

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 12, 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 10:12 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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

The transcript constitutes the minutes from the Public Hearing held on February 12, 2020.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
STEPHEN J. MORDFIN
KAREN THOMAS
ELISA VITALE

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

10:12 a.m.

MR. MOY: Thank you, Mr. Chairman.

So, that would be Case Application No. 20144, David Barth and Lisa Kays, as amended, for Special Exceptions under Subtitle E, Sections 205.5 and 5201, for the rear addition requirements; Subtitle E, Section 205.4, lot occupancy requirements; Subtitle E, Section 404.1, from the accessory building rear yard requirements; Subtitle E, Section 5004.1, from the non-conforming structure requirements; Subtitle C, Section 202.2, to construct a two-story rear addition with a basement to an existing attached principal dwelling unit and a second-story addition to the 2A detached accessory building, RF-2 zone. This is at 1832 15th Street, Northwest, Square 191, Lot 56.

CHAIRPERSON HILL: Okay. If you could please introduce yourselves from my right to left?

MR. BEPBLER: Hi. I'm Peter Bepbler, homeowner at 1830 15th Street, Northwest.

MS. S. NICKEL: Hi. Sarah Nickel, homeowner at 1834 15th Street, Northwest.

MR. T. NICKEL: Taylor Nickel, also owner at 1834.

MS. MAZO: Samantha Mazo, Law firm of Cozen O'Connor. I represent the adjacent neighbors who are in opposition. Thanks.

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1 MR. SULLIVAN: Marty Sullivan, on behalf of the
2 Applicant.

3 MR. JONES: Patrick Jones, the architect.

4 MR. BARTH: I'm David Barth, the Applicant.

5 MS. KAYS: Lisa Kays, Applicant.

6 CHAIRPERSON HILL: Okay. Great. So, welcome
7 back, everybody.

8 Let's see. So, this is going to actually possibly
9 be relatively short. Like I don't have a lot of questions,
10 and I don't necessarily know if the Board has a lot of
11 questions. I mean, everything is right in the record. You
12 guys gave us everything that you have done, that you did do,
13 that you kind of are at.

14 And so, what basically I'm going to really quickly
15 do is I'm going to ask the attorneys to kind of tell us what
16 has happened. We might go to the Office of Planning; I don't
17 know. But I only have a couple of questions to start with,
18 and I guess I would go ahead and ask the Board, also, if they
19 have any questions to start with. And mine just basically
20 goes to the Applicant.

21 Mr. Sullivan, I mean, we've read the -- I'm going
22 to give you my gist of this real quick -- I mean, we've read
23 all the record. We've read what you guys have done. We've
24 read you all talked and everything. We saw the changes that
25 the Applicant made in terms of the glazing, the windows, and

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1 what they've tried to do, and what currently is, I guess,
2 what has been put forth on the table. And we're not
3 necessarily part of this settlement agreement body. Like
4 that's not part of our thing.

5 But I'm just kind of curious to you, Mr. Sullivan,
6 that, again, your client understands that they have party
7 status. Because you've been here before. They all get a
8 full order, right, if they're in opposition, whatever? If
9 there's an appeal, if there's not an appeal, whatever, that
10 does -- whether or not that's fruitful or not is up to them,
11 right? But your client is aware of all this?

12 MR. SULLIVAN: Yes.

13 CHAIRPERSON HILL: Okay. All right.

14 So, then, with that being said, Mr. Sullivan, go
15 ahead and take five minutes to tell us what happened. Ms.
16 Mazo, you can do the same. And then, we'll see where we get.

17 MR. SULLIVAN: Okay. So, there was some
18 interaction between the Applicant, Applicant's counsel, and
19 neighbors' counsel towards a compromise. We did make the
20 changes to the windows, but we could not reach agreement on
21 the length of the addition.

22 CHAIRPERSON HILL: Just to clarify --

23 MR. SULLIVAN: Yes?

24 CHAIRPERSON HILL: -- you guys made the windows
25 smaller in the upstairs of the accessory dwelling unit,

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1 right? And then, you frosted the glaze on that right side?
2 Right. Thanks.

