just trying to, like, just get myself together and just be
20 stable for a little while. And also, really, trying to say,
21 like, why do I need to go back through this process? And
22 really, we were, like, having those discussions back and
23 forth.

24 CHAIRPERSON HILL: Okay. I'm going to figure out
25 what the permit is and what you did get approval to build.

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1 Does anybody have any questions? Because I want to hear from
2 the Office of Planning. I'm sorry, could I hear from the
3 Office of Planning?

4 MS. BROWN-ROBERTS: Okay. Good morning, Mr.
5 Chairman and Members of the Board, when we got this
6 application, we noticed that it had the relief for -- that
7 was in the Zoning Administrator's referral.

8 After looking at it further, we realized that it
9 did not meet the square footage for the storage area. And
10 so I went back to the Zoning Administrator and discussed it
11 with him, and he said, yes, that would need a variance. I
12 --

13 CHAIRPERSON HILL: In addition to the special
14 exceptions.

15 MS. BROWN-ROBERTS: In addition to the special
16 exceptions. I told Ms. Barksdale about that and said, you
17 know, she may need to go back to the Zoning Administrator to
18 get a new referral if she did not agree with me. And so --
19 but nothing happened. She didn't go and so therefore, that
20 is why we had put it in our recommendation, regardless of not
21 having the referral from the Zoning Administrator.

22 I mean, that is something that we do a number of
23 times.

24 CHAIRPERSON HILL: Right, but if the Applicant
25 doesn't want to argue the area variance, then they don't have

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1 to.

2 MS. BROWN-ROBERTS: They don't have to.

3 CHAIRPERSON HILL: And that's just on them. They
4 won't get the permits if --

5 MS. BROWN-ROBERTS: Right.

6 CHAIRPERSON HILL: -- it turns out that they need
7 --

8 MS. BROWN-ROBERTS: When they go back to get the
9 permits. Right.

10 CHAIRPERSON HILL: -- the area variance.

11 MS. BROWN-ROBERTS: Right.

12 CHAIRPERSON HILL: You're going to be back before
13 us again.

14 MS. BROWN-ROBERTS: Right. Right.

15 CHAIRPERSON HILL: But, however, you're still in
16 denial of the special exceptions that have also been put
17 forward.

18 MS. BROWN-ROBERTS: Yes, because I think that it
19 flows over, also, from having the area variance for the size
20 of the penthouse. When you look at the requirements for the
21 special exception, one of the things it talks about is that
22 in the RF-1 zone, the penthouses are restricted for certain
23 reasons.

24 And so this penthouse is so much larger that it
25 doesn't meet those restrictions anymore. And so that is

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1 where our recommendation for denial flows.

2 CHAIRPERSON HILL: Okay. And then, Ms. Barksdale,
3 you are aware, again, of the one-to-one setback that you're
4 requesting as well as the other special exception, correct?
5 I'm sorry, you need to push the button.

6 MS. BARKSDALE: It's only not set back on one side
7 and again, you know, this is a situation where, you know, to
8 be honest, if we had known, you know, all the requirements
9 and, you know, DCRA had let us know what the requirements
10 were for the penthouse in the beginning, that we could have,
11 essentially, just set it back on that one side.

12 CHAIRPERSON HILL: Sure. I mean, well, I'm
13 turning to the Office of Planning, so how did they -- and I
14 always get confused about this, how did they get permits to
15 build it?

16 MS. BROWN-ROBERTS: When I looked at the plans,
17 I think I saw the approval on, like, the electrical and the,
18 I think, one of the mechanical drawings. I'm not sure if it
19 was on the plans that the zoning division reviewed.

20 CHAIRPERSON HILL: Okay. So it could have been
21 potentially been the error of the contractor?

22 MS. BARKSDALE: No.

23 MS. BROWN-ROBERTS: Well, it could have been,
24 potentially, that the sheet that the zoning people usually
25 review, that it may not have been shown in that sheet.

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1 CHAIRPERSON HILL: Okay. So all right. Does
2 anybody have any further questions for the Office of
3 Planning?

4 COMMISSIONER SHAPIRO: I'm a little confused. Is
5 it your belief that there was some error on the part of the
6 Zoning Administrator; DCRA? I know it's hard to throw
7 another agency under the bus, but, you know --

8 MS. BROWN-ROBERTS: Right. If you look at the
9 plans in total, and here is where my mind may not be fully
10 correct, is that, when I looked at the sheets, they were --
11 it was shown that the -- the penthouse was shown, like, on
12 the electrical sheet, and on the mechanical sheet, but the
13 front sheet that the Zoning Administrator usually -- where
14 you have all the -- how they meet the zoning requirements,
15 it wasn't shown on that sheet.

16 So I don't know if they didn't go back to look at
17 every sheet within the package, you know?

18 COMMISSIONER SHAPIRO: So perhaps this is a
19 question for you, perhaps this is a question for OAG, I just
20 don't understand. Now, if DCRA screwed up, what does that
21 even mean for us? How do we take that into account when we
22 have an application before us?

23 MS. BROWN-ROBERTS: Well, again, I mean, if DCRA
24 had -- we have, in other cases, where DCRA has made an error
25 and the Applicant has made the argument that this was, you

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1 know, such an egregious error by DCRA that the -- that, you
2 know, the variance for a special exception should be approved
3 because it was their error why she went ahead and built that.

4 I think if, you know, she had outlined that
5 argument, then we could proceed from there.

6 CHAIRPERSON HILL: And now, Commissioner Shapiro,
7 I mean, we had asked this from OAG before, I'm asking OAG
8 now, like, I forget what has happened in the past. Haven't
9 we been in a situation where DCRA has made an error and then
10 that's the argument for the variance?

11 MS. NAGELHOUT: Yes, the Zoning history of a
12 property is something that can be taken into account for
13 purposes of finding exceptional situation or practical
14 difficulty. I don't think that's relevant to the special
15 exception, because for a special exception, you just apply
16 the special exception criteria, but for a variance relief,
17 I think the permitting history could be relevant.

18 On the other hand, this is not an appeal. It's
19 a variance application.

20 COMMISSIONER SHAPIRO: If I can, Mr. Chair, this
21 is a question for Ms. Barksdale. Just help me to understand
22 -- put this in perspective in your life, you're living in the
23 house.

24 MS. BARKSDALE: Yes.

25 COMMISSIONER SHAPIRO: The penthouse is partially

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1 built.

2 MS. BARKSDALE: Yes. It's, like, we have
3 literally not been able to do anything to that particular
4 area since --

5 COMMISSIONER SHAPIRO: I'm with you. I just want
6 to make sure I understand.

7 MS. BARKSDALE: Okay.

8 COMMISSIONER SHAPIRO: So it's an annoyance and
9 you can't use it as storage.

10 MS. BARKSDALE: We can't use it as anything. It's
11 not insulated. It's not anything like we --

12 COMMISSIONER SHAPIRO: Is it infecting the rest
13 of your house in any way?

14 MS. BARKSDALE: It is.

15 COMMISSIONER SHAPIRO: Is it compromising the
16 integrity of --

17 MS. BARKSDALE: It is compromising the integrity
18 because we've had various leaks that have come up there and
19 we haven't even been able to appropriately go up there and
20 make sure that the leaks have been taken care of, because
21 every time we go up there to even look around, we get called
22 on by this particular individual in our neighborhood, and
23 then we, you know, like, inspectors are coming to our house
24 and saying, what are you doing?

25 And we're like, we're just looking to make sure

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1 there's no leak. I actually submitted an application for --

2 COMMISSIONER SHAPIRO: I hear you.

3 MS. BARKSDALE: -- a limited --

4 COMMISSIONER SHAPIRO: I hear the energy that you
5 have around this.

6 MS. BARKSDALE: Yes.

7 COMMISSIONER SHAPIRO: But hold that at bay.

8 MS. BARKSDALE: Okay.

9 COMMISSIONER SHAPIRO: So you're talking about the
10 integrity of the penthouse. I'm talking about the integrity
11 of the rest of the house.

12 MS. BARKSDALE: Integrity of the house. Yes,
13 because it's a big hole, basically, that's just open, that's
14 uninsulated, that's leading up to this particular area.

15 COMMISSIONER SHAPIRO: Okay. All right. Thank
16 you.

17 CHAIRPERSON HILL: Okay. I don't know where the
18 Board is with this, or how we can kind of, like -- I mean,
19 I guess, and I'm trying to also help Ms. Barksdale so that
20 we can understand what's going to end up being before us.
21 I mean, right now, the Office of Planning is mentioning that
22 you need an area variance, so you don't have the area
23 variance listed on your application at this point, right?

24 MS. BARKSDALE: Right.

25 CHAIRPERSON HILL: And I'm just saying, and if you

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1 do -- and the Office of Planning seems to think you need an
2 area variance, so even if you were somehow to argue the
3 special exceptions that are before us, and you went back to
4 get your permits, you would then be rejected again because
5 you need an area variance.

6 So what the Office of Planning is saying is that
7 you could go to the Zoning Administrator and see whether or
8 not they, the Office of Planning, is wrong, which, I don't
9 know -- I would doubt it, so I would suggest, perhaps,
10 working with the Office of Planning to see where you can kind
11 of clean this up and/or understand how you would make an
12 argument about DCRA -- if DCRA is how you got here, then
13 that's kind of the argument that I guess you have to make,
14 because currently, you're not going to make an argument for
15 the special exceptions.

16 I mean, the one-to-one setback, you're like, you
17 said it's only on one side. Well, it doesn't matter which
18 side it's on, right? I mean, it's one side, right? And so
19 you're kind of stuck having to make that argument.

20 And whether or not this is something now that if
21 it is DCRA's fault, then I guess you could make that argument
22 for the variance that I guess would then tie into the special
23 exceptions, because that's the size that it is.

24 MS. BARKSDALE: Right.

25 CHAIRPERSON HILL: But you don't have that

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1 argument before us right now, so I think you get failed right
2 now. I mean, I'd be voting no right now, and so I don't see
3 how this is necessarily going to -- I don't think this is
4 organized well enough yet for you to be back before us to
5 kind of figure out where you need to be so that we can at
6 least make a decision one way or the other.

7 So unless the Board has other thoughts or
8 suggestions, you know, I would suggest the Applicant kind of
9 go back and work with the Office of Planning to see how to
10 tidy this up, and then see where we get the next time. Ms.
11 John?

12 MEMBER JOHN: Just a quick question for the Office
13 of Planning, I don't know if you can see Exhibit 4, the
14 architectural plans with the roof raining plan, and so what's
15 the size of that penthouse that's depicted there, and is that
16 -- was that approved by DCRA? That would be the only
17 question I had.

18 And if we're back here. Assuming this is DCRA's
19 error, I would really like to see some, you know, record of
20 that.

21 MS. BROWN-ROBERTS: This is the drawing that the
22 Applicant submitted. I am not sure if this is what they
23 submitted to DCRA. But this drawing has an area, I think,
24 of 140, approximately, square feet, where the 30 feet is the
25 maximum allowed.

1 MEMBER JOHN: And isn't there something in the
2 record where there was an addendum that approved a
3 30-square-foot storage area? Did I misread the record?

4 MS. BROWN-ROBERTS: No, that's the maximum on the
5 -- for the RF-1 zone right now.

6 MEMBER JOHN: I thought I saw something in the
7 record that approved 30 square feet, like a letter or
8 something, but that can be sorted out later.

9 MS. BROWN-ROBERTS: Yes.

10 VICE CHAIRPERSON HART: So I think that, Ms.
11 Barksdale, I think that we would need to have at least an
12 understanding about -- and I understand that you're kind of
13 being made aware of some of this stuff, but the variance
14 test, in terms of just how you're meeting that, and Ms. John
15 just brought up the issue of having the actual permit
16 drawings, so what did the -- what did DCRA see, and that
17 could go along with the variance test or just, you know, as
18 a separate -- you know, they could be an exhibit within
19 that.

20 You know, typically we have cases where, you know,
21 we get this information and we have to be able to take the
22 information, but we have to get it first, and right now, it's
23 hard for us to understand, kind of, when some of this stuff
24 happened, and we're learning it as we are going along today,
25 and it's a little bit hard to kind of find that path of where

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1 all of this is.

2 I understand that this is -- as this is your
3 house, this -- you know, for all of us, your house is your
4 house and you want to fight to keep it and all of that, so
5 I fully understand that.

6 We're just trying to understand how this fits in
7 with the zoning regulations, which is why the Chairman was
8 trying to focus us as we're moving through this presentation.

9 And with regard to the, kind of, differences
10 between variances and special exceptions, special exceptions
11 are actually set out in the zoning regulations, so there are
12 things that you can do within the zoning and this is what you
13 need -- this is the criteria that you need to meet to be able
14 to do that.

15 Then there are things, which are called variances,
16 which are outside of zoning, and so they are -- the criteria
17 and the ability to get a variance is much more stringent and
18 it's much more difficult, and it is because it's with -- it's
19 outside of zoning that it is more difficult.

20 So the special exception is, you meet these
21 criteria, and the Board is -- really has to look at that and
22 say, well, they meet it, so we have to really look to approve
23 that. The variance is, well, how do we see these particular,
24 we call them, prongs, but there are three tests within the
25 zoning regulations that we have to say that your application,

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1 or the next person's application, or whomever, that they meet
2 those three prongs.

3 If they don't, then we can't get there. You've
4 probably heard some of the conversation earlier about that,
5 so I think having the permit drawings and understanding, and
6 I don't know if my fellow Board Members want this, and I
7 don't know if I just missed this, if there is somewhat of a
8 summary timeline of some of this, and it's helpful just to
9 understand, kind of, okay, well this happened then, and this
10 happened, and this happened, and this happened, try to hit
11 the -- if you could provide that, try to hit the, kind of,
12 high points of it.

13 When you got permits, you know, when you got the
14 Zoning Administrator letter, and then, kind of, where we are
15 now, since that is a -- and I understand that, you know, we
16 all have other things that we want to do, and sometimes, you
17 know, time slips a little farther than we would like, but I
18 would appreciate that if you could, and that's it.

19 MEMBER JOHN: Mr. Chairman, I think the letter I
20 was referring to is the ANC 5E statement to the Board, and
21 it's at Exhibit 36. And it does not mention the size of the
22 penthouse. It describes the initial permit, B140447, and
23 it's for renovation of attic to increase headroom and to
24 install roof deck, upgrading existing plumbing and electric
25 insulation of central air conditioning, add an additional

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1 bathroom and laundry.

2 And in the amendment, which was on December 22,
3 2015, allowed a spiral staircase to a room above the master
4 bedroom.

5 So I don't see the penthouse mentioned there, so
6 it's perhaps something you could look at.

7 CHAIRPERSON HILL: Ms. Barksdale, so when you guys
8 went before the ANC, did you go before the ANC? So you
9 didn't argue or at that point, you didn't know that you
10 needed an area variance, correct?

11 MS. BARKSDALE: No, I did not.

12 CHAIRPERSON HILL: Okay. So you hadn't -- Ms.
13 Barksdale, I think you're kind of going to have to even start
14 at the beginning a little bit, right, you're going to have
15 to go back to the ANC now in order to present your case for
16 an area variance, or not.

17 I suppose you can go ahead and see if the permits
18 that, you know, DCRA -- if this is something that has been
19 really kind of a -- the fault of DCRA, and, you know, you got
20 these permits, and I'm sorry, it's just something that's not
21 before us right now, right?

22 We're trying to figure out how to get you kind of
23 cleaned up so that it's something that can happen that we can
24 kind of process. I think that if you go ahead and go back
25 to the Office of Planning and kind of understand what it is

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1 that you need relief from, and then go ahead and try to see
2 about -- the Office of Planning can also tell you about,
3 like, you know, DCRA and try to bring those errors to us.

4 Because then if you can argue the errors, that's
5 something that you could do in terms of the variance
6 standard, right? And so I think that's kind of your best bet
7 at this point in terms of, kind of, understanding what we
8 need.

9 And if, in fact, you are able to put together an
10 argument for the variance, and you don't want to go back
11 before the ANC, that's also your prerogative, and you can
12 just kind of come before us again and you can let us know
13 that this is what the ANC had looked at, and therefore, you
14 know, you can just see how that argument goes as well,
15 meaning, in front of the Board.

16 I'm sorry that I don't think that this is
17 necessarily ready for us to hear right now. And so what
18 happens is, if we were to deny this application at this
19 point, you can't come back for a year, and so that's why I
20 just don't think it's necessarily to your benefit for us to
21 continue to necessarily deliberate this at this point,
22 because then you'd be kind of stuck with a year time clock
23 again. Do you understand that? Okay.

24 So I'm going to keep moving forward with the
25 hearing. Is there anybody here wishing to speak in support?

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1 Is there anybody here wishing to speak in opposition? Okay.
2 So, Ms. Barksdale, do you kind of understand the things we're
3 trying to ask from you?

4 MS. BARKSDALE: I do. I just think it's very
5 unfortunate, because when I went before the ANC, excuse me,
6 my voice.

7 CHAIRPERSON HILL: Sure.

8 MS. BARKSDALE: When I went before the ANC, and
9 when I went before the Bloomingdale Civic Association, they
10 were all in agreement that DCRA had made an error in this
11 case and that they had allowed us -- they had issued a permit
12 for us to build the penthouse. The penthouse drawings that
13 are online is what we submitted to DCRA and what was
14 approved.

15 Now, whether it didn't go through Zoning or
16 whatever people, if they didn't put it through the right
17 offices within their division, or within their agency, that
18 is not my fault, but that's how I got here, because they
19 didn't do what they were supposed to do in the beginning.

20 The drawings that I put online is what they saw
21 and approved. And it took us -- it took my ex-husband about
22 two months to get that permit, because he kept going back and
23 they said, change this, change that, it wasn't like we just
24 walked in the same day and got the permit. It was a back and
25 forth over two months to get that permit issued to build what

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1 is now being called a penthouse.

2 And so it's just really unfortunate that this
3 process doesn't account for errors with DCRA. And I will
4 just say also, that it's also indicative because the
5 additional relief that's required wasn't identified until,
6 like, a few weeks ago, so again, another error that DCRA has
7 made that is now causing me to have to now go back again
8 through this process once again.

9 So it was an error that got me here, and now it's
10 an error that's taking me back, basically, to ground one.
11 When I came before you the last time, I had asked for an
12 extension because when I found out -- when I went to go
13 before the ANC, they said that you had to present at two
14 meetings, and because of my hearing date, I wouldn't be able
15 to get in front of them for two meetings because they were
16 out for the summer.

17 When I went to the first meeting to do my
18 presentation, I got such an overwhelming support they said,
19 you don't have to come back for the second meeting. We're
20 going to approve that you just present at one meeting, and
21 we hope that this, you know, moves forward in a positive way,
22 so that I can just be done with this whole process and then
23 I can just go on and live my life, and finish the little bit
24 of renovations that need to go on within the penthouse.

25 And I'm not even sure that this process is really

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1 going to remedy anything for me because if you issue a new
2 permit -- okay, so if you deny --

3 CHAIRPERSON HILL: Ms. Barksdale, I'm going to --

4 MS. BARKSDALE: And so wait a minute, let me just
5 -- can I just finish?

6 CHAIRPERSON HILL: Sure.

7 MS. BARKSDALE: Can I just have one more minute?
8 If you issue me a new permit, our neighborhood has now been
9 deemed historic preservation, or a historic district, this
10 process will start all over with a historic district, because
11 what you guys say here, whether you -- if you even approve
12 me to go forward, it's not set up to be just, this is the
13 end.

14 I would have to then go before the Historic
15 Preservation Board and get community support, and I'm
16 probably another year getting that resolved, or six months,
17 because --

18 CHAIRPERSON HILL: Okay.

19 MS. BARKSDALE: And so that's what I'm just
20 saying.

21 CHAIRPERSON HILL: Ms. Barksdale, I'm just trying
22 to interrupt you, that I think that, you know, we're also
23 here now to see what we have in the record, right? So
24 there's nothing in the record that shows us that DCRA made
25 a mistake. And so until we see something that shows us that

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1 DCRA made a mistake, and that's now going to be your argument
2 as to how you're meeting the standards, we're just stuck,
3 right?

4 And it's not a matter of whether -- you know,
5 we're not -- we have the regulations that we have to look at.
6 We're not the ANC, we're not a community board that gets to
7 kind of decide whether or not we think the regulations are
8 being met, we have to decide whether the regulations are
9 being met.

10 And some of the great weight that we give is from
11 the Office of Planning, so I'm just saying, like, I think
12 that you're better off, as I said, as of now, you'd get a no,
13 right? And you wouldn't even necessarily have the area
14 variance, which I think is what you're going to need.

15 So I would go ahead and, you know, continue this
16 hearing to a time when you've had an opportunity to kind of
17 talk with the Office of Planning and see what you need from
18 the Office of Planning, either if you want to add the
19 variance to your application, that's what they're
20 recommending, and if so, then that's going to require, you
21 know, whatever that's going to require, right?

22 MS. BARKSDALE: I mean, can the fees and stuff --

23 CHAIRPERSON HILL: I can't -- we can't -- I'm
24 sorry?

25 MS. BARKSDALE: Can the fees be waived so the

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1 application can just be modified without paying any
2 additional fees and that sort of thing or am I going to have
3 to be starting from ground zero in terms of submitting a
4 brand new application?

5 CHAIRPERSON HILL: I don't know. Is that the
6 Office of Zoning, Mr. Moy?

7 SECRETARY MOY: That'd be OCA, if you can meet
8 with the staff afterwards. Typically, when you add
9 additional relief, particularly if it's a variance relief,
10 that's going to be another fee, unless you ask for a waiver
11 of that.

12 CHAIRPERSON HILL: Okay. So you can ask for a
13 waiver of that? Okay. All right. When can we -- do you
14 have any questions for us before we go ahead and put you on
15 continuance?

16 MS. BARKSDALE: I guess I would just like in
17 writing in terms of the procedures in terms of me moving
18 forward, in terms of waiving the fee, and what particular
19 variances I need to have, and whether I need to actually go
20 back to the ANC, do I have to go back to Zoning, do I have
21 to start this process all over, a clear path forward.

22 CHAIRPERSON HILL: Okay. Well, I can't give you
23 anything in writing. I can go ahead and refer you to the
24 Office of Planning, which I guess you've been working with,
25 and the Office of Planning will be able to tell you what they

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1 believe you need, and then you can decide what the path is
2 after that, okay?

3 All right. Mr. Moy, when can we put this on for
4 a continuance?

5 SECRETARY MOY: Given some of the moving parts
6 here, Mr. Chairman, what I'm hearing, to allow the Applicant,
7 if she wishes to go back to the ANC or not, but according to
8 my notes, their next meeting is March 17, if she wishes to
9 do that.

10 I think they do have a meeting in February, which
11 would be, again, if Applicant wishes to do that, would be
12 February the 18th, number one. Number two, Mr. Shapiro is
13 back with the Board on March 25th, so we could do that,
14 unless you want to schedule a continued hearing earlier than
15 that, then I could schedule in March, but I just need some
16 guidance from the Board.

17 CHAIRPERSON HILL: All right. Well, Mr. Shapiro's
18 back on the 26th of February. I think maybe what might be
19 a benefit to Ms. Barksdale, you can go ahead and kind of see
20 where you are after speaking with the Office of Planning, and
21 then if on February 26th, which isn't that far away, if you
22 determine that --

23 MS. BARKSDALE: That's probably not going to be
24 possible with, you know, what I'm dealing with right now,
25 from a personal perspective, and then even with the ANC, they

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1 did grant me an exception to only present at one meeting, so
2 I don't know if this is something that they would be in a
3 position to do again, so I don't know in terms of getting on
4 their schedule.

5 I know that they've had full schedules in the
6 past.

7 CHAIRPERSON HILL: Okay.

8 MS. BARKSDALE: And they've had to bump stuff.
9 So in terms of just giving me one meeting to meet with them,
10 I don't want to put myself in a position where I'm --

11 CHAIRPERSON HILL: Okay. Sure. Well, I was just
12 trying to get you back before us as quickly as possible,
13 because people want to get back and forth as quickly as
14 possible, so where's the March date that Mr. Shapiro is back
15 again? March 25th. Okay. So we'll go ahead and continue
16 you to March 25th and then you can let us know where you are
17 at that point.

18 Mr. Moy, is there anything that we need before
19 that?

20 SECRETARY MOY: Well, I think before the continued
21 hearing on March 25th, it would be desirable for you to
22 submit any new materials into the record, if possible, two
23 weeks prior to March 25th, which would be March the 11th.

24 CHAIRPERSON HILL: Okay. I'm sorry, the Office
25 of Planning had a comment?

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1 MS. BROWN-ROBERTS: Yes, I would like to be
2 available, but on the 25th, I'm out.

3 CHAIRPERSON HILL: Okay.

4 MS. BROWN-ROBERTS: I'm just asking.

5 CHAIRPERSON HILL: Okay. So then Mr. Shapiro,
6 what's the following week and would you be willing to come
7 back, Mr. Shapiro?

8 COMMISSIONER SHAPIRO: The next one I'm at here,
9 scheduled for, is April 29th.

10 CHAIRPERSON HILL: Right. I'm saying, would you
11 come back the week after the 25th?

12 COMMISSIONER SHAPIRO: Sure.

13 CHAIRPERSON HILL: Okay. So we'll go ahead and
14 put you on for -- what's the week after -- Ms. Brown-Roberts,
15 are you here? Okay. April 1st. Oh, great. Okay. So April
16 1st then. Okay. And then what does that do for -- is that
17 then March 25th would be the submissions?

18 SECRETARY MOY: March 25th would be a week before
19 April 1st.

20 CHAIRPERSON HILL: Oh, that's not right. So okay,
21 what's the submission date then?

22 SECRETARY MOY: Let's make it March 18th.

23 CHAIRPERSON HILL: Okay. All right. Great.
24 Okay. Ms. Barksdale, well, we wish you the best of luck.

25 MS. BARKSDALE: Thank you so much.

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1 CHAIRPERSON HILL: And we'll see you on the 1st.
2 All right, Mr. Moy, you want to call our next case?

3 SECRETARY MOY: I believe that would be Case
4 Application Number 20187 of Jon-Joseph Russo, captioned and
5 advertised for a special exception under the RA use
6 requirement, Subtitle U, Section 420.1B, and pursuant to
7 Subtitle X, Chapter 10, for area variances from the roof --
8 or rather, the floor area ratio requirements, Subtitle F,
9 Section 302.1, lot occupancy requirement, Subtitle F, Section
10 304.1, to permit an art gallery use in the 1st floor, and a
11 residential 2nd story addition to an existing semi-detached
12 principle dwelling unit, RA2 zone.

13 This is at 1101 5th Street, NW, Square 514, Lot
14 849.

15 CHAIRPERSON HILL: Could you please introduce
16 yourselves for the record?

17 MR. RUSSO: Jon-Joseph Russo. Owner/Applicant,
18 1101 5th Street, NW.

19 CHAIRPERSON HILL: Okay, Mr. Russo. Mr. Russo,
20 we're -- I believe that the record has been -- is fairly
21 substantial, and I believe that your arguments are relatively
22 clear. I don't have a particular question with anything
23 right now, so unless the Board has any specific questions,
24 I'd like to just move straight to the Office of Planning.

25 Does the Board have any specific questions they'd

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1 like to hear from the Applicant that's not in the record?
2 Okay. I'm going to move to the Office of Planning.

3 MR. MORDFIN: Good afternoon. I'm Stephen Mordfin
4 and the Office of Planning recommends approval of this
5 application, and stands on the record, and is available for
6 any questions. Thank you.

7 CHAIRPERSON HILL: Does anybody have any questions
8 for the Office of Planning? I only have one quick one, just
9 because it doesn't happen that often. So the FAR lot
10 occupancy, you guys don't normally approve it that easily,
11 or that often, how did you kind of get to your analysis?

12 MR. MORDFIN: Well, I think this lot has some
13 uniqueness. One is that the ground floor facing New York
14 Avenue is already built out, so it doesn't look like there's
15 a rear yard there, but at the same time, it also looks like
16 it could be another front. And then there's that historic
17 building that's, like, three and a half stories high that was
18 moved adjacent to the back of this building, which created
19 an unusual streetscape, where you have the two-story
20 rowhouse, and then a one-story garage, and then a
21 three-and-a-half-story, I think now, it's an apartment
22 building.

23 So I think that created some unusual situations
24 there where it's a uniqueness that resulted in the practical
25 difficulty in terms of the streetscape that we would want to

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1 achieve along New York Avenue and L Street over adjacent to
2 the subject property.

3 CHAIRPERSON HILL: Okay. Thanks, Mr. Mordfin.
4 I was just very curious. Does the Applicant have any
5 questions for the Office of Planning?

6 MR. RUSSO: No.

7 CHAIRPERSON HILL: Is there anyone here wishing
8 to speak in support? Is there anyone here wishing to speak
9 in opposition? Mr. Russo, do you have anything you'd like
10 to add at the end?

11 MR. RUSSO: No.

12 CHAIRPERSON HILL: All right. I'm going to close
13 the hearing. Is the Board ready to deliberate? Okay. As
14 I mentioned before, I thought that the record is concise and
15 I didn't have any issues with the application. I thought it
16 was interesting. I think the application is interesting and
17 had we had more time, I would have liked to know a little bit
18 more about it, but I do believe they've met the standard and
19 so I'm going to vote to approve. Is there anything else
20 anyone would like to add?

21 I'm going to make a motion to approve Application
22 Number 20187, as captioned and read by the Secretary and ask
23 for a second.

24 VICE CHAIRPERSON HART: Second.

25 CHAIRPERSON HILL: Motion made and seconded, all

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1 those in favor say, aye.

2 (Chorus of Aye.)

3 CHAIRPERSON HILL: All those opposed. Motion
4 passes. Mr. Moy.

5 SECRETARY MOY: Staff would record the vote as
6 4-0-1, and this is on the motion of Chairman Hill to approve
7 the application for the relief requested. Second to the
8 motion is Vice Chair Hart. Also in support, Ms. John and
9 Zoning Commissioner Peter Shapiro. No other members present.

10 COMMISSIONER SHAPIRO: I just have to ask Mr.
11 Russo, you've been here all morning?

12 MR. RUSSO: Yes.

13 COMMISSIONER SHAPIRO: Were you expecting this to
14 go this way at this moment?

15 MR. RUSSO: Yes.

16 COMMISSIONER SHAPIRO: Okay. All right. Just
17 checking the reality of the situation. Thank you.

18 CHAIRPERSON HILL: All right. Thank you very
19 much, Mr. Russo.

20 MR. RUSSO: Thank you very much.

21 CHAIRPERSON HILL: All right, Mr. Moy, can you
22 call our next case?

23 SECRETARY MOY: All right, Mr. Chairman. I'm
24 going to read, this is Case Application Number 20065 of Dilan
25 Investments, LLC, and this has been amended for special

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1 exceptions under Subtitle C, Section 703.2, for the minimum
2 parking requirements of Subtitle C, Section 701.5, and under
3 Subtitle C, Section 807.2, from the long-term bicycle parking
4 space requirements of Subtitle C, Section 805.9.

5 This would raise the existing detached principle
6 dwelling unit and to construct a new ten-unit residential
7 building -- residential apartment building, actually has been
8 changed or reduced to an eight-unit residential apartment
9 building in the MU4 zone at premises 1818 Rhode Island
10 Avenue, NE, Square 4208, Lot 7, and I'd ask that the
11 Applicant confirm the caption as I've read.

12 CHAIRPERSON HILL: All right. If everyone could
13 please introduce themselves for the record, from my right to
14 left.

15 MR. MONTAGUE: Commissioner Jeremiah Montague,
16 Jr., ANC-5C.

17 MR. SULLIVAN: Marty Sullivan from Sullivan and
18 Barros, on behalf to the Applicant.

19 CHAIRPERSON HILL: You need to push the button
20 there, sir.

21 MR. MEHMETOGLU: Jehat Mehmetoglu, Applicant.

22 CHAIRPERSON HILL: Can you spell your last name
23 for me, sir? You need to press the button.

24 MR. MEHMETOGLU: M-E-H-M-E-T-O-G-L-U.

25 CHAIRPERSON HILL: Okay. Great. All right.

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1 Commissioner Montague, welcome back. Nice to see you. Happy
2 New Year. It's always a pleasure. Let's see. Mr. Sullivan,
3 I suppose you're going to be presenting to us, is that
4 correct?

5 MR. SULLIVAN: Yes.

6 CHAIRPERSON HILL: I don't know what's -- well,
7 first of all, I guess Mr. Moy had asked whether or not this
8 was captioned correctly, so that would be the first question.
9 The next is, to me, this is kind of a mess, and so we'll see
10 what happens, or where we get, I mean, you know, you got --
11 I don't even know, the Office of Planning's in denial, the
12 ANC's in denial, it looks like we had new late filings on
13 Friday.

14 I don't know if the plans are the plans that we're
15 looking at, so I'm going to just let you know that's where
16 I am right now, and you can begin whenever you'd like.

17 MR. MONTAGUE: Chairman Hill, can I interrupt you?

18 CHAIRPERSON HILL: Sure, of course. You need to
19 push it just one time, Commissioner.

20 MR. MONTAGUE: I submitted a petitioner to Mr. Moy
21 to ask to have this upheld because of the lateness of the
22 documents that we got on Friday.

23 CHAIRPERSON HILL: Okay. Okay. And so --

24 MR. MONTAGUE: I don't think anybody in here has
25 had enough time. I know that OP hasn't. I don't think --

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1 or I'm not trying to speak for you, but I don't think OP has,
2 I know when I went to DCRA, and I went to DDOT on Monday,
3 they were clueless about it.

4 CHAIRPERSON HILL: Okay. So I mean, I think, Mr.
5 Sullivan, this might end up being helpful to you anyway, and
6 your client, in order to tidy everything up, but did you have
7 a idea as to what you were actually going to try to present
8 today and hope that the Office of Planning was going to give
9 their analysis on the dais here?

10 And then also, what do you have to say concerning
11 the postponement request?

12 MR. SULLIVAN: So this case, we've had to postpone
13 a couple times, so I didn't want to postpone. I may have if
14 it would have been our first postponement. I understand that
15 we have made changes late and the changes, by the way, in
16 regard to the hearing notice, it's an eight-unit building
17 now, and so we lessened the relief.

18 Our understanding was the ANC was going to -- they
19 did oppose it and they would still oppose it. We did add
20 relief for bicycle parking in the way that we provide it, so
21 I did think because the relief that we're requesting doesn't
22 really relate to the structure itself, and the design of the
23 building, and the size of the building, that we could try to
24 go forward, but I understand if the Board doesn't agree.

25 I mean, we have some things to work out that I

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1 think are unrelated to the relief, so I wanted to try to, in
2 a sense, get the relief out of the way, and then, you know,
3 we still have public space issues to address that aren't
4 really related to the relief, but --

5 CHAIRPERSON HILL: Okay.

6 MR. SULLIVAN: -- I don't have a strong feeling
7 about it.

8 CHAIRPERSON HILL: Okay. All right. Is there
9 anyone here wishing to speak in support of this application?
10 Is there anyone here wishing to speak in opposition of this
11 application? Okay. So that's the public. Just one second,
12 Mr. Commissioner. That's okay. I guess, you know, I'm kind
13 of -- I'm interested in, I guess, postponing it for the sake
14 of the ANC, and then also, for the sake of the Board, in
15 terms of not having to struggle with trying to figure out
16 what's what in this, and give the time to kind of, like,
17 figure out what's matter of right, what's kind of a special
18 exception, and then kind of work from there.

19 So I hear -- I see my fellow Board Members
20 nodding. Commissioner, you were about to say something?

21 MR. MONTAGUE: Yes, my question is, is that you
22 asked for opposed and support, but if those persons weren't
23 able to be here today because of the uncertainty of what
24 happened, will they get that opportunity in the future?

25 CHAIRPERSON HILL: When you say the uncertainty

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1 of what happened, meaning whether or not it was going to be
2 postponed?

3 MR. MONTAGUE: Yes, because of what dropped on us
4 on Friday.

5 CHAIRPERSON HILL: Sure. Usually, we -- it will
6 end up being a continued hearing, and since we haven't heard
7 anything, people will be able to come and testify. And if
8 you are here, and I forget that, just remind me. I'm going
9 to turn to Mr. Moy, I suppose, when's the next -- well, we
10 just found out Mr. Shapiro is back on the 23rd?

11 COMMISSIONER SHAPIRO: 26th.

12 CHAIRPERSON HILL: 26th of February. Mr.
13 Sullivan, would that be enough time for you to get what you
14 need to get done, you think?

15 MR. SULLIVAN: Yes, and I think we're done, but
16 it was submitted recently, so I would defer to the ANC on the
17 time that they think they need to review that.

18 CHAIRPERSON HILL: Commissioner Montague?

19 MR. MONTAGUE: Give me a second.

20 CHAIRPERSON HILL: Sure, of course.

21 MR. MONTAGUE: The next single-member district
22 meeting is February the 5th. That's a Wednesday. I can
23 probably accommodate that. The next full commission meeting
24 is February the 19th. I have to talk to fellow
25 Commissioners, but we can probably roll in on February 19th

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1 is the earliest that we would be through our part of the
2 process.

3 CHAIRPERSON HILL: Okay. Well, that'll work out,
4 then, for Commissioner Shapiro to be back with us on the 26th
5 of February, and we could get something from your ANC if the
6 Applicant has been able to get in front of you by that time
7 as well.

8 So, Mr. Moy, when would our timeline be then if
9 we were trying to come back with Mr. Shapiro? Oh, I'm sorry.
10 Oh, it looks like, Office of Planning, does that date work
11 for you?

12 MR. COCHRAN: Yes, sir. I just wondered, OP is
13 going to be asking the Applicant for additional information
14 based on the PowerPoint that they submitted this morning, so
15 I don't know whether that factors into anything today or not
16 in terms of the scheduling, or whether you want us to go on
17 the record on what additional information will be requested
18 or not.

19 CHAIRPERSON HILL: Yes, if you could go on the
20 record now and tell us.

21 MR. COCHRAN: Sure. OP would be looking for the
22 response from DDOT on the transportation demand management
23 plan. Ideally, but not absolutely, on DDOT's -- on the
24 request for the vertical bike spaces.

25 We'd like documentation on the width of the

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1 driveway. The PowerPoint that the Applicant has filed
2 indicates that it's 7 feet wide. There are both plats and
3 easement agreements from the 1920s that indicate that it is
4 -- well, the easement is supposed to be 4.4 -- 4.5 feet on
5 each side, so that would make it 9 feet.

6 The plats indicate that they're each a little over
7 5 feet, so we'd like some clarification on that, on whether
8 the Applicant wouldn't have a legal driveway to the back, and
9 that's it.

10 CHAIRPERSON HILL: Mr. Sullivan, do you have any
11 questions? You got all that?

12 MR. SULLIVAN: Got it. Thank you.

13 CHAIRPERSON HILL: Okay. Sure, please.

14 VICE CHAIRPERSON HART: I have a question on that.
15 Just out of curiosity, if they don't have a legal driveway,
16 what does that mean? You're saying that you'd like for them
17 to have one, but is there --

18 MR. COCHRAN: No, I'm not saying I'd like, I
19 simply want clarification. It does raise questions. If they
20 do have a driveway that would be legal, I'd need to check to
21 see whether the fact that it's legal only because of an
22 easement has any impact on the zoning regulations, et cetera.
23 We just want to get the documentation.