3 And so -- and I guess I'm just curious -- how come
4 you frosted that one? How come you guys decided on frosting
5 the ones that you decided to frost?

6 MR. JONES: That's where the bathrooms were. So,
7 they were going to be frosted or privacy glass regardless.

8 CHAIRPERSON HILL: Got you. Got you. Okay. All
9 right.

10 All right. Mr. Sullivan, you can continue,
11 please.

12 MR. SULLIVAN: Yes, I just have a statement from
13 the Applicant.

14 CHAIRPERSON HILL: Okay. Okay. Sure, go ahead.

15 MR. BARTH: Sure. I just want to say this is a
16 once-in-a-lifetime thing for us. So, it's important for us
17 to get it right. And I think we're not that far apart from
18 where they are at this time, but we do want to get to a point
19 where we get what we need out of this, as opposed to
20 something that we have to live with and regret.

21 Ms. Mazo, I think in her letter, characterized it
22 as the "negotiations failed to launch". I don't think that's
23 quite a fair characterization. They made an offer. We made
24 a counteroffer. Our counteroffer did include some reduction
25 in relief to 12 feet. It's more than a foot; it's a foot and

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1 a quarter. And we asked for access to facilitate disruption.
2 It would make construction faster. It would make cleanup
3 faster. It gives us a better choice of materials and it has
4 some advantages. And they elected not to take us up on our
5 proposal. So, I think that's okay, but that's why we're here
6 today, because we want to get what we need out of this.

7 CHAIRPERSON HILL: Okay. Now I'm going to clarify
8 because I'm curious again. You said you went back a foot and
9 a half? You went back?

10 MR. BARTH: Sorry, we offered to only build out
11 to 12 feet. And we evaluated whether that would meet our
12 needs and we decided it did. And so, we could do that, if
13 that's necessary. But we asked for access because it makes
14 the construction faster, the cleanup faster. It gives us
15 more ability to make the project work and --

16 CHAIRPERSON HILL: Access to one of the --

17 MR. BARTH: To their property. To their
18 properties.

19 CHAIRPERSON HILL: -- one of the neighbor's
20 properties or both the neighbors' properties?

21 MR. BARTH: To both sides.

22 CHAIRPERSON HILL: Okay. All right. Okay.

23 MR. BARTH: Otherwise, we're building from the
24 inside out.

25 CHAIRPERSON HILL: Got you.

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1 MR. BARTH: It looks like prefabricated cinder
2 block. I don't know; I'm not a builder. This is my
3 understanding.

4 CHAIRPERSON HILL: That's fine. Okay. All right.
5 Anything else?

6 MR. BARTH: We just want to make this work for us.
7 So, we're open to -- if we need to amend somehow, let us
8 know.

9 CHAIRPERSON HILL: Sure. You're going back 12 --
10 you were going to go to what? You're going to go to 12?

11 MR. BARTH: We had proposed, instead of 13 and a
12 quarter, just going to 12, but we've try to make it a win-win
13 for both sides in some respects, and they did not take us up
14 on that offer.

15 CHAIRPERSON HILL: Okay. No problem. All right.
16 Mr. Sullivan?

17 MR. SULLIVAN: So, that's what we have to say
18 about what went on in between the two hearings. I don't know
19 if the Board would like a summary.

20 CHAIRPERSON HILL: I don't think so. We'll see
21 what the Board needs.

22 MR. SULLIVAN: Okay.

23 CHAIRPERSON HILL: I'm just curious as to what
24 happened from the last time --

25 MR. SULLIVAN: Sure.

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1 CHAIRPERSON HILL: -- because, I mean, you guys
2 made your case the last time. Okay?