24 VICE CHAIRPERSON HART: Okay. Thank you.

25 CHAIRPERSON HILL: Commissioner?

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1 MR. MONTAGUE: One last thing. So you're saying
2 the driveway is on your property? The existing driveway?

3 MR. SULLIVAN: The driveway is split, but it
4 doesn't -- it's not --

5 CHAIRPERSON HILL: What are you trying to ask and
6 understand?

7 MR. MONTAGUE: Okay. There's a driveway that sits
8 between the house to the west and the property that we're
9 talking about. It's right --

10 CHAIRPERSON HILL: Okay. Commissioner, I'm just
11 going to interrupt just because -- it's okay. This will all
12 be fleshed out when you're talking with the Applicant about
13 their application, okay? Mr. Sullivan, do you have any
14 questions?

15 MR. SULLIVAN: No, thank you.

16 CHAIRPERSON HILL: So I was back to Mr. Moy, did
17 we figure out -- and do we need a supplemental from the
18 Office of Planning? Okay. So how will that time work for
19 everybody?

20 SECRETARY MOY: Okay. My suggestion, Mr. Chair,
21 working backwards, we would continue this hearing until
22 February 26th and then a due date of February the 21st, which
23 would be any materials from Office of Planning, if they
24 desire to submit a supplemental, I suppose, on the filing
25 from the Applicant, as well as the ANC, to file their report

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1 from their meeting of -- on February the 19th. I think that
2 was the day.

3 The Applicant, to make their filing on February
4 the 12th.

5 CHAIRPERSON HILL: And then do we want anything
6 from DDOT?

7 SECRETARY MOY: If we do, could they -- could
8 Office of Planning roll that into their report?

9 MR. COCHRAN: Yes.

10 CHAIRPERSON HILL: Okay. Great. All right. Then
11 we'll see you guys on 26th. Thank you.

12 MR. MONTAGUE: Thank you.

13 CHAIRPERSON HILL: Thank you. We're actually
14 going to continue the marathon here and do the one more case
15 before the appeal. We're going to do this last case, then
16 take lunch, and then have our appeal. And so, Mr. Moy, you
17 may call it when you can.

18 SECRETARY MOY: Thank you, Mr. Chairman. So that
19 would be -- could we have parties to the table to 20178 of
20 Murat, M-U-R-A-T, Kavali, is that pronounced, K-A-V-A-L-I?
21 Captioned and advertised for special exception under the
22 penthouse requirements, Subtitle C, Section 1504.1 from the
23 setback requirements, Subtitle C, Section 1502.1A, Subtitle
24 C, Section 1502.1B, and Subtitle C, Section 1502.1C1A, and
25 pursuant to Subtitle X, Chapter 10, variance from the maximum

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1 lot occupancy requirement, Subtitle F, Section 604.1 to
2 construct rear deck addition and accessory structure, RA8
3 zone at 1738 Church Street, NW, Square 156, Lot 313.

4 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
5 Could everyone please introduce themselves for the record,
6 from my right to left?

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

9 MS. KAYALI: Kathryn Kayali, my husband and I are
10 the Applicant.

11 CHAIRPERSON HILL: Could you spell your last name
12 for me?

13 MS. KAYALI: Kayali is K-A-Y-A-L-I.

14 MR. PINTO: Craig Pinto, Karma Home Design, Karma
15 Construction Group, I'm the contractor.

16 CHAIRPERSON HILL: All right. Okay. So, Mr.
17 Sullivan -- your last name, could you spell that, is that --
18 spell it again, please.

19 MR. PINTO: P-I-N-T-O.

20 CHAIRPERSON HILL: Okay. All right. So, Mr.
21 Sullivan, you -- well, I'll wait for you to just get back.
22 You requested a filing waiver?

23 MR. SULLIVAN: Yes, we submitted an additional
24 submission with some information in response to the Office
25 of Planning report, and we were recently hired, just in the

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1 last couple of weeks, and so we just wanted to supplement the
2 record.

3 CHAIRPERSON HILL: Okay. Does the Board have any
4 objection to the waiver? Okay. I do not either. We'll
5 accept the filing. Let's see, so then, Mr. Sullivan, you
6 were just hired, is that correct, or in the past couple
7 weeks?

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON HILL: Okay. So I'm kind of laughing,
10 this has not been an easy day, Mr. Sullivan. There is
11 nothing that's worked -- except for that art guy, there's
12 nothing that's gone smoothly, okay, right?

13 So today, right now, you know where you are,
14 right? You got the Office of Planning in denial of your
15 variance, they're in support of your special exception, the
16 ANC looks like they are in support, the plans of the lot
17 occupancy, I guess I'm getting a little bit confused also,
18 stuff came in late on Friday again, okay, and so -- or this
19 past Friday, I believe, we got a lot of information.

20 And so I don't know if you -- well, I guess you
21 -- I mean, do you think that you want to postpone this as
22 well to kind of take a little bit more time or do you want
23 to go ahead and move forward? All right, Mr. Sullivan, I'll
24 go ahead and give you 15 minutes on the clock and you can
25 begin whenever you like.

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1 MR. SULLIVAN: Thank you, Mr. Chair. And the
2 plans that were submitted last week were alternatives to
3 illustrate the practical difficulty in doing something less
4 than what's the requested 76 percent lot occupancy. So I
5 want to go through our presentation and then I think I'll
6 have some comments I'd like -- I wouldn't mind comparing and
7 contrasting this with the first two lot occupancy variability
8 cases.

9 I think this one compares very favorably to those
10 and I was quite puzzled by the Office of Planning's report
11 in light of their reports on the other two cases.

12 This is 1738 Church Street, NW. It's in the RA8
13 zone. It's currently approved with a single-family dwelling.
14 The Applicant's proposing to construct a new garage and a
15 roof deck, and to replace an existing rear deck, which will
16 connect the house and the new garage.

17 For this, we're requesting special exception and
18 relief from the rooftop guardrail setback requirement. I
19 believe that OP is in support of that portion of the case.
20 And we're also requesting variance relief from the lot
21 occupancy requirement to go to 76.7 percent proposed.

22 So this is the site plan of the property. This
23 shows the deck and the deck is connected to the proposed
24 garage. And I think the Board can look at this in the
25 context of Office of Planning has stated, to us at least,

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1 that they would be okay with a 70 percent special exception
2 request.

3 If we were to do just the garage, we would be
4 within the limits of either matter of right or the special
5 exception. And if we were to do just the deck, we would be
6 within the matter of right limits. So I think that the
7 variance portion of this applies to one or the other.

8 Although, I think we have presented a practical
9 difficulty -- exceptional practical difficulty argument as
10 to both structures; both the garage and the connecting deck.

11 This is a photo showing the open parking space
12 right now. The photo on the left is the existing garage and
13 deck. This was a case that was approved about four or five
14 years by the Board, they got over 90 percent lot occupancy
15 in order to build that garage. Right, the neighbor's garage.

16 And then so this is a good description of our
17 unique condition here. The yard at 1738 is in the center of
18 this diagram, and as you see, it's covered by extended
19 building on the left, extended building on the right, garages
20 on both sides, and I will -- and this is the elevation
21 showing -- this is just 13 feet between the house and the
22 garage once the garage is constructed.

23 So we have a very limited amount of space and it's
24 somewhat enclosed by surrounding buildings. I want to jump
25 ahead a slide to this slide, which shows the condition here,

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1 and this is what I find strikingly unique, more so than the
2 first two cases today.

3 This is one of those rare cases where the third
4 installment of a trilogy is actually, I think, a better case
5 than the first two, but --

6 CHAIRPERSON HILL: Are you making jokes, Mr.
7 Sullivan?

8 MR. SULLIVAN: No.

9 CHAIRPERSON HILL: That's somewhat unlike you,
10 actually.

11 MR. SULLIVAN: So there's an open space here and
12 every other property from the one -- from actually, three
13 properties to the west, all the way down to the end of the
14 block, go all the way to the end, and you can see the lot
15 occupancies there. They're all, I would estimate, safely
16 over 80 percent with buildings, not with decks.

17 And so one of the things that Ms. Myer mentioned
18 in her case was, the fact that there was uniqueness of the
19 size of the building in relation to the other buildings. And
20 we think we have that safely here as well. It's a smaller
21 building, but once the garage is constructed, we're left with
22 a 13-foot rear yard that is, essentially, in a pit.

23 And so construction of the deck satisfies two
24 things, one, it allows us to get to the roof deck on the
25 garage without going down to the yard and then back up to the

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1 roof deck, and also, the 1st floor here is the living space.
2 The bottom floor is not really effective living space. It's
3 a very limited basement and it's not a place that's easy to
4 go in and out of to use the backyard, so the 1st floor, the
5 main living level, is the space that's used for that.

6 So every bit of space that we lose from shrinking
7 the deck is space that ends up being unusable yard, which is
8 best described by these photos. This is probably the best
9 photo. This is looking up at the house that's to the west
10 if you're down in the yard.

11 And this is an angle with a side elevation showing
12 what that yard is, so you would see, on this elevation, a
13 building on the other side of that.

14 So I'll get back on track here. First of all, the
15 general special exception requirements, the project is in
16 harmony with the general purpose and intent of the zoning
17 regulations and map. This is RA zone, single-family. The
18 project, clearly, will not tend to affect adversely, the use
19 of neighboring property.

20 Both neighbors are in support of this relief.
21 Regarding the special exception requirements for the
22 guardrails, proposed guardrails would be consistent with the
23 existing development pattern, along with south side of Church
24 Street for similar decks, and would result in a deck that
25 would likely be -- if we had to provide the setbacks, it

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1 would be more costly and less functional.

2 And I'll go through these. I'll just skip over
3 these because the Office of Planning is in support of these
4 as well, and get to the special exception requirement -- or
5 the variance requirements. So variance. Exception
6 situation. This property, as you saw, is alone among this
7 half of the block, and having no structure along or near the
8 property line.

9 And that exceptional condition results in the
10 peculiar and exceptional practical difficulties, including
11 unauthorized parking, this relates to the garage itself.
12 Something that was instrumental in the approval of the lot
13 occupancy relief for the building next door was the location
14 of the Keegan Theater next door to that building, so it's two
15 doors down from this building.

16 And that also being close to the commercial uses
17 south of there contributes to practical difficulties with
18 having that open slot there and wanting to put the garage in
19 there.

20 So this provides a space for -- the opening
21 provides a space for proliferation of public trash and
22 rodents, and typical security issues of having this inviting
23 open space on the otherwise entirely closed row of buildings.

24 The subject property's rear yard is surrounded on
25 three sides by buildings, and -- well, on four sides, once

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1 the garage is constructed, and has larger buildings to the
2 south, so there's a shallow and narrow yard, which leaves
3 most of the Applicant's backyard heavily shaded and virtually
4 unusable for any other typical activities for which families
5 use rear yards.

6 In the other two cases you heard about, usability
7 of house because it was small and wanting to get additional
8 space, effectively, what we're asking for is additional
9 outdoor recreation space, which we think is reasonable, and
10 because the yard itself is virtually unusable, so we're
11 trying to recapture some of that.

12 And I think the degree of relief, it's a couple
13 percentage points higher than the first case that you
14 approved, but the degree is much less because it's just a
15 pervious deck surface, not an actual enclosed building.

16 The car that you're looking at is in the spot
17 where the garage would be and the first picture is looking
18 to the south across the alley. Regarding no substantial harm
19 to the zoning regulations, the Applicant's not changing the
20 use of the property.

21 There's a confluence of unique conditions, I think
22 is rare enough to protect the integrity of the zoning
23 regulations. I'd like to turn it over -- no, so the
24 alternate plans, I would like the Applicant and contractor
25 to speak on illustrating for you some of the practical

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1 difficulties in doing the alternative plans.

2 MEMBER JOHN: What's the exhibit for the alternate
3 plan? And does the alternate plan have a smaller garage?

4 MR. SULLIVAN: No, the alternate doesn't have a
5 smaller garage. It has smaller decks. There's two plans and
6 two levels of difficulty, in a sense, with those two smaller
7 decks. One at 70 percent and one at 72-1/2. I'll get the
8 exhibit number for you.

9 MS. KAYALI: Hi. I appreciate you taking the time
10 to hear us. You know, my husband and I bought this house two
11 years ago with every intention of having a family here and
12 we're just trying to make it safe and usable for future kids,
13 and that family. We're the only house without a garage, that
14 means that that's where neighbors dump their dog waste,
15 that's where the rats live, that's where the trash cans blow
16 over. It drives everyone nuts, including us.

17 The garage, you know, I have to sit in the car
18 when there are people in the alley at night and wait for them
19 to clear out. The garage feels like a safety need and once
20 we put that there, the rest of our yard is just a hole. You
21 know, we've come up with these 70 and 72 percent ways of,
22 kind of, connecting our kitchen to the garage so that we
23 don't have to go down steps and back up steps, but the truth
24 is, they don't really work or make any sense, and they've
25 kind of destroyed the rest of our property.

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1 You know, the safety is the most important thing
2 to us. That's what we want the most, but I'd love to be able
3 to use our yard, and I think it's really hard to do that
4 without elevating that rear space, because otherwise, we're
5 in a pit. I mean, there's just mosquitos and water, and
6 nothing grows.

7 And so to open that door and be able to walk out
8 with kids and strollers, and make sure that the screen -- or
9 sorry, not the screen door, but the bar door actually opens
10 all the way. I mean, you can't even do that in some of the
11 lower proposed -- the 70 and the -- the 70 percent one, I
12 don't even think I can get my bar door open all the way.

13 And then with either the 70 or the 72 percent, you
14 kind of got to open it up, shimmy over, and then walk across
15 the -- you know, the sort of, I don't know what to call it,
16 gangway to the deck.

17 And, you know, I appreciate that that is a doable
18 thing, but it just leaves us with no yard. And --

19 COMMISSIONER SHAPIRO: Let me interrupt, I'm just
20 trying to understand what I'm looking at here.

21 MS. KAYALI: Of course.

22 COMMISSIONER SHAPIRO: These are two different
23 scenarios here and is there a third one or this is two
24 versions of the --

25 MS. KAYALI: SO what you're looking at on the

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1 alternative plan, one screen, is, the top is a -- I think
2 that's the larger of the two. These look awfully --

3 MR. SULLIVAN: It's the same, actually. I'm
4 sorry.

5 MS. KAYALI: Okay.

6 MR. SULLIVAN: This is the 70 percent plan and
7 this is the 72 percent, so it's showing two levels, but it's
8 the same plan. They're not -- the two alternatives are not
9 side-by-side.

10 MS. KAYALI: The problem with these is just, all
11 of that white space is in a hole. You can't do anything with
12 that space at all and it really just collects dirt. The deck
13 navigation part, I think, is something Craig can speak to
14 better.

15 MR. SULLIVAN: And it's Exhibit 40, is the
16 alternate plans.

17 MR. PINTO: Okay. So essentially, the difference
18 between the 70 and 72 percent is that little space that's on
19 the -- would be if you were to egress out of the building to
20 the left, that's that space that you would not be able to
21 open the door completely. It would only be able to open 90
22 degrees.

23 One of the key components here is that --

24 CHAIRPERSON HILL: And can you point to it, Mr.
25 Sullivan? Thanks. Great.

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1 MR. PINTO: Yes, sure. No worries.

2 CHAIRPERSON HILL: Is it that door?

3 MR. PINTO: Okay. No. It's, sorry, this section
4 right here. Do you see that? So in this one, which is the
5 70 percent, you see how it's right up against the door? In
6 the 72 percent, you actually have a little bit of space
7 there.

8 MS. KAYALI: There are bar doors that open
9 outwards, whereas, the diagram shows the doors opening
10 inwards.

11 MR. PINTO: So, yes, there's interior doors and
12 then there's bar doors as well.

13 VICE CHAIRPERSON HART: Okay. I'm missing this
14 and I'm usually good at reading plans here.

15 MR. PINTO: Okay. So --

16 VICE CHAIRPERSON HART: So we have a set of doors
17 that are right here.

18 MR. PINTO: Yes.

19 VICE CHAIRPERSON HART: Okay. So you can walk out
20 -- you're saying these doors are actually -- they're actually
21 going out?

22 MR. PINTO: No, so those doors swing in for the
23 interior portion.

24 VICE CHAIRPERSON HART: Okay.

25 MR. PINTO: And then there's bar doors on the

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1 exterior portion of it that swing out.

2 VICE CHAIRPERSON HART: And they do --

3 MR. PINTO: It's for, like --

4 MEMBER JOHN: You mean gross.

5 VICE CHAIRPERSON HART: Gross.

6 MR. PINTO: Yes, gross, gross. Exactly.

7 VICE CHAIRPERSON HART: Okay. Okay. I was
8 thinking, like, bar, as in like a place to get a drink bar,
9 and I'm like, what is that? Okay. So you're saying a
10 security door that --

11 MR. PINTO: A security door.

12 VICE CHAIRPERSON HART: That it goes out.

13 MR. PINTO: Exactly.

14 VICE CHAIRPERSON HART: Okay. So one door would
15 open -- they would look -- you know, they would have,
16 whatever, they would have two doors that opened out, one
17 would --

18 MR. PINTO: Essentially.

19 VICE CHAIRPERSON HART: -- they would hit the
20 rail, and the other one would be opening out, but you'd have
21 to --

22 MR. PINTO: Exactly.

23 VICE CHAIRPERSON HART: -- walk out and then close
24 it to be able to walk by it.

25 MR. PINTO: So this is the scenario, like, I'm

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1 trying to explain, so, you know, with an egress door, that's
2 usually, like, the type of door that you're exiting in time
3 of emergency, whatever, you know, situation may be. The
4 maneuvering clearance from when you open that door is, like
5 --

6 VICE CHAIRPERSON HART: No, I understand that.
7 My question is, why not just put in a sliding glass door or
8 put in a door? I mean, I understand it may not be the thing
9 that you like, but, you know, we're talking about a variance
10 that you're trying to get to and you're telling us that a
11 door -- there's a way to get around that, so I don't quite
12 understand that -- why that's a point to get to.

13 MR. PINTO: Yes, again, at the end of the day,
14 it's something where it's also a security thing, why the bars
15 are there, and then another thing is, is just, you know, that
16 distance that's between where the door opens and where you
17 would be is, like, not usable at all.

18 VICE CHAIRPERSON HART: How does somebody get back
19 there? They'd have to do through the building to get back
20 there.

21 MR. PINTO: Yes.

22 VICE CHAIRPERSON HART: You can continue on with
23 that. You don't have to continue on with that line of
24 discussion. I understand it, I just was trying to figure out
25 what door you were talking about, so you can continue on.

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1 MR. PINTO: Sure. No worries. And then, so
2 essentially, like, what we're proposing is that --

3 MEMBER JOHN: May I ask a quick question?

4 MR. PINTO: Yes, sure.

5 MEMBER JOHN: What is the size of the length of
6 the rear yard? Point out the 39 feet for me, if I'm reading
7 it correctly, this is after the addition of the garage?

8 MR. SULLIVAN: It's 13 between the house and the
9 garage.

10 MEMBER JOHN: Okay. So do I have the right case;
11 20178? OP has that change at 39.2, is that right? Oh,
12 sorry, we'll get to that. Okay. Thank you.

13 MR. PINTO: Okay. So essentially, what we want
14 to do is, is that, we want to have the ability to, you know,
15 use that complete deck to go straight across, so that when
16 you come out the door, it's not like you're just at the edge
17 of the guardrail, essentially.

18 And so, like, if somebody wanted to stand on the
19 other side of the door and, like, hand you something, or even
20 if you wanted to come to the door and somebody's opening the
21 door, I mean, you have that room. That's why we, you know,
22 were looking at the 76 percent.