3 MR. SULLIVAN: Right. Sure.

4 CHAIRPERSON HILL: Okay. Ms. Mazo?

5 MS. MAZO: Yes. You know, I don't really have
6 much to add. Access is not an issue that's before the Board.
7 And my clients really did make a heartfelt effort to,
8 hopefully, continue a dialog. And quite frankly, when we
9 received the request -- I'm sorry -- the suggestion that they
10 could reduce the property what read to us like in exchange
11 for something, we, then, went back --

12 CHAIRPERSON HILL: In exchange for the removal of
13 your opposition?

14 MS. MAZO: No, no, no. We were offering,
15 initially, we were offering to remove the opposition in order
16 to reduce the property.

17 CHAIRPERSON HILL: Right. To the 10 feet?

18 MS. MAZO: But I'm saying -- no, but in exchange
19 for the access.

20 CHAIRPERSON HILL: That's okay. I'm just curious.

21 MS. MAZO: Yes.

22 CHAIRPERSON HILL: So, the 12 feet -- and it
23 doesn't matter because I'm just asking a question.

24 MS. MAZO: Right. I mean --

25 CHAIRPERSON HILL: The 12 feet was rejected?

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1 MS. MAZO: The 12 feet was rejected and --

2 CHAIRPERSON HILL: In order to get the 12 feet,
3 they wanted the access?

4 MS. MAZO: Yes, sir.

5 CHAIRPERSON HILL: Okay. Got it. All right.

6 MS. MAZO: Sorry. And so, therefore, we have now
7 come back with the current compromise that our client, that
8 my clients are willing to support and to remove their
9 opposition, which is the 10 feet.

10 CHAIRPERSON HILL: The 10 feet?

11 MS. MAZO: Yes.

12 CHAIRPERSON HILL: Okay. All right. Does the
13 Board have any questions of either the Applicant or the party
14 sides?

15 COMMISSIONER TURNBULL: I just had one. Do we
16 really have drawings that show 12 feet?

17 MR. SULLIVAN: No, we haven't submitted that.

18 COMMISSIONER TURNBULL: Oh, okay. I was going to
19 say, you know --

20 MR. SULLIVAN: No. That was just --

21 COMMISSIONER TURNBULL: -- I'm going through
22 whatever we had, and I'm like, I don't remember seeing 12
23 feet anywhere.

24 MR. SULLIVAN: No. No, that was just -- we were
25 just describing the discussion.

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1 COMMISSIONER TURNBULL: Oh, okay. Well, that's
2 not in the record, I guess.

3 The only thing, I guess we really don't have the
4 authority to agree to access on someone's property. That's
5 really an individual owner's ability to do.

6 CHAIRPERSON HILL: Anybody got questions?

7 (No response.)

8 Okay. I'm actually going to turn to the Office
9 of Planning. Could you do me a favor? Could you run through
10 again your approval as to how you're getting to the decision
11 that you made?

12 MR. MORDFIN: Okay. So, OP reviewed the
13 application and it's for lot occupancy and, also, for rear
14 yard. And what we did is we looked at the shadow studies,
15 and we concluded that it would not be unduly affected. There
16 would be an increase in shadow. You can't build anything
17 without creating a shadow someplace. But we did not find
18 that it would unduly affect those neighboring properties.

19 At the same time, we did not see that privacy and
20 use would be adversely affected. The windows look out into
21 the rear yard and they extend out further from the building
22 than the current windows do, which would preserve more
23 privacy closer to the houses, the adjoining houses, than the
24 current situation. So, therefore, we did not see that this
25 building out of the 13.25 feet would adversely affect the

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1 privacy of those adjoining buildings, of the adjoining
2 rowhouses.

3 As viewed from the street, and the second story
4 onto the garage, there are other garages in that alley with
5 a second story on them. It would not be out of character
6 with that alley, with the other structures that are along
7 that alley. And at the same time, we made no recommendations
8 for any kind of special treatment, and there would be no
9 introduction of non-conforming uses or non-conforming heights
10 and things like that. So, therefore, the Office of Planning
11 recommended approval of the application.

12 CHAIRPERSON HILL: Thank you.

13 VICE CHAIRPERSON HART: Thank you very much.

14 I don't think I have any questions for that per
15 se, but I do appreciate going through that. It's helpful for
16 us to kind of hear that again. I know we've read through it,
17 but that was helpful. Thank you.

18 CHAIRPERSON HILL: Mr. Mordfin, I guess, again,
19 my question was that the original -- and I know that now you
20 guys put in a supplemental in terms of the windows and how
21 you thought that that did help the privacy issue. And that's
22 correct, yes?

23 MR. MORDFIN: That's correct, yes, sir.

24 CHAIRPERSON HILL: Okay. But you were -- and I'm
25 just kind of thinking about other cases -- I mean, you were

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1 in favor of it before, even the way the windows were?

2 MR. MORDFIN: That's correct.

3 CHAIRPERSON HILL: And that's because you didn't
4 -- and this is now something that the Board might end up
5 talking about a little bit -- because you didn't think that
6 -- and thank you so much for the Applicant to put that up
7 there. In terms of the Office of Planning's approach to
8 this, those rear windows in the -- thank you -- in the
9 accessory dwelling unit, I mean, the Office of Planning just
10 didn't necessarily think that the fact that those are looking
11 back into the -- we see those windows all the time in the
12 back of the house, like the floor-to-ceiling windows that are
13 on the back of rowhouses that look into the backyards of
14 people. But I haven't recalled -- and this isn't necessarily
15 in floor-to-ceiling -- I guess this is the long way of going
16 about it. Again, the Office of Planning didn't have any
17 issues with those windows that were looking back from the
18 accessory dwelling unit, correct?

19 MR. MORDFIN: That's correct.

20 CHAIRPERSON HILL: Okay. Okay. All right.
21 Anyone else for the Office of Planning?

22 (No response.)

23 Do either of you have any questions for the Office
24 of Planning, either the Applicant or the party of status
25 individuals?

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1 MR. SULLIVAN: No, thank you.

2 MS. MAZO: I just have one question, which was,
3 in our most recent filing, which I think was at tab or
4 Exhibit 100, we submitted sun studies showing a 3-foot-6-inch
5 shadow. And I have copies of them in the PowerPoint which
6 we filed. I'm happy to bring them up here.

7 But just I guess, generally, my question for the
8 Office of Planning is that, if those sun studies showing a
9 3-foot-6-inch matter-of-right extension, when reviewed, would
10 compare to the current proposal, the 13-foot-2 -- sorry --
11 13.25-foot extension; if a comparison of that sun study does
12 show significantly more sun and shade being cast by this
13 project, couldn't that constitute undue adverse impact on
14 this project in a comparison between the matter-of-right
15 extension of 3 feet 6 inches, which is what would be
16 permitted if they retain the garage, and the current 13 feet
17 .25 inches that they're showing?

18 MR. MORDFIN: I don't think the question is
19 whether or not it produces more shadow. The more you build,
20 the more shadow you're going to get. It's whether or not it
21 creates an undue hardship or a situation where you're
22 adversely affecting the neighboring properties. And the
23 Office of Planning's conclusion was that the amount of shadow
24 that you were going to get from the Applicant's 13.25-foot
25 proposal was not an -- what was the right word? -- an undue

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1 hardship on the neighboring properties.

2 MS. MAZO: No more questions. Thanks.

3 CHAIRPERSON HILL: Okay. Great.

4 Is there anyone here who wishes to speak in
5 support?

6 (No response.)

7 Is there anyone here who wishes to speak in
8 opposition?

9 (No response.)

10 Ms. Mazo, Mr. Sullivan, do you guys have anything
11 else you would like to add in conclusion?

12 Ms. Mazo? You guys can go first. It's their
13 application.

14 MS. MAZO: No, I think that this is a very
15 unfortunate situation that you guys are grappling with here.
16 And this will, this addition will, especially at 13 feet .25
17 inches, will change these backyards and will substantially,
18 and in my clients' view, unduly impact both the light and air
19 and the privacy.

20 My clients do appreciate the changes to the
21 windows and thank the Applicant for that. I think we all
22 just kind of wished we were in a different place than where
23 we are.