23 And also, the fact that, you know, that white
24 space that's in-between, you see the two staircases, is,
25 like, there's nothing that can grow there. There's hardly

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1 any light that comes in there because the buildings on either
2 side are pretty much built out past this deck and, you know,
3 what we're proposing is a deck that's completely opened up
4 and open below, but you just use that surface.

5 And, you know, compared to everyone else's units
6 that are next to us.

7 MR. SULLIVAN: And the overall practical
8 difficulty, again, is the lack of the use of the yard. And
9 I know every case is decided on its own merits, but we use
10 the discussions in those cases and the decisions to educate
11 us on what we think are reasonable arguments for practical
12 difficulty.

13 And in the previous case, Ms. Myer said that the
14 special exception increase was not reasonable. So they could
15 go to 70 percent, but it was not reasonable, and that's our
16 argument here. It doesn't need to be impossible, and the
17 Board has heard that many times, that to get area variance
18 relief, you don't have to prove that something is impossible.

19 We could do a 70 percent and it would give us
20 access where we get it, but we believe it would be
21 unnecessarily burdensome, which meets the test. Overall,
22 because of the condition of the yard being in a pit in the
23 middle of these buildings, and being relatively unusable,
24 we're effectively trying to capture some of that space.

25 And we could lower the deck. You could lower the

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1 deck to 4 feet and it wouldn't count in the lot occupancy,
2 but that becomes a practical difficulty too because when you
3 lower it too much, then the stairs, it gets difficult to get
4 the stairs down and the stairs back up.

5 And also, you exit the building and then you
6 immediately have to go downstairs, which we don't think is
7 safe for children and not as accessible as this, which allows
8 the current deck, or the proposed deck, at 76 percent, to be
9 used as part of the main level, and accessible to people who
10 can also get on the main level.

11 COMMISSIONER SHAPIRO: Did you explore a version
12 where you lowered part of the deck?

13 MR. PINTO: Yes, so essentially, there were a
14 couple different options out there, but again, it was like,
15 as soon as you come out the door to go straight down to the
16 bottom of the deck, it just wasn't, like, a safe alternative,
17 because there wouldn't be enough landing, and then to go down
18 to the next deck and then to come back up, it would literally
19 just be staircases connected to each other, which wouldn't
20 make sense, again, for, like, usability purposes, you know?

21 Because you just -- it doesn't make sense to go
22 down stairs to just go up a stairs. Like, you know --

23 COMMISSIONER SHAPIRO: Yes, I appreciate it.
24 Thank you.

25 MR. PINTO: Sure. No worries.

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1 MEMBER JOHN: So does the garage have to be 20
2 feet long? Could you build a smaller garage that --

3 MR. PINTO: Yes, so essentially, a 20x20 garage
4 is standard. We're doing an 18x20, so it's less width, and
5 essentially, the correct height for, you know, standard cars.
6 You know, like, unless people have Mini Coopers or, you know,
7 like, small bug cars, it's really hard to park the complete
8 car, like, in there, and have, like, you know, a little bit
9 of space in the front.

10 I mean, you can't hit the front and the back every
11 time you're trying to operate the garage door, you know? So
12 20 is a typical size that we -- that's, like, standard, you
13 know?

14 Oh, and again, what he was saying, the garage
15 doors -- the garage size would line up with the rest of the
16 garages in the area, you know?

17 MS. KAYALI: Yes, I mean, that was a question I
18 asked as well, when we were trying to explore this, and
19 unfortunately, you just can't get the car in if you make it
20 any shorter.

21 VICE CHAIRPERSON HART: So earlier, Mr. Sullivan,
22 you stated that the neighbor, I don't know which neighbor it
23 is, the neighbor that is -- I'm not sure which direction it
24 is, that already has a garage that's about the same size,
25 yes, that's shown here, that was done pre-ZR16.

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1 MR. SULLIVAN: It was done by -- yes, by lot
2 occupancy variance. They requested, I believe it was, 90 --
3 it was in the 90s. Over 90 percent lot occupancy variance,
4 which may have gone down somewhat, because it probably
5 counted some quarts, a quart or two, that wasn't counted, but
6 they effectively have -- their building goes back and then
7 it's just a -- it's 3 or 4 feet from the building to the
8 garage, and they have stairs that still go down, so that's
9 what took up all the lot occupancy.

10 You can see that there, there's the building and
11 then it just goes up steps to the top of the deck. It's just
12 one story, the building in the back, but yes, in 2014, they
13 got lot occupancy relief for that.

14 VICE CHAIRPERSON HART: Thank you.

15 MR. SULLIVAN: And the building was existing. So
16 that case revolved around the garage and the need for a
17 garage. Which I think the Board could do in this case --

18 VICE CHAIRPERSON HART: What do you mean the
19 building was existing?

20 MR. SULLIVAN: So, their footprint was existing.

21 VICE CHAIRPERSON HART: For the house and the rear
22 addition.

23 But all the other properties on this block, on
24 this side of the block have rear additions that this property
25 doesn't have. And we have an existing deck but not a

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1 building. The others have buildings.

2 So, because -- so, you can see the building. If
3 you look at the -- so, the building to the west you can see
4 the line between the garage and the building itself. So,
5 what I'm saying is all the additional footprint for that lot
6 occupancy variance case was related to the garage. So, the
7 entire argument was related to the garage, and the need for
8 the garage in resolving that particular practical difficulty
9 of not having a garage.

10 So, if you wanted to look at we could build the
11 deck as a matter of right, and then we could come here and
12 ask for variance approval for the garage, and just base our
13 entire argument on the garage. Or, we could build the garage
14 either on their -- that may be special exception approval.
15 And we believe that would get approved. And then come and
16 ask for the deck.

17 So, I actually think you have a choice in that
18 which one of these you focus on for the practical difficulty
19 and exceptional condition.

20 CHAIRPERSON HILL: Okay. So, do you have anything
21 else? All right. Go to the Office of Planning.

22 MS. ELLIOTT: Good afternoon, Mr. Chairman,
23 members of the Board. I'm Brandice Elliott representing the
24 Office of Planning.

25 Our report reflects the original proposal that was

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1 submitted that's requesting 76.7 percent lot occupancy. We
2 did not make any recommendations regarding the alternative.

3 We are recommending approval of the special
4 exception relief for the rooftop guardrail. There, you know,
5 they will be facing the alley. It won't be visible from the
6 street. And we don't believe they would cause any adverse
7 impacts. And there is really no, no issue with the special
8 exception relief.

9 We are, however, recommending denial of the
10 request for lot occupancy. We didn't find in our review that
11 there was an exceptional situation resulting in a practical
12 difficulty. In this case we found that all of the lots
13 within a square where row homes are constructed are, you
14 know, generally, you know, the same size. There are no lot
15 size or lot width requirements in the RA-8 zone, but they are
16 all roughly 18 feet wide and, you know, between 1,700 and
17 1,800 square feet in area.

18 And then we didn't, we didn't see that there were
19 any exceptional conditions with the lot itself that would
20 result in the need for additional lot occupancy.

21 Since we wrote our report, the applicant has
22 provided some additional information. I don't know that we
23 have enough at this point to make a different recommendation,
24 but there's certainly some merit, I think to the issue of
25 access, safe access from the deck. And I don't know that

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1 that would result in 70 percent, 76 percent lot occupancy.
2 I know that the 72 percent alternative does allow for, you
3 know, the doors to open, has a little bit more width.

4 I think that, you know, the applicant may
5 potentially be able to put a confluence or factors type
6 argument together to address that, but I don't know that we
7 have enough information to go in that direction today.

8 So, also I think there was a question regarding
9 the lot -- or, I'm sorry, the rear yard. This is a referral
10 that came from DCRA. And they identified the rear yard as
11 being 39.2 feet in depth. And even with the accessory
12 building, they still identified it as such.

13 And I think that the requirements in the RA-8 zone
14 read a little bit differently where accessory buildings are
15 permitted to be located in the rear yard. And that doesn't
16 -- that isn't held against the rear yard. So, for instance,
17 in an RF zone it would be the distance between, you know, the
18 edge of the house and, like, the front of the garage. It
19 would be 13 feet in this case.

20 But because it's in an RA-8 zone, it just
21 continues to measure to the rear property line. I think
22 that's based on the way the regs are written.

23 Happy to answer any questions you have.

24 CHAIRPERSON HILL: Does the Board have any
25 questions for the Office of Planning?

1 So, Mr. Sullivan, I don't know whether or not you
2 have any questions of the Office of Planning and/or if now
3 we might want to take a little time to work with the Office
4 of Planning and see where we might get in terms of the
5 additional information that you've submitted.

6 Before I ask your answer to that question, does
7 anybody here wish to speak in support? Okay, just one second
8 then.

9 Is there anybody here who wants to speak in
10 opposition?

11 Okay, if you could come forward, please, in terms
12 of support. Yes, please.

13 Did you get sworn in earlier today?

14 MS. KIRBY: Yes.

15 CHAIRPERSON HILL: Okay. You just go ahead and
16 have a seat. And if you could introduce yourself for the
17 record, please.

18 MS. KIRBY: Hi. My name is Amity Kirby.

19 CHAIRPERSON HILL: Okay. Ms. Kirby, you'll get
20 3 minutes as a member of the public to provide your testimony
21 to the Board. And there is a clock there on either side of
22 you. And you begin whenever you like.

23 MS. KIRBY: Thank you. I don't really have much
24 to say except that I do support this young couple in their
25 desire to grow a family in the future and to maximize their

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1 current property.

2 CHAIRPERSON HILL: Okay, great.

3 Does the Board have any questions for the witness?

4 COMMISSIONER SHAPIRO: Just curious about where
5 you live, proximity to the property.

6 MS. KIRBY: I actually live over at 14th and
7 Clifton.

8 COMMISSIONER SHAPIRO: Okay.

9 MS. KIRBY: So, I'm familiar with the street.

10 COMMISSIONER SHAPIRO: Okay, thank you.

11 MS. KIRBY: Thank you.

12 CHAIRPERSON HILL: Are you a friend of the
13 applicant?

14 MS. KIRBY: No idea. Never met them.

15 CHAIRPERSON HILL: So you --

16 MS. KIRBY: I'm just sitting back there listening.

17 CHAIRPERSON HILL: Oh, okay. So, I mean did you
18 come down here for this case?

19 MS. KIRBY: No.

20 CHAIRPERSON HILL: Okay. All right.

21 MS. KIRBY: We're here for something else.

22 CHAIRPERSON HILL: That's all right. This does
23 happen every now and again. But if you waited here for 8
24 hours to say that I was just a little curious.

25 So, but thank you so much.

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1 MS. KIRBY: Yes, thank you.

2 CHAIRPERSON HILL: Yeah, sure.

3 All right. So, Mr. Sullivan, back to you. You
4 know how the Office of Planning's report influences what we
5 can do in terms of orders. And so, would you like to kind
6 of work with the Office of Planning a little bit and/or is
7 the Board interested in either a supplemental report from the
8 Office of Planning based on that time limit?

9 Or, first of all, Mr. Sullivan, are you interested
10 in working with the Office of Planning?

11 MR. SULLIVAN: Sure. We always are --

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: -- willing to work with them.

14 CHAIRPERSON HILL: Okay. All right. So, then in
15 that case does the Board -- we would like to have a
16 supplemental report from the Office of Planning. And then
17 do we need a continued hearing?

18 SECRETARY MOY: Yeah, I would suggest.

19 CHAIRPERSON HILL: So, we'll do a continued
20 hearing so we can ask questions of the Office of Planning.
21 And so, if we did a continued hearing, Mr. Shapiro, you're
22 back here on the 26th of February; right? And so we could
23 shoot for that date.

24 The ANC has already submitted their opinion. I
25 don't think that this will necessarily change -- I don't

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1 think you'll have to go back to the ANC because I don't think
2 any of the changes that you've made are significant. But if
3 you do want to go back to the ANC, you are more than welcome
4 to.

5 And then we get a supplemental report.

6 So, Mr. Moy, if we came back here on the 26th of
7 February, also we're trying to get a supplemental report from
8 the Office of Planning, could you give this a timeline,
9 please?

10 SECRETARY MOY: I would suggest, Mr. Chair, that
11 the applicant make their updated filings, let's say, by
12 February the 12th. And that will allow timing for a
13 supplemental report from the Office of Planning. I'll give
14 Office of Planning a week, or let's say Monday, February the
15 17th.

16 Is that good, Ms. Elliott?

17 MS. ELLIOTT: That's great. Thank you.

18 SECRETARY MOY: And then a continued hearing on
19 February 26th.

20 CHAIRPERSON HILL: Okay. Does the Board have
21 anything else?

22 And just so the public knows, and for the record,
23 all we will be discussing at the continued hearing and/or
24 taking testimony on at the continued hearing is whatever
25 information takes place between now and then.

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1 Mr. Sullivan, do you have any questions?

2 MR. SULLIVAN: No.

3 I would like to just point out a couple things
4 just because it's fresh in your minds, the lot occupancy
5 variance cases that you've had today, and the OP reports that
6 you've had today. Because there seems to be a bit of a
7 difference in the standard being applied to this one, and I'm
8 not sure where that comes from.

9 But Ms. Elliott mentioned that we might be able
10 to show that we need the additional deck for some safety or
11 accessibility reason. The question that was never considered
12 for the other two cases when they were just adding habitable
13 space because we want the habitable space. It was okay with
14 the Office of Planning to just want the habitable space.

15 So, again, the standard isn't that it's impossible
16 to do it, it's that it's unnecessarily burdensome.

17 So, I could do a comparison of the things they
18 said. They said that those cases were cases were unique and
19 the properties were identical. If you looked at the maps
20 with those OP reports, the properties are identical.

21 This case sticks out in my mind as it is unique.
22 When you look at this, this drawing in particular, you see
23 what's missing there. And you see that everyone has this lot
24 occupancy. And the delta in that lot occupancy and the one
25 we're requesting is much greater than in those other two

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1 cases.

2 So, I'm hopeful that we can continue to work with
3 the Office of Planning and come to an agreement on that.

4 VICE CHAIRPERSON HART: Yeah. And I, I guess just
5 to kind of respond to some of that, we are looking at these,
6 as you know, on a case by case basis. And one of the things
7 that was helpful to hear in some of the other cases also was
8 the degree in which the amount of relief that was being
9 requested. You're going from what, 45 percent lot occupancy?

10 MR. SULLIVAN: Yes. Because that includes the
11 garage.

12 VICE CHAIRPERSON HART: I understand that. I'm
13 just --

14 MR. SULLIVAN: Right.

15 VICE CHAIRPERSON HART: -- I'm just saying that
16 that is a much larger, you know, change that we're talking
17 about for this.

18 And there, in my mind there also seemed to be some
19 options to go with this. You, while I understand that there
20 is a garage that is, you know, that is not in this location,
21 the next door neighbor didn't have a garage up until about
22 3 years ago, 3 or 4 years ago. And, and so I understand
23 that.

24 I'm just saying that the, you know, even on this
25 block that you see here there are other places that do not

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1 have garages in the rear of them. So, there are -- across
2 the street, across Church Street. And, again, I understand
3 the point that you're making, I'm just saying that we have
4 to look at these as on an individual basis, and we have to
5 make that, you know, that determination, you know,
6 accordingly.

7 So, that's it. That's all I wanted to say.
8 Thanks.

9 CHAIRPERSON HILL: Okay. All right. So, we will
10 see everyone back again here on February 26th.

11 And, so we're going to take lunch. And I imagine
12 we'll shoot for 2:30. And, so, hopefully that will happen.
13 So, we'll see everybody back here at 2:30 for our last case
14 of the day.

15 Thank you very much.

16 (Whereupon, the above-entitled matter went off the
17 record at 1:48 p.m., and resumed at 2:30 p.m.)

18 CHAIRPERSON HILL: All right, Mr. Moy, whenever you're
19 ready.

20 SECRETARY MOY: Thank you, Mr. Chairman. The
21 Board is back in session. And I'm recording the time as
22 2:40, at or about.

23 So, if we can have parties to the table to Appeal
24 No. 20183 of The Residences of Columbia Heights, a
25 Condominium, capture and advertised for an appeal from the

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1 decision made on December 30th, 2019, by the Zoning
2 Administrator, Department of Consumer and Regulatory Affairs,
3 to issue Building Permit No. B190860.

4 CHAIRPERSON HILL: All right. I'll organize this
5 all. Just give me a second.

6 Go ahead. Please continue, Mr. Moy.

7 SECRETARY MOY: Building permit, to issue a
8 Building Permit No. B1908601 to permit a new building with
9 50 residential apartments for the Short-Term Housing --
10 Family Housing, or STFH, in the MU-5A Zone, at premises 2500
11 14th Street, N.W., Square 2662, Lot 205.

12 And as the Board is aware, there are motions to
13 dismiss and postpone.

14 CHAIRPERSON HILL: Okay, great. Thank you.

15 Please go ahead and introduce yourselves from my
16 right to left.

17 MR. GREEN: Good afternoon, Chairman, and members
18 of the Board. Hugh Green, G-R-E-E-N, attorney for the D.C.
19 Department of Consumer and Regulatory Affairs.

20 MR. LeGRANT: Good afternoon. Matthew LeGrant,
21 zoning administrator, DCRA.

22 MR. BROWN: Good afternoon, Chairman Hill, and
23 members of the Board. David Brown for The Residences of
24 Columbia Heights condominium.

25 MR. GIRVIN: Thank you for hearing us today. I'm

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1 Cammeron Girvin. I'm on the board of Residences of Columbia
2 Heights.

3 MS. MOLDENHAUER: Good afternoon, Meridith
4 Moldenhauer of the law firm of Cozen O'Connor on behalf of
5 the Department of General Services.

6 CHAIRPERSON HILL: Okay. So, let me see, Mr.
7 Green, you -- I'm sorry, Girvin. Girvin? So, Mr. Girvin,
8 you were trying to get some other people up there with you.
9 Are those just other people that are part of your
10 association?

11 MR. GIRVIN: Yeah. They plan to speak at some
12 point. It depends on, you know, what sections we're going
13 through. They might not, and just sit up here the whole
14 time.

15 CHAIRPERSON HILL: Okay.

16 MR. GIRVIN: But they would like to at some point.

17 CHAIRPERSON HILL: Okay. Sure. Of course.

18 Well, we do a variety of things I think Mr. Brown
19 knows. Like either there'll be witnesses and/or there's
20 always public testimony.

21 That's so funny. It's been a long day. There's
22 no public testimony so -- for appeals. So, but if there's
23 witnesses that Mr. Brown wants to call forward, he'll have
24 an opportunity to do so.

25 So, let's see, so that being the case we're just

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1 trying to get ourselves a little bit organized just for me.
2 You guys need the computer? You will need the computer?
3 Okay. All right.

4 So I'm just trying to figure out whether to move
5 Ms. Moldenhauer over there next to DCRA and then, you know,
6 move you guys. In fact, let's do that, okay?

7 Ms. Moldenhauer, if you'd just kind of sit over
8 there next to Mr. LeGrant. And then you guys can kind of
9 move over that way. That way if I need to bring up witnesses
10 left and right, I can do that to the appellant's right. Okay,
11 great. Thank you.

12 Okay. All right, so let's see. There's a couple
13 of things. I guess there are a couple of preliminary
14 matters, one of which is there was a timeliness motion -- I'm
15 sorry, dismissal due to timeliness. And then also a motion
16 for -- oh, a postponement due to a witness not being here I
17 think for DGS, if that was correct.

18 So, and I guess, Ms. Moldenhauer, since you put
19 the motions forward, could you please just mention both of
20 them to us?

21 MS. MOLDENHAUER: Yes. And if I could, I could
22 use the computer. I have some exhibits I want to walk
23 through with that.

24 So, we have --

25 CHAIRPERSON HILL: Wait a minute. Why don't you

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1 just -- Okay. Okay. I mean, I don't necessarily want to
2 argue the thing, I just want to hear what the motions are
3 real quick.

4 MS. MOLDENHAUER: So, there are three preliminary
5 motions before you today.

6 One is a motion as to the question of late file,
7 our potentially 1-day late filing, which includes all of the
8 motions that we will be discussing.

9 Then there is and we are taking note of the fact
10 that how do you interpret the 7 days, whether the 7 days
11 include the hearing date of today, or do they not include the
12 hearing date of today. If they do not include today's
13 hearing date they were filed 6 days before today, which means
14 that they were late.

15 We filed a preliminary motion asking to late file
16 them by 1 day. It depends on how the Board interprets that.

17 CHAIRPERSON HILL: Okay, that's fine. That's the
18 late date filing, that's the first motion; right?

19 MS. MOLDENHAUER: That's the first motion.

20 CHAIRPERSON HILL: And that's, and that's so we
21 even get to the other motions; right?

22 MS. MOLDENHAUER: Correct. Yes.

23 CHAIRPERSON HILL: And so, the other motions again
24 are -- Go ahead.

25 MS. MOLDENHAUER: A motion to postpone and a

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1 motion to dismiss.

2 CHAIRPERSON HILL: Right. Okay.

3 And what does the Board think? I don't
4 particularly have an issue with the 1 day late filing. I'd
5 rather hear from everybody than not.

6 Does the Board have any thoughts or cares -- not
7 cares -- does the Board have any thoughts?

8 MEMBER JOHN: I'm in agreement.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIRPERSON HART: Yeah, I think we're fine.

11 CHAIRPERSON HILL: Okay. All right. So, we're
12 going to go waive the filing deadline because I'd rather,
13 again, hear from everybody than just try to stifle any kind
14 of discussion.

15 So, then we have the two motions.

16 MS. MOLDENHAUER: Correct.

17 So, I will start off with the motion to postpone.

18 Under Section Y500.5, the rule states that a
19 hearing date may be advanced or postponed by order of the
20 Board for good cause shown. We submit that good cause has
21 been demonstrated in DGS' Exhibit 40. D Series Joinder at
22 Exhibit 56, and Exhibit 58.

23 We have three reasons for the requested late
24 filing -- I'm sorry, the request to postpone.

25 The request to postpone first stems from the

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1 appellant's failure to properly serve an automatic party.
2 DGS is the property owner and, thus, an automatic party under
3 Section Y501.1(c). And I'll start by listing all your
4 exhibits.

5 I pulled Exhibit 15, that is in your case records,
6 that is coming up on the screen now. You can see that in the
7 original process of service the appellant filed and served
8 this document on the Department of General Services at 1250
9 O Street, N.W. There is no DGS building at 1250 O Street,
10 N.W., there is only a building at 1250 U Street, N.W.

11 In addition to that, at Exhibit 1 of the filing
12 the initial submission was filed to an email address of D-S-G
13 not D-G-S at the email. That is also Exhibit 1.

14 And so, based on this, they were also served on
15 generic mailing addresses, one that was wrong. And so it was
16 delay in regards to having knowledge of service vis knowledge
17 of the filings in the District of Columbia.

18 Based on an affidavit submitted at Exhibit 58 by
19 the senior counsel for the Department of General Services,
20 Kristen Wapp (Phonetic.), it states here that obviously they
21 did not receive this based on the improper address. And that
22 when they were finally notified in the conversation about
23 preparing for this hearing they were -- sorry, where they
24 were discussing this hearing on January 29th, 2020 with Mr.
25 Green, that is when they then realized they needed to retain

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1 counsel.

2 And they expeditiously retained counsel. I was
3 not formally retained until January 22nd, which is just we
4 quickly rushed and filed all the documentation that it could
5 be reviewed by the appellant and by the Board as quickly as
6 possible. But, we believe that we did not have enough time,
7 obviously, where we can fully prepare for a case on the
8 merits.

9 Then our final argument is that Director
10 Zeilinger, who is the director of the Department of Human and
11 Health Services, would be a critical witness. There was
12 questions raised by the appellant that she may not be a
13 necessary witness. We believe that she would potentially be
14 able to address comments made in the appellant's briefs
15 specifically, where they assert that all of the short-term
16 housing facilities are the same. She would be able to
17 address those issues.

18 And we would ask for a postponement. I want to
19 be clear, we are not asking for a postponement on everything.
20 We are ready, willing, and able to argue the motion to
21 dismiss today. But, we are asking for a postponement on the
22 merits.

23 CHAIRPERSON HILL: Okay. And the reasoning for
24 that, again, is that DGS was not notified correctly, and that
25 you haven't had enough time to prepare, and that one key

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1 witness that you believe you have or would need is not here.
2 So that was one.

3 And the other, the last is the dismissal; correct?

4 MS. MOLDENHAUER: Yes. The final preliminary
5 motion is the motion to dismiss.

6 CHAIRPERSON HILL: And that's untimely?

7 MS. MOLDENHAUER: Correct.

8 CHAIRPERSON HILL: Okay. So, I don't know --
9 well, I'll give you my initial thoughts.

10 Although first, I guess, Mr. Brown, do you have
11 any thoughts to the different motions?

12 MR. BROWN: Mr. Chairman, when I filed my
13 opposition to the motion to postpone I was under the
14 impression that we had properly effected service on DGS. And
15 I didn't really understand why it had taken them so long to
16 respond.

17 Now that I have seen yesterday for the first time
18 the alleged errors in our service, I was unable to confirm
19 or deny the accuracy of those claims because as a solo
20 practitioner, and I have just one secretary, yesterday
21 morning at 9:15 she was involved in a car accident that
22 totaled her car, deployed her air bag, and sent her to the
23 hospital. I still am unable to confirm the accuracy of those
24 statements.

25 And, obviously, if we made a mistake I regret the

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1 error. And it certainly was not any intention to, to keep --

2 CHAIRPERSON HILL: Okay. Okay. So that's that.

3 MR. BROWN: -- DGS in the dark.

4 CHAIRPERSON HILL: And then the dismissal?

5 MR. BROWN: We are here and prepared to argue the
6 dismissal motion.

7 CHAIRPERSON HILL: Okay. Okay. All right. Let's
8 see, well, these are my initial thoughts.

9 MR. BROWN: I should also say that we are all here
10 ready, willing, and able, and prepared to proceed with the
11 merits --

12 CHAIRPERSON HILL: Sure.

13 MR. BROWN: -- today.

14 CHAIRPERSON HILL: I understand.

15 So, I guess my thoughts -- and I will ask my
16 fellow Board members what they think -- would be to go ahead
17 and I believe that, you know, DGS had enough -- well, I mean
18 they're, we're here. Like, I'd like to hear the case. And
19 I'd care for all of us to hear the case.

20 And then, if we need further clarification from
21 a witness that might not be here in terms of whoever that is
22 that DGS might want to bring forward, we can go ahead and
23 continue the case in order to hear from that particular
24 witness, as everyone is here.

25 And so, I'd like to go ahead and kind of move

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1 through the case while we can. And then, again, if we do
2 need to hear from an additional witness or if we think we
3 need to give more time to DGS, then we can do that after we
4 hear from them I suppose.

5 And I do want to hear from my fellow board members
6 on that.

7 In terms of the timeliness issue, I think that
8 that's something that I'd be interested in putting in
9 abeyance. And when I say abeyance, like I just -- I'm trying
10 to, there are some other things that I have to ask for from
11 the appellant, and so, in terms of clarification of their
12 arguments.

13 But I'd just like to hear from the -- in terms of
14 the timeliness issue to put that at the beginning of your
15 argument. And then the appellant can speak to that in
16 rebuttal in terms of -- I mean, I think the record clearly
17 states as to why you think there is a timeliness issue.

18 I think we have some questions as to what exactly
19 you are saying is untimely, like, which, which -- you know,
20 what is it that you're saying they should, you know, when
21 they should have known about it or whether it's the permit.

22 And so, but regardless, those are my thoughts with
23 the Board. What do you think about? I'm asking my
24 colleagues?

25 VICE CHAIRPERSON HART: So, I was looking over an

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1 older document and trying to discern some of the conversation
2 that was going on, or the explanation that was going on from
3 the owner, the owner's representative. But I would like to
4 hear some further information about the timeliness to kind
5 of make sure I understand that more fully.

6 So, I don't have a problem with waiting on that,
7 you know, some, at some point in the future.

8 I think that we can move forward with the case at
9 least in part today. We'll -- we may actually hear, not hear
10 all of it. So, I wouldn't have a -- I don't, I don't think
11 that we need to postpone the case.

12 And what was the other one? Oh yeah. Oh yeah.
13 So, I think that it's the dismissal part, the motion to
14 dismiss I think we just need to hear a little bit, a little
15 bit more information on that. And then postpone, I think we
16 need to -- I think we have, I think we can move forward today
17 and we will hear from, you know, Ms. Moldenhauer's witness
18 in the future if we feel it's necessary.

19 CHAIRPERSON HILL: Okay. Anyone else?

20 MEMBER JOHN: Well, let me take a different view.

21 I think we're hearing that counsel was just
22 retained a week ago on January 22nd. And so, I don't know
23 if a week is enough time to adequately present the case on
24 the merits. And so, I would be in favor of hearing the
25 motion to dismiss and maybe, you know, not decide on the

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1 motion today.

2 There might be some overlap. And perhaps hearing
3 from some of their witnesses in terms of, you know, so they
4 wouldn't have to come back again. But I would be a little
5 uncomfortable requiring counsel to go ahead with the merits
6 of the case today with only a week to get ready.

7 VICE CHAIRPERSON HART: The only, the only piece
8 that I have for that, the DGS, there's a letter from the BZA,
9 or I guess the Zoning, Board of Zoning -- sorry, there's a
10 letter from the BZA to DGS on December 9th, 2019, stating
11 that this hearing is going to take place. So that was a
12 month-and-a -- almost, actually, a little over a month, a
13 month ago. No, no, a little over a month-and-a-half ago.

14 And there is information from May -- his is
15 Exhibit No. 7 -- May 3rd, 2019. There was a letter from
16 Cozen O'Connor, Ms. Moldenhauer to Mr. Brown. It wasn't with
17 regard to the appeal, it was with regard to some things that
18 the applicant had, or the appellant had brought up, and they
19 were responding to those particular pieces of information.

20 So, it seems like there is a lot of information
21 that's already in the record about some of this. So, that's
22 why I was thinking that this doesn't seem to be a week-long
23 thing. It seems like it's been a much longer period of time
24 where I think folks are ready to kind of move forward today.

25 I understand that there may have been some

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1 information about when the owners -- when DGS' counsel was
2 maybe retained for this, for the appeal itself. But it seems
3 as though there's been information about this either coming
4 or noticed from earlier in December.

5 So, that's it.

6 COMMISSIONER SHAPIRO: Mr. Chair, I would
7 associate myself with Vice Chair Hart's comments. And I'm
8 fine to proceed today on the merits.

9 CHAIRPERSON HILL: Okay. So, let me think.

10 So then my thoughts, I'll explain, my thoughts
11 again is that, you know, this is where the property owner has
12 been -- normally, normally I'd get hits with the appellant
13 and DCRA. And so, the property owner actually now is DGS so,
14 therefore, they have, they are represented by an attorney.

15 Ms. Moldenhauer, you were about to say something?

16 MS. MOLDENHAUER: Oh, I just want to point out
17 that the property owner here, DGS, wanted to mail the brief
18 or write a prehearing statement that would articulate the
19 merits of the case. And, too, Board are on point. And there
20 has been nothing in the record. Typically it is an
21 opportunity for the property owner to at least brief the
22 Board in advance of the hearing in writing to articulate
23 their position on the case. That has not even occurred here
24 yet.

25 And I think it would disadvantage the Board to

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1 hear a case without even having a chance to have read
2 assertions and perspectives being put in writing by the
3 property owner. And that was due to the fact that we did not
4 receive proper notice.

5 The notice Board Member Hart referenced went to
6 a general mailing address at DGS. It is a very large, you
7 know, institutional building.

8 Appellant knew of project managers' email
9 addresses names. There was not even a street number on that
10 mailing, if you look at the mailing.

11 CHAIRPERSON HILL: Okay.

12 MS. MOLDENHAUER: There's not a street number on
13 that.

14 CHAIRPERSON HILL: Okay. So, then now I'm back,
15 I don't know, back over it. Apparently we're going to
16 discuss this for a little while first.

17 I can go either way. I mean if, you know, I think
18 that if it was a week ago that they were notified, we can do
19 it. And as Ms. John was just kind of suggesting, we can go
20 ahead and hear the merits of the timeliness. We can hear
21 from all the witnesses that are here. And then we can come
22 back.

23 I think it's somewhat inefficient. And so, I
24 don't know exactly -- Yeah, I still think my vote is to hear
25 it. But I want to know if that's changed anybody's opinion.

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1 Because we can do what Ms. John suggests which is
2 hear the timeliness, you know, the case we have today at the
3 end. And so, we can hear the timeliness issues. We can
4 either hold that in abeyance or at least hear it. We can
5 hear from all the witnesses and then we can come back here
6 again.

7 It seems to me as though it's a little bit
8 inefficient. But I can also understand the point that says,
9 you know, if the property owner just hired an attorney a week
10 ago, and we haven't seen any briefs from them, that's
11 accurate. We haven't seen anything in writing ahead of time,
12 and we normally do, if there is something that the property
13 owner had wanted to put forward.

14 And we can also clarify with the appellant and the
15 people here because we've basically seen -- we've read the
16 record, and so we know what it is that we are kind of
17 interested in focusing on. So, we can kind of at least
18 clarify that, I suppose, and then come back and hear it
19 again.

20 But what does the Board think?

21 COMMISSIONER SHAPIRO: I think it's a small matter
22 of saying that she is not prepared to go forward then we
23 should flat-out -- and there is nothing in the record that
24 we would normally see in a situation like this -- then that
25 is persuasive enough for me, and I don't think we should move

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1 forward.

2 VICE CHAIRPERSON HART: What is --

3 COMMISSIONER SHAPIRO: I'm not sure that makes the
4 most sense to me, but I'm not sitting on your side of the
5 table. So, but if that's what you're clear about, that's
6 what you're clear about it, you know.

7 CHAIRPERSON HILL: The question I guess, Ms.
8 Moldenhauer, Mr. Girvin -- Girvin, I'm sorry, I'll give you
9 a second in one second -- is, are you not prepared to move
10 forward?

11 MS. MOLDENHAUER: I am not prepared to move
12 forward. I have briefed and prepared for the timeliness
13 argument. We have issues that we would like to further look
14 into. We have not fully prepared for nor have we briefed the
15 merits of the case.

16 CHAIRPERSON HILL: Okay. Mr. Girvin?

17 MR. GIRVIN: Yes, if I may.

18 We have been in discussion with representatives
19 of DGS, including about this. There, I really find it hard
20 to believe that they didn't know this was coming. It's, you
21 know, Ms. Moldenhauer has been aware of this coming for
22 months. Kind of, I suspect the hole -- I realize it's
23 inappropriate to surmise, but I suspect that the whole DGS
24 and DCRA have been kind of atwitter about this behind the
25 scenes.

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1 And it's very convenient for them to have only
2 hired counsel a week ago. And, in fact, Ms. Moldenhauer did
3 just have one day to prepare all that. Kudos to her; she's
4 a work horse. But it's -- I find it disappointing.

5 CHAIRPERSON HILL: Well, I mean, believe me, I
6 find it disappointing. I would like to hear it right now as
7 well. But I guess it wasn't, it wasn't a day, it was a week
8 ago is when apparently when was hired, or thereabouts. And
9 I don't know when the notice -- we're having -- I can't, as
10 you just said, surmise. I mean, I'm just -- and I'm taking
11 test -- we're taking testimony right in front of us right
12 now.

13 Which, by the way, has everybody been sworn in?
14 Okay. Okay, you guys haven't been sworn in.

15 Would you please stand and get sworn in by the
16 secretary to my left. And if anybody didn't get sworn in,
17 please stand.

18 (Witnesses sworn.)

19 SECRETARY MOY: Thank you. You may be seated.

20 CHAIRPERSON HILL: All right. Well, I agree with
21 that. I mean, that's a very flat-out statement. I mean, if
22 the property owner's attorney is not prepare and has not been
23 given the adequate notice, then I don't think that -- we're
24 going to have it postponed.

25 So, let's go ahead and hear the arguments for the

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1 preliminary matters, one of which, again, was the dismissal
2 for timeliness. And I suppose then we will also hear from
3 any witnesses, Mr. Brown, that you have here today. That,
4 you know, I don't know what the day is that we're going to
5 come back. But we can go ahead and hear from witnesses
6 today.

7 Hold on. Give me one second. And I don't even
8 know how we can hear from witnesses necessarily.

9 Give me a second.

10 I'm sorry. Go ahead, Mr. Girvin.

11 MR. GIRVIN: Yeah. We have I think at least 11
12 people gathered here on behalf of the association. Lots of
13 these folks have taken days off work. I have taken a day off
14 work. I -- yeah.

15 CHAIRPERSON HILL: No, it's not so much that.
16 It's that, it's that it's difficult to hear from witnesses
17 on a case we're not hearing right now.

18 And so, you guys can go ahead and make testimony
19 but your testimony -- and I'd be happy, we'll be happy to
20 take the testimony. Actually, in the past we've actually
21 postponed everybody before because it didn't seem to make
22 sense in terms, like, the testimony wasn't going to coincide
23 with the arguments. So, therefore, they were kind of like
24 displaced.

25 But, if there are people that can't come back or

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1 if you want to go ahead and testify, we'll see what happens.

2 I just have a question.

3 MR. GIRVIN: Thanks.

4 CHAIRPERSON HILL: I'm sorry, you guys, I was just
5 trying to figure out procedurally again how this would work.

6 So, Ms. Moldenhauer, if you want to go ahead and
7 give your argument for the timeliness issue.

8 And then, Mr. Brown, you will have an opportunity
9 to give your argument for the timeliness issue.

10 And then DCRA, you will also have your argument
11 to give arguments for the timeliness issue.

12 If there are any questions we have of any of you,
13 we'll kind of go ahead and see how it goes. I still probably
14 think we'll hold it in abeyance. I don't know. But I'm
15 going, Ms. Moldenhauer, I'm going to go ahead and put 10
16 minutes up there, okay. Just so I know.

17 Mr. Moy, if you could put 10 minutes on the clock
18 just so I know where we are.

19 And, please go ahead and give us your argument.
20 Thank you.

21 MS. MOLDENHAUER: Thank you.

22 Members of the Board, the question which is before
23 you today is when did the appellants know or should have
24 known of the zoning decision and approval that was in the
25 foundation permit?

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1 We have put forward a lot of different factors,
2 but right now I'm going to focus on a very clear, very
3 succinct question of the foundation permit.

4 The unique question of timeliness actually is
5 always evaluated on a case-by-case basis. And the Board has
6 to look at each fact and all the facts that are relevant to
7 that case before them. For instance, in the BZA order under
8 the Usevel (Phonetic.) case, the zoning administrator's email
9 in that case was deemed to be not ambiguous under the
10 totality of the circumstances.

11 Here, the totality of the circumstances is glaring
12 that the appellant had actual, constructive, and reasonable
13 notice of the foundation decision, and that this appeal is
14 untimely.

15 CHAIRPERSON HILL: May I interrupt for one second?
16 When you say "foundation permit," what do you mean
17 by that?

18 MS. MOLDENHAUER: We're going to go to it in a
19 bit. So, if you want, the foundation permit is part of
20 Exhibit 51. And I'm going to walk through line by line of
21 the foundation permit during my testimony.

22 But first I want to just simply go to the totality
23 of the circumstances. And I'm pulling up what is Exhibit 45
24 in the case record.