24 And with that, I would just ask the Board to
25 consider this case holistically. It is 69.75 percent lot

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1 occupancy, which is large by any basis, and to consider that
2 as part of their deliberation. Thank you.

3 CHAIRPERSON HILL: Mr. Sullivan?

4 MR. SULLIVAN: Sure. I would just briefly point
5 out that the garage makes up about 20 percent of that lot
6 occupancy, and I think it's clear -- and this photo is a good
7 photo to see that -- there are other accessory buildings.
8 The garage doesn't really impact or change anything about the
9 character or it doesn't adversely affect neighbors. So,
10 we're really talking about the 10 feet. And we think that
11 3-and-a-half or 3.25 feet of relief is very much in line with
12 the very low end of what the Board has safely approved in
13 this area.

14 And if you also look here, you'll see some of the
15 context of the additions. In this block just two doors to
16 the north is an addition, and then, on the two buildings next
17 to that, too. And you can see the two-story porch, too, on
18 that, and then, the large apartment building here. So, we
19 really think it fits within the context of all this, and it
20 certainly fits within the context of what the Board has --
21 I don't want to beat this to death -- but has on occasion
22 called de minimis or not what was really meant to be
23 addressed with the 10-foot rule. It was larger additions,
24 and that asking for 3.25 feet of relief is very reasonable.

25 It's not a large house. The Applicants, really

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1 13 feet they thought was a reasonable amount to get what they
2 needed to provide for their family and to not have to leave
3 the neighborhood. And so, that's how they came up with the
4 number. It's quite a project to undertake, and to go less
5 than that amount starts to make it not worth as much to do.
6 So, we think it's a very reasonable proposal for all those
7 reasons.

8 Thank you.

9 CHAIRPERSON HILL: Okay. Does the Board have any
10 final questions?

11 (No response.)

12 Okay. I'm going to close the hearing.

13 Is the Board ready to deliberate? Okay. I have
14 a bunch of stuff to say, but I don't necessarily need to
15 start. Does anybody want to start?

16 COMMISSIONER TURNBULL: I'll go ahead, if you
17 want.

18 Well, as mentioned, on the part of both the
19 opposition and the Applicant, it's been a very complicated,
20 long, drawn-out process for a very difficult case on how you
21 look at the impacts, and what's not an impact, and how it
22 affects people's lives.

23 And I don't want to go through all of the issues,
24 but I think, just from me looking at what was offered, I am
25 going to go back, whether this addition is 10-and-a-half

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1 feet, 12 feet, 13 feet, 14 feet, 15 feet, there's an obvious
2 problem with building the party wall next to it. And that's
3 an issue they're going to have to work out. That's
4 irrelevant of the BZA.

5 What I liked, what I heard, was the idea of the
6 12 feet. I thought, this is a significant change. In one
7 way, it's small potatoes compared to 13-and-a-half or that,
8 but it's a gesture. Along with the window changes, and
9 everything else, I said, gee, these people are trying to go
10 back and do something with their house, trying to make it
11 blend in. I think I could approve this with the 12 feet.
12 That's just me. Maybe I'm being picky, but I think that that
13 kind of a gesture, moving back their house, the design to 12
14 feet, along with all the window changes, is a significant
15 change to the parties in opposition. Whether it makes a hill
16 of beans of difference, I'm not sure, shadows, or whatever.
17 But, to me, that's a good gesture. That's a good-faith
18 effort of doing that. Now the opposition may claim that
19 that's not enough, but I think it's getting damn pretty
20 close. I think 12 feet, 2 feet sticking out back from the
21 back of the house is not bad. So, where I stand, if it's 12
22 feet, you got my vote.

23 VICE CHAIRPERSON HART: So, I thank you,
24 Commissioner Turnbull.

25 I kind of looked at this as a couple of ways. One

1 of them was kind of looking at the block itself. And you can
2 see this image here showing some of the development that's
3 already occurred at the block. Some of the houses are not
4 as far back in the rear of the property; some of them are.
5 Some of them have garages; some of them don't.

6 And I think that it kind of boils down to whether
7 or not the Applicant had provided sufficient information to
8 demonstrate how they meet the criteria under Subtitle E,
9 205.5 and 5201, and Subtitle E, 205.4.

10 I understand that the parties in opposition are
11 still in opposition and have also provided a compromise,
12 which is this 10 foot that they would be okay with. I think
13 the 12 feet is, whether or not it's 13 feet or 12 feet, I can
14 understand Commissioner Turnbull's looking at this as a
15 gesture. I would not be in -- I think what is before us is
16 the 13.25 feet, and we have to look at the project that's
17 before us now. And while I understand that that might be
18 something to -- I don't know -- that might have been
19 something that was on the table, it was not something that
20 the opposition parties were in agreement with. So, I think
21 that that just kind of falls. It's not something that we can
22 really kind of talk about because we have no drawings for it,
23 but I think that the difference between the 13, 13.25 and 12
24 for -- I'm not sure how we can gauge that in terms of the
25 shadow study impacts. I mean, you can, but it's so minimal,

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1 it's just not -- I don't think it's worth. Either you look
2 at the 10 feet, which is what the opposition party wanted,
3 or the 13.25 feet, which is what the Applicant has before us.
4 And I think that the 13.5 (sic) is something I'd be
5 supportive of.

6 I think that the changing of the windows in the
7 back helped with the privacy issue, which is something that
8 I think that I was concerned about. There was quite a bit
9 of discussion about what was actually the matter of right,
10 if it was 3 feet or 10 feet for the addition, if the garage
11 was there or if the garage was not there. And I think that
12 the way in which the Applicant put forward, they said that
13 they would be able to do a 10 foot and they would remove the
14 garage, if they were looking at the project.

15 And so, I think that the shadow study, while there
16 are impacts, and I'm not saying that there are not impacts,
17 to the house to the north -- I think it's 1834 -- I don't see
18 them as being undue impacts. And I think that, for us, when
19 we look at undue, it is they usually are pretty significant
20 in my estimation and they would shadow the entire, in the
21 entire backyard or they would shadow more than one backyard
22 and the entirety of more than a backyard. I'm not saying
23 that that's the only way to think about it, but it's the way
24 in which I am thinking about it for this particular case.

25 As I noted earlier, I did have some concerns

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1 before we had the conversation, or I guess during the
2 conversation, or during the hearing, about the privacy issue
3 and the windows and the amount of windows or glazing. And
4 I think that the Applicant has provided a change that I think
5 would be amenable. It's reducing the size of the accessory
6 unit -- excuse me -- reducing the size of the windows of the
7 accessory unit that are looking back towards the house and
8 away from the alley. I think that is a good gesture, as well
9 as reducing the number of windows on the rear of the
10 expansion that they are proposing on the second floor. That
11 I think is also something that is a positive step.

12 But, all that being said, these are still
13 neighbors that will have to work together, or at least live
14 next to each other, and that may be difficult. It is always
15 hard when you have your own property that you're trying to
16 do something with and there are differences of opinion as to
17 how that you want to do that. So, I just wish you guys good
18 luck for both of you, because I think it is hard. And I
19 think that sometimes we get to a point that there are
20 differences of opinion and it is not easy for you all -- now
21 I understand that it's not easy for both of you to have to
22 go through this because in some ways you're both kind of
23 losing because of the hard, difficult process that you've had
24 to go through. So, I just wish you all good luck.

25 But I would be in support of the application for

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1 the reasons that the Applicant has stated, as well as what's
2 been stated in the OP report and the supplemental report.

3 MEMBER JOHN: So, I agree with Mr. Hart's summary.
4 And I agree also that this is a difficult case, as are all
5 of these cases that involve neighbors trying to figure out
6 how to build out in a way that does not make it difficult for
7 another neighbor to live next to that addition. And we see
8 them all the time.