25 The appellants have been clear and have known

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1 about this project since December 7th, 2017, when the mayor
2 announced this location as the Ward 1 Short-Term Family
3 Housing Program. Since that day, the appellants may have
4 already made the decision that they had concerns about the
5 association.

6 But since then, there has been open and clear
7 discussion about this project. If you look at No. 5 on the
8 list here, this is the February 1st meeting in which members
9 of the public, community members, were invited to an advisory
10 committee meeting and publicly, online, currently still
11 available through that link, you can get questions and
12 answers. And it states as of February 1st, 2018, that this
13 is going to be a matter-of-right project.

14 We go down then to continued advisory meetings
15 that occurred, notes that were being taken, and information
16 that was being constantly disclosed. Under No. 9, as of May
17 26th, 2018, there was an RFP that was publicly disclosed and
18 submitted throughout the city for this project's construction
19 and architecture of the project. And it listed in that
20 public document it was going to be a by-right project.
21 There's no BZA or special exception relief being requested.

22 We then look at the communication back and forth
23 and information on the project dock website. Here, on No.
24 11, as of January 22nd, 2019, public could have gone to the
25 permit tracker and seen that a foundation permit had been

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1 filed, as well as, on 12, a foundation permit.

2 On No. 13, an important date as well. You can see
3 that on February 1st permit tracker shows a zoning review
4 approval.

5 And I'll just pull that up right now.

6 So, at Exhibit 50 we have here the publicly
7 available information. And you can see here the FD number,
8 which is your foundation permit information. You can see
9 that this was deemed, you have knowledge that it was deemed
10 filed as of January 2019. And then here you can see zoning
11 review approved February 1st, 2019.

12 So, as we go through here there's clear public
13 disclosure as of the permit tracker information in regards
14 to February 1st, 2019.

15 We continue down the timeline, and there is clear
16 evidence as of February that the appellant had knowledge and
17 that they specifically communicated in their own brief their
18 BZA submission, Exhibit 33, said that they knew of the rear
19 yard concern that is challenged in this case.

20 They also then continued between February, March,
21 and April to communicate back and forth with both DGS and
22 then, eventually, DCRA regarding all of the points and issues
23 that are being raised on this appeal, indicating that they
24 clearly knew of these concerns being raised, dating back to
25 February and March. And then eventually consolidating to

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1 their submission in a letter which was on No. 24 which is the
2 appellant's April memorandum.

3 This memorandum goes line by line almost parallel
4 to this appeal, articulating and identifying the challenges
5 that they were bringing. The plans that were referenced in
6 that, and even the zoning chart that is attached to line item
7 29 -- 24, which is their April memorandum, is the same zoning
8 analysis and zoning summary sheet that you will see in the
9 foundation permit.

10 After this, on May 10th, on line item No. 26 here,
11 they had a specific meeting with the zoning administrator in
12 which they discussed the use, the rear yards, the parking,
13 and the loading, all of the points that are on merit here for
14 the appeal. They had knowledge and had that discussion with
15 the zoning administrator in April.

16 After the April meeting, shortly thereafter the
17 April meeting the foundation permit was approved.

18 I'm going to go to the foundation permit was
19 approved. I want to just point out that under BZA Appeal
20 19023, which is the River Inn appeal which was brought by the
21 ANC, the Board found that there was jurisdiction to hear the
22 appeal and that a zoning decision had been made under a
23 public space permit application.

24 So, here a public space permit application, which
25 typically doesn't really bring up zoning jurisdiction,

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1 because that permit gave knowledge and notice of a zoning
2 decision, that was the date in which the 60-day time period
3 ran, and that was the date in which they gave jurisdiction.
4 The major issue there was whether the Board had jurisdiction
5 to evaluate that.

6 Here, the same issue with the foundation permit
7 that was issued by DCRA, approved, reviewed, it is
8 unequivocal that that was a final decision and that that
9 decision included all of the issues being raised by the
10 appellant.

11 I'm going to quote from BZA Case 18469 in which
12 it said, "The word 'approved' next to zoning in PIZ
13 (Phonetic.), without any qualifications whatsoever was
14 unequivocal. The permit has been cleared by Zoning for
15 issuance. Thus, a member of the public accessing
16 information, including the appellant, knew that the zoning
17 administrator had approved the revised permit."

18 Since the approval represented a final decision
19 rather than an interim written determination, there is no
20 need at all to define that the BZA had fully briefed, was
21 fully briefed on this issue.

22 So, I go back again to Exhibit 50 in the record.
23 And I go to the zoning foundation permit in which, identical
24 to BZA Case 18469, there was a case of zoning review and
25 zoning approval. This dates back to February 1st, 2019.

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1 We even then look at the appellant's filing at
2 Exhibit 59. In their filing on Exhibit 59 -- I'm just going
3 to scroll down here -- they attached two emails. One of the
4 emails was filed on May 29th. In this email from Mr.
5 Cammeron, he says to the zoning administrator that he knows,
6 he's following the online permit tracking system. In the
7 second paragraph on the second line they were clearly aware
8 of this online system, the foundation permit was in that
9 system. Zoning identified it as approved. And that permit
10 showed all required information.

11 We now go to the current. This is filed in
12 Exhibit 51 of the BZA application. On the front page of the
13 foundation permit in clear letters it says the word one STFH
14 and PSH, which is clearly known then as the Short-Term Family
15 Housing and Permanent Supportive Housing.

16 On the upper right-hand corner -- I'm going to
17 blow this up so everyone can see it. I'm going to just give
18 me a second to kind of scroll over.

19 This permit was finalized as a final decision by
20 DCRA on May 21st, 2019. And then you can see here there is
21 a notation under the permit, the DCRA's final issuance of
22 zoning review, with the zoning reviewer's name, and the date
23 of May 21st, 2019.

24 If we go, if we go then to page A0.11, which is
25 the next two sheets down, here again with the notation we go

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1 to the project description. What was the project description
2 that was then being approved? It says, "The word 'one Short-
3 Term Family Housing facility that will be located at this
4 address,'" it describes the site, remaining on the site, the
5 service parking of 13 parking spaces, that it will be on
6 paragraph 2, 50 residential apartments. And describes those
7 apartments as 35 2-bedrooms for families in need of short-
8 term emergency housing, STSH. Remaining residences will be
9 1-bedroom apartments with individual for the Permanent
10 Supportive Housing.

11 In addition to this narrative, we have as part of
12 this approval page the zoning summary sheet. On the zoning
13 summary sheet it specifically says "allowed residential
14 uses." "Proposed apartment building." It goes forward to
15 identify the rear yard as "none."

16 It goes on then to provide the specific
17 information regarding parking and regarding loading.

18 All of this information is publicly available and
19 part of a DCRA final building permit that was issued on June
20 -- the final decision was on June two thousand -- on June
21 9th. I'm just going to pull it up again.

22 So, June 3rd on line item 39 on the timeline.

23 Sixty days from the June 3rd date would have been
24 a required filing of August 2nd, 2019. The appellant did not
25 file but for 143 days after that June 3rd, 2019 date.

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1 CHAIRPERSON HILL: Can you go back to, can you go
2 back to that June 3rd date? What is it? Oh --

3 MS. MOLDENHAUER: Sorry. Line item 30.

4 CHAIRPERSON HILL: Right.

5 MS. MOLDENHAUER: The line item 30.

6 CHAIRPERSON HILL: Which are you -- which exhibit
7 are you in again?

8 MS. MOLDENHAUER: So, even though the permit was
9 stamped --

10 Sorry, this is Exhibit 45.

11 Even though the permit was stamped on the upper
12 right-hand corner saying May 21st, the date of the permit
13 because it takes time from when the DCRA stamps it to then
14 when you take it up or when they actually issue the permit,
15 the issuance date which is also on permit tracker is June
16 3rd. So, that is the discrepancy. And we're even going on
17 the later of the two days, to the June 3rd date of when that
18 permit was formally issued.

19 And so, we are 143 days. The regulations require
20 50 days.

21 Questions that are asserted and the standards that
22 have been asserted by this Board are that there must be
23 evidence that it was, one, available for public review.
24 There is no question that this was publicly available on PIZ.
25 And that there is case law that says, and BZA cases that say

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1 that PIZ is publicly available and should be relied upon.

2 But also, that there was a clear way forward for
3 the permit. This was the beginning of the permit process,
4 and clearly denoted DCRA's review of zoning and their
5 confirmation of the uses that were identified here.

6 The appellant's filing in their response to our
7 submissions justify when they filed when they did.
8 Unfortunately, that's not the question this Board is required
9 to analyze. The Board is required to analyze when did they
10 know, when should they have known about a final decision that
11 illustrated and clearly showed -- oh, actually I didn't get
12 to show you in the plans it also showed the site plan.

13 Let me just go to that because I want to make sure
14 that it's clear that those plans showed every facet. Sorry.

15 If we go back to the site plan -- I jumped forward
16 -- it includes the zoning chart. But also on A -- so, on
17 AO.40 it shows the site plan. It shows the rear yard, it
18 shows the information, it shows the elevations. So this was
19 -- and we have three different exhibits, Exhibit 51, 52, and
20 53, because the foundation permit was so extensive.

21 This showed all of the information. That was
22 required and necessary. So, when looking at when the
23 appellant knew or should have known of all of the issues
24 aggrieved -- the use, the rear yard, the connections, the
25 parking, and the loading -- one, which was how did the

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1 circumstances tell the Board that they clearly knew about
2 that dating many, many, many months back, all the back and
3 forth communication, the advisory committee meeting minutes.
4 But that at the end of the day the final decision was on June
5 3rd and that this appeal is untimely.

6 I will reserve the rest of my time for rebuttal
7 and for closing.

8 CHAIRPERSON HILL: You were over time, Ms.
9 Moldenhauer.

10 MS. MOLDENHAUER: I will request additional time
11 for rebuttal and closing.

12 CHAIRPERSON HILL: There is no reserving. Like,
13 you're already, you're already 50 percent over.

14 Let's see. Mr. Brown.

15 Well, do we want to do questions or do you want
16 to hear from Mr. Brown first?

17 All right, Mr. Brown, you can go ahead now and
18 give us your argument, please.

19 MR. BROWN: I just want to start by going over the
20 basic undisputed facts. My clients kept track of when the
21 building permit issued. And within 2 or 3 days of the
22 building permit issuance my clients got permission to file
23 the appeal.

24 We then got a hold of the plans within 10, within
25 10 days. That was October 9th. The appeal was actually

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1 filed on October 19th, and approved for filing and accepted
2 on October 24th. In short, 25 days after the building permit
3 was issued.

4 That is an exemplary example of diligence, not
5 deleteriousness. And the notion that we have been in any way
6 dilatory about wanting to file and challenge this building
7 is just, it defies common sense.

8 Just look at the two issues that we have presented
9 her. The condominium is directly adjacent to the building
10 whose construction is authorized. The zero setback
11 authorized will deprive the condominium of the light and air
12 that would come from compliance with the 15-foot setback that
13 we claim is applicable for the rear yard in this zone.

14 The way they got around the setback requirement
15 is to connect the existing Rita Bright Community Center
16 building --

17 CHAIRPERSON HILL: Excuse me, Mr. Brown. Hold on.
18 Hey. Hello.

19 You know, I'm just politely letting people have
20 their time to talk. I've been here all day, okay. And
21 apparently we're going to be here a while longer.

22 Mr. Brown, I was giving you a couple more breaths
23 before all the people are going to interrupt you. But we're
24 just kind of speaking to the timeliness issue is what they
25 were talking about.

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1 MR. BROWN: I understand. I understand that.

2 CHAIRPERSON HILL: Okay.

3 MR. BROWN: What I'm saying, the point I'm trying
4 to make is that my clients were very concerned about the loss
5 of light and air and they wanted to bring this permit appeal
6 as soon as they could.

7 CHAIRPERSON HILL: Sure.

8 MR. BROWN: And we're not being dilatory.

9 CHAIRPERSON HILL: I understand.

10 MR. BROWN: The same is, the same is true with the
11 other claim, the lack of a special exception. Because the
12 special exception gives this Board the opportunity to provide
13 conditions that protect neighboring property.

14 CHAIRPERSON HILL: Right. So that, again, is a
15 different discussion. But I'm just trying to figure out the
16 timeliness in terms of this, in terms of when you guys filed
17 the appeal.

18 And I'm not trying to be -- I'm just trying to
19 clarify what I understand. It's, again, the permit, the
20 building permit is what you guys are using as, again, what
21 the zoning administrator's decision was for the first
22 writing.

23 MR. BROWN: So, what happened, what happened was
24 when I got involved in this case and I saw the efforts that
25 DGS had gone to to get a zoning administrator ruling with

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1 respect to the legitimacy of the connection between the two
2 buildings, he included in his ruling a disclaimer saying that
3 this was not a first writing.

4 As a result of that, and knowing that there was
5 no first writing that my clients could appeal, I arranged for
6 a meeting with the zoning administrator. And Mr. Girvin and
7 I attended, along with several other people. I believe that
8 the zoning, the general counsel for the zoning administrator
9 was there at that meeting.

10 And as Ms. Moldenhauer pointed out --

11 CHAIRPERSON HILL: Was that meeting before the
12 building permit got issued?

13 MR. BROWN: Way before. Way before. This was
14 back in May of 2019. The building permit was issued on
15 September 30th.

16 And what I've included in my, in my file, in
17 Exhibit A, and Ms. Moldenhauer has highlighted it for you,
18 was Mr. Girvin's email to Mr. LeGrant thanking him for
19 meeting with us and saying that as we understand from the
20 meeting, no building permit or zoning determinator --
21 termination letter has been issued.

22 So, we were waiting for that in order to file the
23 appeal.

24 CHAIRPERSON HILL: What are you reading from? I'm
25 sorry.

1 MR. BROWN: Exhibit A to my opposition brief.

2 CHAIRPERSON HILL: Do you know what exhibit number
3 it is?

4 MS. MOLDENHAUER: Exhibit 59.

5 CHAIRPERSON HILL: Thank you.

6 MR. BROWN: And then in a subsequent email that
7 I sent to Mr. LeGrant on September 24th, I said to him, "This
8 is a further inquiry into the status of the zoning review of
9 Building Permit B1908601 for what has been dubbed an
10 apartment house to be erected by the Department of General
11 Services at 2500 14th Street, N.W. As shown below, we met
12 on this in May, where I raised several issues, including DGS'
13 failure to seek a special exception for the emergency shelter
14 component of this proposed construction. The permit tracking
15 page of the DCR website shows zoning review approval as of
16 9/3/19. Is that correct? Inclusive of your decision on the
17 issues that I raised with you?"

18 "So, I would appreciate a heads-up as to when the
19 permit might issue so that I can ensure a timely appeal to
20 the BZA. Otherwise, I stand ready to meet with you at your
21 convenience if you think it would be helpful to further
22 discuss the issues."

23 So, plainly, we were of the impression that we
24 couldn't appeal. In fact, I advised --

25 CHAIRPERSON HILL: Okay.

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1 MR. BROWN: -- my clients that there hadn't been
2 a final, there hadn't been a final decision that could be
3 approved.

4 CHAIRPERSON HILL: Okay.

5 MR. BROWN: And, finally --

6 CHAIRPERSON HILL: Sure. Go ahead.

7 MR. BROWN: -- what I wanted to say with regard
8 to this foundation permit, I am unaware of any decision by
9 this Board that said that some subsidiary permit to the
10 building permit would be the trigger for the filing of a
11 building permit appeal.

12 And I would rely, as I pointed out in my brief,
13 the Basken v. BZA case, 946 A. 2d 356, at page 364, says it
14 is the building that "is the document that reflects the
15 zoning decision about whether a proposed structure, and its
16 intended use as described in the permit application, conforms
17 to the zoning regulations."

18 And if you look at the -- and Ms. Moldenhauer
19 didn't show you these, these documents that describe the
20 foundation permit -- these documents have these big shadow
21 blanks saying that this area above ground is not included in
22 this permit application. But our concern is all about what's
23 above the ground, the lack of light and air coming from the
24 building that's above the ground.

25 My clients aren't concerned about the issues that

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1 were resolved in the foundation permit. I would have advised
2 them that they need to wait till the building permit was
3 filed, and that's what we did. This is not a case of
4 deleteriousness, this is, this is --

5 CHAIRPERSON HILL: Okay. All right, Mr. Brown,
6 I got you.

7 MR. BROWN: All right.

8 CHAIRPERSON HILL: Actually, somebody had a
9 question.

10 VICE CHAIRPERSON HART: Yes. Actually, one of the
11 things does actually pertain to whether or not it's below
12 ground or above ground, and that's the connection. Because
13 your assertion, to my understanding, is that the connection
14 is below grade, which would be included in the foundation
15 permit. Because that's part of what they're talking about
16 with that.

17 MR. BROWN: I don't know that that's the case.
18 But I certainly wasn't --

19 VICE CHAIRPERSON HART: I mean, it is --

20 MR. BROWN: I will, I will, I will give you this,
21 that I paid no attention to the foundation permit. I, I
22 believed all along, based upon this Board's precedence, that
23 what we needed to do was to appeal the building permit.

24 MR. GIRVIN: If I may interject, we understand if
25 you consult the drawings for the foundation permit there's

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1 nothing about the connection in the foundation permit.
2 That's only in the building permit, --

3 CHAIRPERSON HILL: Okay.

4 MR. GIRVIN: -- in the plans.

5 CHAIRPERSON HILL: All right. I'm sorry, didn't
6 mean to interrupt.

7 Okay, well I -- Do you have a question? Okay.

8 So, Mr. Green, and I think Mr. Shapiro has a
9 question for OIG in a second perhaps, but it appears to me
10 as though there's been a lot of, there was a lot of back and
11 forth about what Mr. Brown and his clients had intended to
12 do when all this stuff was going on. And so, you know, it
13 seems to me like they were waiting for the building permit
14 to be issued before actually formalizing their appeal.

15 It sounds as though you guys knew there was going
16 to be an appeal. And so, I'd like to hear your thoughts on
17 the timeliness issue, please.

18 MR. GREEN: Good afternoon, Chairman.

19 I want to bring -- I don't know if my 10 minutes
20 starts -- but I just wanted to bring a couple of points.

21 We did join the motion, DGS' motion, as you're
22 aware, and also, for the record, to postpone. So, just to
23 clarify that we did file that, we joined that.

24 The one thing I want to bring up is --

25 COMMISSIONER SHAPIRO: Sorry. To postpone or to

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1 dismiss?

2 MR. GREEN: To dismiss and also to postpone.

3 Excuse me. Pardon me for the fraction.

4 COMMISSIONER SHAPIRO: That's all right. Thank
5 you.

6 MR. GREEN: The point I --

7 CHAIRPERSON HILL: I didn't know, actually, that
8 you're also onboard with the postponement. So, that's
9 helpful.

10 MR. GREEN: Sorry. So, we're onboard for that.

11 So, there's a couple of things, I think need to
12 be brought to, just for clarification under 02.2, as Ms.
13 Moldenhauer pointed out, what did the appellants know or
14 reasonably should have known?

15 The reason why the foundation permit is important,
16 and it's in the appellant's own filings -- and I'll just
17 bring it to your attention here for further clarification
18 because it is important -- this is Mr. -- this is Mr. Brown's
19 own, this is BZA Exhibit 6, his own zoning compliance
20 memorandum wherein -- and if I could draw down your attention
21 to this, and this is all with respect to his zoning analysis
22 of the foundation permit. And I bring this exhibit to your
23 attention, which is April 18th, 2019. Let me just -- and I'm
24 not going to read the whole thing, obviously, to torture
25 everyone. But this is, here's, here's where it becomes

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1 important, and then I will go into the other issues of
2 timeliness.

3 So, Mr. Brown, and who has been retained by the
4 appellants to review the zoning compliance analysis for this
5 Ward 1 project says, "I find a number of significant
6 deficiencies in the conclusions expressed in the table."
7 What table? The table of the foundation permit which was
8 previously discussed by Ms. Moldenhauer and presented.

9 "The plans should not be approved in their present
10 form and are subject to challenge if they are approved."
11 Wherein, all of the foundation permits, or excuse me, all of
12 the plans with respect to the foundation permits which were
13 just presented by Ms. Moldenhauer, and were in the
14 appellant's possession along with Mr. Brown's analysis, were
15 subject.

16 And Mr. Brown expressly states they could be
17 challenged. What do you mean? Challenged by way of an
18 appeal.

19 Okay. So, in this regard the appellant for
20 months, not just a few weeks, not just, oh, the permit, the
21 building permit appeared, for months was aware of both the
22 nature of the building, its use, it was a single structure;
23 all of the issues that were raised. And actually, this
24 particular April 18th, 2019 analysis is essentially his
25 entire appeal.

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1 So, for the purposes -- and I know, I'm trying to
2 keep my time brief because you're all very important -- the
3 purpose is then there were subsequent meetings after, which
4 Ms. Moldenhauer went through and the timeline shows, that the
5 appellant was keenly aware of all aspects of this project.

6 So, I want to bring the court's attention -- or,
7 excuse me, court -- the Board's attention that this is
8 important and it is a timeliness question. That's why we
9 joined the motion.

10 COMMISSIONER SHAPIRO: Mr. Chair?

11 So, Mr. Green, I just want to understand, are you
12 arguing that they're gaming the system somehow? So, you're
13 arguing that they -- because I'm confused about -- and I'm
14 curious, OIG or even others might tell experiences about
15 this, because this is a little bit newer to me that the clock
16 starts ticking at the foundation permit and that they should
17 have known that.

18 They're saying, well, they thought the clock
19 started ticking with the building permit. And you're saying,
20 no, they're not telling the truth, that they should have
21 known that the clock started ticking with the foundation
22 permit.

23 MR. GREEN: No, it's not about -- if I may, Mr. Shapiro, it's
24 not about whether they're telling the truth or not, it's
25 whether or not they had knowledge of what the use and --

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1 MR. SHAPIRO: But I'm asking you a different
2 question.

3 MR. GREEN: Yes, sir.

4 MR. SHAPIRO: Because they clearly had knowledge
5 of the project. And they clearly have been opposing the
6 project, right? That's not a surprise to any of us. It's
7 that the timeliness of their appeal, they felt like they were
8 being timely with the appeal because they were timing it
9 based on the building permit.

10 You're saying they were untimely because they
11 missed the clock because they should have been timing it
12 based on the foundation permit. I mean, that's what's before
13 us.

14 MR. GREEN: Correct.

15 MR. SHAPIRO: And you say yes, that is correct,
16 the clock starts ticking at the foundation permit.

17 MR. GREEN: I'm saying that the clock starts
18 ticking when they knew or should have known the actual
19 decision of the DCRA which they --

20 MR. SHAPIRO: It's when they know.

21 VICE CHAIRPERSON HART: But when are you saying
22 that point was?

23 MR. GREEN: So --

24 VICE CHAIRPERSON HART: When we have to look at
25 this, we have to look at this is the date that we are

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1 starting to affirm that this is starting, that the clock is
2 starting at that point. What are you saying is that date?

3 MR. GREEN: June 3rd, 2019, in which the
4 foundation permit was issued.

5 VICE CHAIRPERSON HART:: So it's the foundation?

6 MR. GREEN: Correct.

7 VICE CHAIRPERSON HART: Okay. Thank you.

8 MR. SHAPIRO: So I just want to make -- and again,
9 pardon me for ignorance. It's not because there's something
10 magical about the foundation permit. Instead what you're
11 saying is, it's because then there's documented evidence that
12 they knew.

13 MR. GREEN: It's documented evidence that the DCRA
14 has issued a final determination with respect to the issues
15 which are on appeal.

16 MR. SHAPIRO: Okay. That's clear. Thank you for
17 the -- now I understand.

18 MS. JOHN: I have a question for DCRA.

19 So do you have any examples of situations where
20 there's been appeal based on a foundation permit? I'm having
21 difficulty getting to understand how the public would know
22 that once they see a foundation permit, the clock could start
23 to tick.

24 MR. GREEN: I think there's a difference here
25 between the average public individual and one that's clearly

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1 represented by a seasoned zoning attorney.

2 And the reason being is clearly, not only was the
3 Appellant following this, but Mr. Brown had met with a number
4 of parties, he met with the zoning administrator, had
5 challenged it at every level, and then says, well, we're
6 going to wait, essentially we're going to wait for the
7 building permit and then appeal it, when the question becomes
8 when did the Appellant reasonably know of the decision that
9 is before you today?

10 MS. JOHN: So this is secret law. So some seasoned
11 attorneys might know, but the general public would not
12 necessarily know to be aware of the filing of a foundation
13 permit to go find counsel, because that's really what I see
14 happening that -- just hear me out, just hear me out.

15 Everybody knows that you have 60 days from the
16 time of the building permit, right? And there's case law
17 that says, previous discussions don't really matter. You can
18 continue to have discussions to try to resolve a problem.
19 Yes, there is some.

20 And so assuming that that's correct, how does the
21 general public know that the issuance of a foundation permit,
22 which is from foundation to grade, how does the public know
23 that? That's my only question.

24 The general public. Where is the case law? The
25 guidance? Something to alert the general public that a

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1 foundation permit can trigger an appeal. That's my only
2 question.

3 MR. GREEN: As I sit here, I cannot present one.
4 I can certainly. I don't have one right off the top of my
5 head. It would take some time for that particular analysis,
6 if that's what you're asking.

7 MS. MOLDENHAUER: Could I answer that question,
8 Commissioner John?

9 CHAIRMAN HILL: Hold on, give me a second. This
10 gentleman's been raising his hand several times. Mr. Girvin,
11 you had something to say, and then I'll let Ms. Moldenhauer
12 answer the question.

13 MR. GIRVIN: If I may, I'll give you a second to
14 look for something. I feel like we've gotten off to a wrong
15 start with a misleading argument.

16 We're not appealing the foundation permit. We're
17 appealing the building permit. And there are a lot of
18 precedents in place in which it's been made clear that the
19 building permit is the actionable thing.

20 Case 20141 is nearly parallel to this case. There
21 is broad community awareness, dialogue about it, and the
22 Board ruled the zoning letter was not the first writing. And
23 I have, if I may --

24 CHAIRMAN HILL: Mr. Girvin, it's all right --

25 MR. GIRVIN: -- to say what you said on --

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1 CHAIRMAN HILL: No, no, no. Give me one second.

2 MR. GIRVIN: Sure.

3 CHAIRMAN HILL: We're jumping around here. I
4 thought you had a quick little thing. I didn't realize you
5 were going to start rearguing the argument.

6 MR. GIRVIN: I'm raring to go, but I'll hold on.

7 CHAIRMAN HILL: That's okay. I mean, it's just
8 timeliness that we're here, and your attorney has already
9 given his -- everybody's about to finish wrapping up their
10 opinion.

11 MR. GIRVIN: This is about timeliness.

12 CHAIRMAN HILL: Yes, this is all about timeliness.

13 MR. GIRVIN: Okay.

14 CHAIRMAN HILL: And so no, we're done. You're
15 done. Give me a second now. I'm looking up the reg. Right,
16 that's why this was here before us. So I'm going to the reg.
17 Would you like me to read the reg?

18 MR. GIRVIN: Yes, sir.

19 CHAIRMAN HILL: So Y302.2, a zoning appeal shall
20 be filed within 60 days from the date the person appealing
21 the administrative decision had notice or knowledge of the
22 decision complained of, or reasonably should have had notice
23 or knowledge of the decision complained of, whichever is
24 earlier.

25 Did you write this Mr. Shapiro? So again, there's

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1 no building permit. And this has what has created a problem
2 for this board, ok? Because it's -- there's emails to get
3 thrown around, there's building permits to get thrown around,
4 there's cement permits that get -- I don't know, right?

5 And I know that you got hired, Mr. Brown, a while
6 ago, and I know that you guys have been talked to Mr. Brown
7 for some time ago, in terms of what they had intended on
8 doing, which was to file an appeal onto -- did you think that
9 you were going to get -- Mr. Green, did you think that there
10 was going to be an appeal to this?

11 MR. GREEN: Full disclosure, I wasn't part of the
12 communications --

13 CHAIRMAN HILL: No, no, no. When you were citing
14 some emails that went back and forth, Mr. Brown had said that
15 had met with Mr. LaGrant at some point and there was an email
16 that cited a discussion way back --

17 MR. BROWN: What happened, Chairman Hill, is at
18 the point that I raised a concern, Ms. Moldenhauer was
19 retained by DGS to respond to my letter, and I wasn't --

20 CHAIRMAN HILL: I'm just trying -- I'm sorry to
21 interrupt you. I'm trying to figure out when you guys knew
22 that they might be filing an appeal, okay?

23 MR. BROWN: This was in May.

24 MS. MOLDENHAUER: But, can I answer that question?

25 CHAIRMAN HILL: No. I'm not asking you the

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1 question.

2 MR. BROWN: This was in May. And after I got Ms.
3 Moldenhauer's letter, I went to the zoning administrator and
4 gave him both my letter and Ms. Moldenhauer's letter, and my
5 reply to her letter, and so he had all three. And we had
6 this discussion. DGS was not part of that meeting.

7 CHAIRMAN HILL: In May?

8 MR. BROWN: In May.

9 CHAIRMAN HILL: Okay.

10 MR. BROWN: And when we met with Mr. LaGrant and
11 the general council, I left the meeting with the impression
12 that they were going to mull over objections before the
13 building permit was issued. That's why we had these follow
14 up emails wondering when is the building permit going to be
15 issued?

16 CHAIRMAN HILL: Okay.

17 MR. BROWN: At no point in that meeting Did Mr.
18 LaGrant or the general counsel suggest to us that the
19 building permit was not the operative event that the
20 operative event would be the foundation permit, which was
21 coming much earlier.

22 MS. MOLDENHAUER: Can I just say that, the fact --

23 CHAIRMAN HILL: I appreciate if you ask the
24 question, then let me answer question first as to if you --
25 now what are you try to -- what are you responding to?

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1 MS. MOLDENHAUER: The regulations --

2 CHAIRMAN HILL: I'm just trying to keep in order.
3 So you're responding to him?

4 MS. MOLDENHAUER: I'm responding to -- I never got
5 a chance to --

6 CHAIRMAN HILL: Okay, just want to understand
7 where we were because I didn't know if we were in rebuttal
8 or where we are. I'm just trying to get through the
9 timeliness thing. And so, you're responding to a question
10 that Ms. John had asked.

11 MS. MOLDENHAUER: Yes.

12 CHAIRMAN HILL: Ok. Please do.

13 MS. MOLDENHAUER: So I have two points in response
14 to what Ms. John asked. One, the regulations, the zoning
15 regs, clearly say that a building permit may not be the first
16 writing.

17 So under Section 302.5, it says, a zoning appeal
18 may only be taken from the first writing had that reflects
19 the administrative decision of which that Appellant had
20 notice. No subsequent documents, including a building
21 permit.

22 So it is clear in the regs, point blank, that
23 there may be something, a foundation permit, a retaining wall
24 permit, a public space permit, an email, that may give rise
25 to a first writing.

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1 To Board Member John's point, on this, in 2012,
2 this Board, in Case 18469, in Susan Lynch, found that a RW,
3 a retailing wall permit, not a building permit, not a B
4 number, gave rise to an appeal.

5 CHAIRMAN HILL: Can I interrupt you for a second?
6 Also in the regulations on 302.6, the Board may extend the
7 60-days deadline for the filing of a zoning appeal, only if
8 the Appellant demonstrates that at A and B, and I can read
9 through A and B, and you know what A and B are, right?

10 MS. MOLDENHAUER: Yes, I do.

11 CHAIRMAN HILL: So does the Board have any other
12 questions of anybody right now? Does the Board have any
13 other questions of anybody right now? Okay.

14 MS. MOLDENHAUER: But there's been no argument
15 under A and B.

16 CHAIRMAN HILL: I'm just trying to point out,
17 you're making the argument that -- and I'm also being pretty
18 straightforward up here as I'm going through this. DCRA is
19 here all the time when we talk about this, right?

20 And honestly, we're talking an email one day,
21 we're talking about one building permit the next day, we're
22 talking about another building permit the next day, and we
23 take hours and hours just talk about this, okay? Right?

24 And from my perspective, I would just rather the
25 regulations say the building permit and be done with it. Ok?

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1 And then understand when exactly -- this is where I get into
2 this confusion as to -- just before an appeal happens we talk
3 about whether it's timeliness right?

4 In the hopes that it goes away. And honest
5 to God, it rarely goes away, right? And so, if you guys
6 knew, and I don't even know why I am -- I don't what I'm
7 trying to get here. If you guys knew that they were going
8 to appeal this thing and they were going to appeal it six
9 months ago or whatever it was then they can have the same
10 argument that, yeah, it's the counterargument to your
11 argument that they knew you were going to build it six months
12 ago.

13 It sounds to me like they were waiting for the
14 building permit in order to file the appeal. And so I'm
15 talking to my Board members here as we go through this as
16 well.

17 So Mr. Moldenhauer, if you want to go ahead and
18 give a little rebuttal and then your conclusion, and we can
19 have a discussion up here to decide if we're going to put
20 this abeyance for your timeliness issue.

21 MS. MOLDENHAUER: The law is complicated, but the
22 law is the law and the regulations require not that you just
23 look at a building permit. The regulations require that you
24 actually, unfortunately, this complicated, weird, hard
25 analysis of when they knew or should have known, and it says

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1 whatever is the earlier of those.

2 Here, all we are saying, representing the property
3 owner, is that there was clear totality of the circumstances
4 and knowledge that they would appeal. We thought that if
5 they going to appeal, that they would have appealed days and
6 months ago. They did not.

7 Unfortunately, the burden is on the Appellant, and
8 this Board has the duty to follow the law and follow
9 regulations.

10 CHAIRMAN HILL: We follow the law. We follow the
11 regulation. I hate being told that every time.

12 MS. MOLDENHAUER: I'm putting this on the record
13 that we are looking at the regulations, and even in Baskens,
14 Baskens says, which went up to the Court of Appeals, that
15 reliance on opposing counsel's misrepresentation of a
16 deadline for filing an appeal, did not constitute an
17 exceptional circumstances in pairing the Applicant's ability
18 to appeal a permit.

19 So the question then goes to the point that Chair
20 Member Hill brought up. There is a two-prong test that this
21 Board can evaluate in extending this 60-day period. This 60-
22 day period can only be extended if the Board finds that there
23 is exceptional circumstances, which would have been fair to
24 the Appellant.

25 We have heard nothing. No argument articulating

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1 why they failed to file. These individuals live right next
2 to the building. They walk past it every day. Even in their
3 merits briefing, they have arguments that they saw the
4 groundbreaking, that they knew of the construction going on,
5 yet they still failed to file timely.

6 We are just simply asking that this Board deny
7 this case on a failure to file timely, because we believe
8 that the record is clear, that they knew or that they should
9 have known as early as June 3rd all of the issues that are
10 being asserted here, and that the case should be dismissed
11 on timeliness. Thank you.

12 CHAIRMAN HILL: Okay. What do you guys want to
13 do? You want to deliberate? Sure, go ahead.

14 MR. BROWN: May I speak for a couple minutes?

15 CHAIRMAN HILL: No, just give me a second.

16 MR. BROWN: Okay.

17 CHAIRMAN HILL: You have to push the -- Mr. Brown,
18 I'm sorry. Could you turn off your microphone?

19 MS. JOHN: So this is a foundation to grade. Is
20 there anything that shows the connection between the two
21 buildings in that permit?

22 MR. LAGRANT: Matt LaGrant, zoning administrator.
23 I would have to look at the particular plan sheets for the
24 foundation permit.

25 I do not believe that they would illustrate the

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1 connection being below grade, because it's DCRA's position
2 that the connection is above grade in compliance with the
3 requirements.

4 MS. JOHN: Okay. All right. I'm good. Thank
5 you.

6 VICE CHAIRPERSON HART: So, this is also for Mr.
7 LaGrant, kind of following up on the question that my
8 colleague just asked, the foundation would show, in this case
9 you have a sight that is sloping, and you have, a portion of
10 this foundation is below grade.

11 A portion of it is, well, it's just sloping, so
12 it's a different location. It seems, though, there was --
13 and this is part of the problem that we're running into is
14 that we have a lot of documents that show a lot of different
15 plans and things.

16 But it's hard to try to determine which plans go
17 with what time periods, and with what aspects of the
18 approvals, foundation, full buildings and whether there were
19 other approvals, and so, did you have those drawings in the
20 record that we have now?

21 MR. LAGRANT: You're referring to the set of
22 drawings for the foundation permit?

23 VICE CHAIRPERSON HART:: Yes.

24 MR. LAGRANT: I believe that they were part of the
25 exhibits submitted.

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1 VICE CHAIRPERSON HART: There were a lot of
2 exhibits submitted, so that's why I was -- the owner's
3 representative has submitted, 15 documents as part of their
4 exhibits, so I just wanted to kind of point to a particular
5 one. So --

6 MR. LAGRANT: Give us a moment. We'll identify
7 the exhibit number.

8 VICE CHAIRPERSON HART: Thank you.

9 MR. LAGRANT: Okay. I believe that Exhibits 52 and
10 53 show the actual drawings associated with the foundation
11 permit.

12 VICE CHAIRPERSON HART: Say that again.

13 MR. LAGRANT: Exhibits 52 and 53.

14 VICE CHAIRPERSON HART: Thank you.

15 CHAIRMAN HILL: Mr. Brown, I guess we're going to
16 continue to ask some questions here. In terms of the
17 regulations, when do you think you should have known, when
18 do you think you knew or should have known about the final
19 decision? You need to push the button.

20 MR. BROWN: Shortly after September 30th, as we
21 were monitoring the status of the building permit.

22 CHAIRMAN HILL: Got it. Okay. Sure, go ahead.

23 VICE CHAIRPERSON HART: So this is another
24 question for Mr. LaGrant. So typically, when you're looking
25 at the foundation plans, to get to a foundation permit, this

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1 building was deemed prior to this foundation permit being
2 approved, this permit, this building was deemed to have been
3 as a matter of right.

4 MR. LAGRANT: Correct.

5 VICE CHAIRPERSON HART: So that would mean that
6 anything in it -- now if the drawings have not changed from
7 it. I don't know when that first determination was made.
8 Maybe back in May. Sounds like there was some conversations
9 that were going on then with Mr. Brown.

10 So if that determination was made at that point,
11 that this was a matter of right project, but the foundation
12 permit was -- I'm sorry, that the -- if the building was a
13 matter of right, then everything in it would have been
14 included in the -- sorry, it's a little too late for me to
15 get to the actual point.

16 But it's just that we have -- you have made a
17 determination in this case regarding it being a matter of
18 right, and that was reflective in the foundation permit and
19 the sheeting and shoring and the subsequent building because
20 otherwise, you would have had, the project would have had to
21 have come to us for approval, for some sort of BZA relief.
22 Some sort of, sorry, zoning regulation relief.

23 VICE CHAIRPERSON HART: Ok.

24 MR. BROWN: That is correct.

25 CHAIRMAN HILL: Yes, I got a real quick -- Ms.

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1 Moldenhauer, the zoning decision that the ZA is making in
2 terms of the first writing rule, when your clock is starting,
3 what decision is that you're stating?

4 MS. MOLDENHAUER: I am saying that there is clear
5 evidence that the community should have known on June 3rd,
6 when the foundation permit was issued, on June 3rd.