9 In this case, the relief that the Applicant is
10 seeking is, I'm going to say, only 3.25 feet. And
11 considering that the Applicant could build to 10 feet, what
12 the Board has to do is to look at the difference between 10
13 feet and 13.25 feet. And whenever I get these cases, I
14 always pull out my little ruler and say to myself, now what
15 does 3 feet look like? And we all can look here and
16 see -- maybe this sign is about a foot, and imagine what 3
17 feet would look like.

18 So, when I look at that, and I look at the sun
19 studies, which I always like to pay attention to, there isn't
20 a significant difference between the 10 feet and the 13 feet,
21 as OP has suggested. Now, when there is a wall next to you,
22 it's really going to be some adverse impact because there was
23 no wall before. So, when you see 13 feet, you're thinking,
24 oh, so this is a 13-foot wall which I should not have. But,
25 in reality, the Applicant can be allowed to build to 10 feet.

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1 So, having said all of that, I would approve of
2 the request for the relief. And I believe, based on OP's
3 analysis and the record, that the Applicant has also met the
4 criteria for the lot occupancy relief. I think the Applicant
5 has tried to meet, to offer the compromise of 12 feet. And
6 frankly, I don't see the difference between 12 feet and 13
7 feet.

8 I think the windows on the garage do help with the
9 privacy issue. And frankly, the previous witnesses were
10 fine, but I think it's a great concession that they have
11 offered.

12 So, based on all of that, I would approve the
13 application.

14 CHAIRPERSON HILL: Okay. Great. Thanks.

15 And this kind of for both the parties also. So,
16 the Applicant also -- if you all just wouldn't mind changing
17 the slide projector while we're kind of talking, just
18 because, then, it gets into like a whole -- just leave it
19 wherever it was. Thanks.

20 So, let's see, in terms of where I am, I mean,
21 again, this was a Special Exception, right, for what they are
22 trying to ask for. And so, like under E 5201.3, you have
23 "(a) The light and air available to neighboring property
24 shall not be unduly affected; (b) The privacy of use and
25 enjoyment of neighboring property shall not be unduly

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1 compromised; (c) The addition or accessories structure,
2 together with the original building, as viewed from the
3 street, alley, and other public way, shall not substantially
4 visually intrude upon the character, scale, and pattern of
5 houses along the subject street frontage." And then, I don't
6 need to read all of them, but those are kind of the gist of,
7 I think, kind of like the regulation and the criteria that
8 we're kind of going through.

9 As you have mentioned before, we have mentioned
10 before, this is kind of a small addition in terms of going
11 back farther. And basically, what they're trying to do --
12 and I mentioned this during the last hearing -- they're
13 maxing out their lot occupancy. I mean, they can go to 70
14 percent by Special Exception, and they're going to 69.7. I
15 mean, 70 is, that's what the number is. And so, they're
16 under that number. And so, therefore, they are able to do
17 what they're trying to do under Special Exception, not trying
18 to do a variance.

19 So, it really comes down to, light and air, and
20 whether we think it's unduly affected. I don't think it's
21 unduly affected. I'll just cut to the chase right there.
22 And that I think that we have approved things that are much
23 farther back, but, again, the lot occupancy was not an issue,
24 right? It was more that we had had this discussion -- the
25 Board now, this is just we're having this discussion together

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1 more -- which is like 10 foot, you're allowed to do by matter
2 of right, right? And then, anything beyond that is a Special
3 Exception.

4 And so, we've talked about how 10 feet is like,
5 it's like a bathroom or it's like -- it's not really even a
6 whole of lot of space, but it does work for some people. And
7 then, we've been in situations where the argument has always
8 been that I would be able to live with the 10 feet, but,
9 really, they're not able to live with the 10 feet; it's just
10 that that's a matter of right. You don't have an argument
11 with that, right?

12 So, most people -- and I can completely understand
13 that -- would not be interested in having anything, because
14 nobody wants -- well, I shouldn't say "nobody" -- but change
15 is not necessarily something someone wants, right? So, even
16 10 feet you don't necessarily want. So, this is the
17 additional 3 feet by Special Exception and whether or not it
18 meets this particular criteria, right?