7 CHAIRMAN HILL: Okay. So I'm just trying to get
8 a clock started somewhere. So the zoning administrator's
9 decision that you're speaking to that the community should
10 have known about for sure is June 3rd?

11 MS. MOLDENHAUER: Correct.

12 CHAIRMAN HILL: Okay. All right. I can tell
13 you -- I mean, do you want to -- I'm just, I, well, I know
14 where I am. So we can either hold this in abeyance and then
15 go through what we were going to go through, which is hearing
16 from people, and possibly providing some clarification as to
17 what we want to hear from the -- and I think maybe we should
18 do that.

19 Let's just go ahead, because then we'll have a
20 little bit of time to think about it, in terms of -- give me
21 one second. That's all right -- and then have a little bit
22 of time to think about it in terms of the timeless in. And
23 so we'll still go ahead and move through our day here, unless
24 somebody else has another idea.

25 MR. SHAPIRO: Mr. Chair? Mr. Chair, I mean,

1 again, I think there's enough gray area here. It's just
2 not -- I mean, this is to your point to evidence. This is
3 probably something that the zoning commission needs to take
4 up to get a little more clarity around.

5 But I don't think that, based on that gray area,
6 that this is a case that I would be comfortable for
7 dismissal on timeliness. So I'm happy for us to just take
8 this on, for us to vote on that.

9 MS. JOHN: I would like to express my deep
10 appreciation for that thought, because I am really disturbed
11 that the public doesn't know what is expected. It's a very
12 elastic standard.

13 And so the average person sitting at home would
14 not know that they need to monitor this project for a
15 foundation permit. So we going to start allowing appeals
16 after foundation permits, everybody needs to know that so
17 everybody has the same opportunity to file an appeal, and
18 that they should have filed once the foundation permit was
19 issued.

20 As to this particular case, I don't think we
21 should dismiss on time limits. And I think we should hear
22 the appeal, and I guess we can hold this in abeyance. Is
23 that what we're suggesting or we want to decide now? I'm
24 able to decide now.

25 CHAIRMAN HILL: No, I -- we can have this

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1 discussion, because it's one that has been obviously
2 stressful. Got me a little going. It is elastic, as you
3 said. Right?

4 Known or should have known, and two, I know
5 different points, different people have argued it here
6 different ways, where we've had the arguments about emails
7 and I know it got ruled one way with the emails, then it got
8 ruled another way with the building permit, then now there's
9 the foundation permit.

10 And my issue with it is that, I think that DCRA
11 knew that this was going to be appealed. And if they had
12 thought that something has been issued, that the clock has
13 started then they should tell the public that the clock has
14 started. If you're going to -- so anyway, I'm also then
15 voting for not granting the motion as being untimely and to
16 go ahead and hear the appeal. So I got three votes right
17 now.

18 Mr. Carlton, I mean, Mr. Hart, you want to weigh
19 in?

20 VICE CHAIRPERSON HART: Yeah, I think this is --
21 while I do agree with you that it is rather elastic, I think
22 one of the pieces that has been somewhat inelastic, if that's
23 correct in this case, is that these have not changed from May
24 to now.

25 I mean, these issues were raised in May of last

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1 year. And so it seems as though -- and we've heard in other
2 cases that attorneys, as well as other people's cases that
3 attorneys, as well as other people that are in opposite to
4 particular projects, have been very zealous in making the --
5 I'm not talking about the folks that are in front of us right
6 now, I'm just saying in general -- about filing things very
7 very quickly, and whatever the -- anything that's been put
8 forward have been -- people have gone after it.

9 Now, we haven't heard, of course, about the
10 foundation permit, per se, but this is a larger building than
11 we typically review, and you don't really do foundation
12 permits for all buildings.

13 And so, if you have a house, you're not really
14 looking at doing that. So I can understand how the owner and
15 DCRA are looking at it like, whoa, this is something that
16 really they should have known about, and they have an
17 attorney that is looking at this, and that's the part that
18 I -- and the Appellant has an attorney, that I think should
19 have known some of this.

20 So I think I'd probably vote to approve the motion
21 to dismiss? But --

22 CHAIRMAN HILL: Okay. All right. I can't --
23 okay. So I'm going back to let's hold it in abeyance. I'm
24 going to look at. I want to look at it. And so I want to
25 take some time, and we'll just hold the decision. The

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1 time -- I'll let you have -- one second -- so I just want to
2 hold in advance, I want to have a little bit of time to, to
3 think about it a little bit more. Yes. So Mr. -- and I
4 apologize. Give me just one second.

5 MR. GIRVIN: Girvin.

6 CHAIRMAN HILL: Girvin, thank you. You're raising
7 your hand for some reason. Mr. Girvin, we've already had all
8 the arguments. I mean, what is it that you want to say?

9 MR. GIRVIN: I'd like to speak real quickly.
10 Obviously, we've been under the impression that the building
11 permit is the actionable item since we spoke to Mr. LaGrant,
12 and there is a very clear precedent of this in Case 20141.

13 CHAIRMAN HILL: Mr. Girvin, I'm sorry. You're
14 just starting to argue it again. That's okay.

15 MR. GIRVIN: I'm sorry. Maybe I don't understand
16 the procedure.

17 CHAIRMAN HILL: No. So what happened, the
18 procedure was, your attorney, the person made the motion,
19 they argued it. You guys argued it. DCRA argued it. We
20 answered all our questions, so now we're done arguing it.

21 So now you're starting to reargue it again, which
22 means that she's going to get to -- I'm sorry, Ms.
23 Moldenhauer will get to reargue again, and DCRA will get to
24 reargue again, so I don't want to hear you reargue it again.
25 Okay. So thank you so much.

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1 MR. GIRVIN: Okay. Thanks.

2 CHAIRMAN HILL: All right. Okay. All right. So
3 we're going to hold it in abeyance. Okay.

4 MR. BROWN: Mr. Chairman?

5 CHAIRMAN HILL: Sure, Mr. Brown.

6 MR. BROWN: I'd just like to add one answer to the
7 question raised by Commissioner John and Commissioner Hart,
8 if I might. I'm not going to reargue anything. It's just
9 a personal observation on my part.

10 Both of them, Mr. Hart and Ms. John, was concerned
11 about the general public, and Mr. Hart said, well, this
12 client is represented by an attorney. I do zoning work. I
13 do not represent developers. I do not work closely with
14 engineers. I do not closely study plans that are submitted
15 for review.

16 And in fact the plans that I cited in my case in
17 that email that was highlighted by Mr. Green, I thought I was
18 looking at the building permit plans. I didn't know from
19 foundation permit plans versus building permit plans.

20 CHAIRMAN HILL: Okay. All right. I know, it's
21 understandable. We're going to go through this for a while.
22 Ms. Moldenhauer, do you want to finish something else now
23 that Mr. Brown had something to say? I just want to give you
24 the last word, since it's your motion.

25 MS. MOLDENHAUER: I would just say I'm looking at

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1 the Waste Management case, which is what the zoning
2 commission ended up following to create the 60-day period.

3 And the Court of Appeals in that case back in
4 2001, so this has been an issue that people have been
5 struggling with on the Board for many years, they said
6 because deadlines for appeals serve an important end, and to
7 that point they said they should not be extended without good
8 cause.

9 So I think here there is clear evidence that they
10 knew. Unfortunately, if their attorney is saying, well, I
11 didn't know enough and I didn't know to look at this, that's
12 not the standard.

13 CHAIRMAN HILL: Okay. All right. Okay. Sure,
14 go ahead, Mr. Green.

15 MR. GREEN: Just one point that Ms. John had
16 brought up is when does the general public, when does the
17 general public know of the statute of limitations of any
18 particular cause of action or an appeal?

19 So I bring that, is the general public should know
20 about the appeals process for this? What about for any cause
21 of action in a civil matter? Not many times does the public
22 know when they can file and when they can't. That's just a
23 point. Thank you.

24 CHAIRMAN HILL: Okay. So -- sure.

25 MS. JOHN: Okay. I think what I'm saying is that

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1 there ought to be reasonable guidelines and standards that
2 the public can understand.

3 We're saying that only lawyers should know when
4 an appeal should be allowed, because they have to know that
5 a foundation permit is one thing, that you must watch out for
6 and appeal. And that's what bothers me.

7 The average person sitting at home watching a
8 building go up next door doesn't know to go out and try to
9 get an attorney to protect their interests because they don't
10 know that they need to appeal a foundation permit. I have
11 no problem with saying that a foundation permit can be
12 appealed.

13 I just think that people don't know that. So we
14 have no quarrel. But I'm just unwilling to say that in this
15 particular case that the foundation permit was proper notice.
16 And that's where I am. I will go back and review what's been
17 said and maybe look at some of the cases. Not maybe, look
18 at some of the cases.

19 But Mr. LaGrant knows that since I've been on this
20 Board, I've been very concerned about situations where the
21 public does not know what is expected. And that is my only
22 issue. Okay, since my name was involved, I thought I should
23 respond.

24 CHAIRMAN HILL: Okay. All right. Thank you.
25 Okay. So, let's see. I don't really think we should take

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1 witnesses today. I think there's no need to. If we're not
2 going to argue the case then you guys are just going to be
3 talking about things that we're not talking about.

4 So it's not, I don't think, of any use to you all.
5 I think, Mr. Brown, however, if you would, and I don't know
6 if you provided a list of your witnesses, but if you -- okay,
7 so then there you go.

8 What I would like to point out as to what I was
9 curious of, Mr. Brown, as you're going -- we did read the
10 record prior to this, and the building property owner's
11 attorney hasn't had a chance to put their brief in, but we
12 have read yours.

13 And so what I would be most interested in when you
14 come back is really why is this not an apartment building?
15 Why is this that -- the permitted use of the property is for
16 an apartment building. So I'd be kind of -- I want to hear
17 that. That's what I'm going to be focusing my attention on,
18 right?

19 And the Board, since we're having this second bite
20 at the apple, if you want to provide any further
21 clarification, and then the meaningful connection. So those
22 are the things that I'm interested in. The witnesses and/or
23 discussion about parking and loading, I think that the
24 record's pretty full on that.

25 But if you want to go ahead and make arguments

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1 about that or bring witnesses forward about that, then that's
2 fine. But those are the things that I'm interested in. Is
3 there anything else anyone would like to focus the Appellant
4 or the property owner or DCRA on? Okay. So then -- yes, Ms.
5 Moldenhauer?

6 MS. MOLDENHAUER: Whenever you're done, I was
7 going to just provide a comment.

8 CHAIRMAN HILL: I'm done.

9 MS. MOLDENHAUER: Okay. We appreciate the
10 postponement. We were just putting the Board and the
11 Appellant on notice that in reviewing, we may be filing some
12 preliminary motions to strike or in limine to limit
13 testimony.

14 It appeared as though there were statements in
15 their PowerPoint that had to do with building code issues or
16 issues regarding light and air, which are not to the merits
17 of this case.

18 So I'm just, as a professional courtesy, letting
19 the Appellant's attorney and the Board know that we will most
20 likely be filing some motions to that effect when we discuss
21 the merits.

22 CHAIRMAN HILL: Okay. All right. So --

23 MR. GIRVIN: Can I comment at all?

24 CHAIRMAN HILL: You paid your attorney. If he has
25 anything to comment upon, I guess he can comment upon it.

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1 MR. GIRVIN: Can I speak for us, though?

2 CHAIRMAN HILL: Okay.

3 MR. GIRVIN: I really just want to say, really we
4 just beg you to look particularly at the last point on the
5 timeliness thing and the precedent that was set last month
6 in December. Thank you.

7 CHAIRMAN HILL: Okay. Wow. I guess that's it.
8 So Mr. Shapiro is back on February 26th. Is that when it
9 was? And we basically have a full day. I mean, normally,
10 and I appreciate that you guys were here all day. And I've
11 been here now for five years, every Wednesday, and it goes
12 long like this, but usually we make appeals, only one appeal,
13 and then there's not really any cases.

14 We basically almost had a full day today and then
15 the appeal. I mean, it's now 4:15. So I'm asking Mr. Moy
16 that, because to actually have a full docket and then do an
17 appeal, that means that we're going to be here until like
18 9:00. How many cases you got on the 26th?

19 MR. MOY: The 26th? Well, the Board can do
20 anything, but after having said that, we already have an
21 appeal scheduled for the 26th with five cases, so you would
22 have five cases plus two appeals.

23 CHAIRMAN HILL: Mr. Shapiro was going to be here
24 for another appeal?

25 MR. MOY: Oh, yes.

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1 CHAIRMAN HILL: Okay.

2 MR. MOY: And the hearing after that, the Board
3 has eight cases, and we could have this. That would be eight
4 cases plus an appeal.

5 So this is very challenging. Then the hearing
6 after that, we have an appeal with four or five cases. The
7 18th we have an appeal with four cases. The 25th of March,
8 there's a lot of applications. There's 12.

9 The only opening I have, which matter of fact, Mr.
10 Shapiro would be back, would be April 1st, but that may be
11 too long for you.

12 CHAIRMAN HILL: What was the one you said after
13 Mr. Shapiro is back here again? Because he was going to
14 come --

15 MR. SHAPIRO: I'm here the 25th of March and April
16 1st.

17 CHAIRMAN HILL: Right, but you were also
18 here February 26th, correct? And then you were going to be
19 here the week after that because you're going to come in for
20 something. You said you'd come in for something. Today.
21 Wasn't Mr. Shapiro coming back for something today?

22 The next week? It went to April 1st. Oh, that's
23 right. Okay. So I guess, Mr. Brown, and/or Ms. Moldenhauer,
24 and DCRA, do you guys have any -- well, first I'm going to
25 go ahead with Mr. Brown. It's your appeal. What dates do

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1 you see as being possible?

2 MR. BROWN: Mr. Chairman, I think even the
3 February 26th date would be okay if we could get a plenary
4 indulgence not to have to be here at 9:30 in the morning.

5 If you could tell us to be here at a later time
6 reasonably calibrated to the completion of the other
7 business, I think that would make things a lot easier on
8 everybody, from our side.

9 CHAIRMAN HILL: So February 26th, can DGS get
10 their -- is that enough time?

11 MS. MOLDENHAUER: Yes, I've cleared with
12 individuals. That would be more than sufficient. Thank you.

13 CHAIRMAN HILL: Okay, so if -- I don't think --
14 how many -- oh, there's already an appeal.

15 MR. MOY: Yes, that would be five plus one appeal.
16 Well, the only other option, Mr. Chairman, is we could
17 schedule a special public hearing just for this on another
18 day other than a Wednesday.

19 CHAIRMAN HILL: All right. Never mind. Okay.
20 Saturday. Sunday. Go to church and come here. Pardon? So
21 let's -- so April 1st is too far away for you, Mr. Brown?

22 MR. BROWN: Well, obviously, we're trying to --
23 we filed this appeal right away because we wanted to get our
24 issues addressed as soon as possible because construction is
25 ongoing.

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1 CHAIRMAN HILL: Got it. Okay. So let's go ahead
2 and, I think we'll just do two appeals. It'll be fantastic.

3 MR. MOY: Okay. So that would be February 26th.

4 CHAIRMAN HILL: February 26th. Okay. So then,
5 Mr. Moy, if we are doing that February 26th, when do we need
6 filings by?

7 MR. MOY: Given the nature of the appeal, Mr.
8 Chairman, and assuming only one filing with no responses, it
9 would be desirable to have the filing submitted two weeks
10 before the 26th, which puts the Board at February 12th for
11 filings with no responses.

12 CHAIRMAN HILL: So February 12th with filings, no
13 responses, and then we're back here on the 26th.

14 MS. MOLDENHAUER: Chairman Hill, we're fine with
15 February 12th. I believe the rules do allow the Appellant
16 to file any response or replies within two days of the
17 hearing date under the regular rules, so I would assume that
18 the Appellant would be able to file a reply.

19 CHAIRMAN HILL: Mr. Moy? I was going to ask the
20 Appellant anyway, but --

21 MR. MOY: To reply --

22 CHAIRMAN HILL: If we do the replies, if you guys
23 come the --

24 MR. MOY: We can do the replies, Mr. Chair, sorry
25 to interrupt, we can give replies a little less than seven

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1 days. So if it's possible, Monday, February 17th, because
2 the staff needs the information as well.

3 CHAIRMAN HILL: Yes. Can you get it on the 14th?
4 Does that give enough time? Okay, fine. The 17th.

5 MS. MOLDENHAUER: We can file ours earlier, so
6 they have seven days from our filing. We're happy to do
7 that.

8 MR. MOY: Okay. So then your response to the
9 Appellant would be Friday the 14th, right? That's
10 Valentine's Day.

11 MS. MOLDENHAUER: The 7th, and then they would
12 have until the 14th, I believe is what you're saying.

13 CHAIRMAN HILL: Yes.

14 MS. MOLDENHAUER: Okay. We're more than happy to
15 accommodate that, and we appreciate the postponement, so we
16 will follow that guideline.

17 MR. MOY: Okay, what was that date again?

18 CHAIRMAN HILL: So the 7th, we get filings.

19 MS. MOLDENHAUER: DGS will file a prehearing
20 statement by the 7th.

21 MR. MOY: 7th, DGS. Go ahead.

22 MS. MOLDENHAUER: And give the Appellant seven
23 days to the 14th to provide a reply.

24 CHAIRMAN HILL: The Appellant will have to the
25 14th. Friday the 14th. Mr. Brown, is that good?

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1 MR. BROWN: Yes. I want to point out that if Ms.
2 Moldenhauer finds some legal defects in the PowerPoint
3 presentation that we've already submitted, we may need to
4 make some adjustments, and we'll make them in that same
5 timeframe.

6 CHAIRMAN HILL: Okay. That's fair. Okay. We'll
7 see you guys on the 26th.

8 MR. BROWN: Can we get from Mr. Moy a later time
9 of arrival?

10 CHAIRMAN HILL: Yes, I'll figure it out. We'll
11 make an announcement right now. Ms. Moldenhauer?

12 MS. MOLDENHAUER: I just want to make sure the
13 Board is not looking for any addition legal briefings on the
14 timeliness. Is it being held in abeyance, so I'm not sure.
15 Is there any -- no.

16 CHAIRMAN HILL: We're not interested in anything
17 about timeliness. And as far as the time goes, I don't know.
18 I really don't know. After lunch?

19 MR. MOY: It won't be before lunch.

20 CHAIRMAN HILL: We have how many cases, Mr. Moy,
21 you said?

22 MR. MOY: We have one, two, three, four, five
23 applications, one of which is a special exception.

24 CHAIRMAN HILL: So five applications. Then we'll
25 start the -- I can't imagine we're with you guys anywhere

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1 until like 2 o'clock.

2 MR. MOY: We'll do this appeal first before we do
3 the second appeal.

4 CHAIRMAN HILL: No, I'm saying we do the appeal
5 first and then we do their appeal. You have five cases, and
6 I'm going to talk this through, because I want to be -- I'm
7 doing my best for everybody that's been here all day.

8 There's the five cases, then there's the appeal.
9 The appeal might run -- I'm thinking we'll be lucky, around
10 three hours, right?

11 MR. MOY: Okay. Yes.

12 CHAIRMAN HILL: So that gets me 2 o'clock before
13 they're here. We'll tell you 2 o'clock, okay? Come on back
14 here at 2 o'clock on the 26th, and if we somehow get done
15 beforehand, we'll just wait for you. But there is a good
16 chance you'll be here for a couple hours before you start.
17 So it's the best I can do.

18 MR. GIRVIN: Thank you very much.

19 CHAIRMAN HILL: Okay. All right. Thank you all
20 very much. Have a nice day. Mr. Moy, is there anything else
21 before the Board?

22 MR. MOY: No, sir.

23 CHAIRMAN HILL: Okay. We stand adjourned.

24 (Whereupon, the above-entitled matter was
25 concluded at 4:23 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 01-29-20

Place: Washington, DC

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