19 So, the Office of Planning has already submitted
20 their analysis as to how it meets these criteria, right? I
21 do believe that this is not unduly affected, and I think that
22 there's plenty of case law, plenty of previous cases before
23 us, where this has been farther back and even more affected
24 than this particular property.

25 It is very disappointing, obviously, as it always

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1 is, when neighbors are unable to get to a place where they
2 can agree. I mean, we all live in neighborhoods. I've
3 mentioned before I live in a very densely-populated area and
4 there's always things that are going on where we are -- you
5 have to deal with what is taking place in terms of the
6 changes around. However, you're not necessarily happy about
7 it.

8 I think that in this particular case the Applicant
9 did make an effort to go ahead and at least -- you know, I
10 mean, I know that there could have been discussion about the
11 windows that were in the accessory dwelling unit that were
12 looking back into the yard. I mean, the windows that we've
13 had on many projects before us that have been the floor-to-
14 ceiling windows, as I mentioned before, on the rear of the
15 property that looks back into the backyards.

16 In terms of the character of this block, I think
17 that there are other units that have even bigger expansions
18 beyond what this Applicant is proposing to do. I guess I'm
19 just trying to clarify my impression that what the Board
20 seems to be speaking towards, as well as I'm speaking
21 towards, is that they are meeting the criteria for which we
22 need to grant this.

23 It's not something where, again, this is a
24 variance. Or what is always before us is that, if they meet
25 the criteria with the Special Exception, we basically have

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1 to grant it, right? I mean, it's like, do we think they meet
2 this criteria, not I think they meet this criteria. In the
3 past, as I've said before, we've approved things that have
4 been larger and have been even more unduly affecting
5 different areas in terms of shadowing and light. And we,
6 along with, you know, depending upon -- you know, each case
7 is different -- the Office of Planning has provided their
8 input.

9 So, let's see if I missed anything. I think the
10 character is not an issue. I think that the -- yes, it's
11 unfortunate, meaning that they weren't able to come to a
12 compromise. As I mentioned, I do think that they have made
13 an effort in terms of they could have kept those back
14 windows, I suppose, and I don't know whether the Board would
15 have approved it or not, to be quite honest, with those back
16 windows.

17 So, in any case, does anybody have anything else
18 to add?

19 COMMISSIONER TURNBULL: Yes, I would like to, Mr.
20 Chair.

21 CHAIRPERSON HILL: Sure.

22 COMMISSIONER TURNBULL: I agree, Mr. Vice Chair,
23 that what I discussed earlier was not in the record per se.
24 It was discussed. So, as far as I'm concerned, it's on the
25 table. It's free for discussion.

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1 What has not been talked about in this case is the
2 cumulative effect of all this relief that's being given on
3 this property, which is not in the regs per se. And I think,
4 Mr. Mordfin, you need to go back to Ms. Steingasser and talk
5 about relief to various aspects on a property; that is,
6 Special Exceptions on various aspects, whether it's an
7 accessory building and an addition, or whatever else.

8 I think the cumulative effect of some of these
9 Special Exceptions can lead to a condition that the criteria
10 is not met. In this particular case, I think it does begin
11 to reach that. And I think that the 13.25 is no longer de
12 minimis. It does become an impact. That's why my comment
13 that, going back to 12 feet, although it is minuscule at
14 best, was a gesture to try to relief from that.

15 But I think with the accessory building and the
16 other aspect of this, there is an impact that we can't talk
17 about because it's not really addressed in the regulations.
18 Okay? But, to me, I think OP needs to go back and discuss
19 this because we're getting into a point where, if we have all
20 these properties coming before us that want relief in various
21 aspects, and you look at these as separate little entities,
22 as separate little pieces of the puzzle, you're not looking
23 at the whole thing.

24 So, my feeling is that the 13.25 does become an
25 issue, and it does become an issue in that, to me, it's no

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1 longer de minimis. It may be de minimis in one sense, but,
2 overall, for the impact on the properties adjacent, I think
3 it does begin to encroach. So, I will be voting against
4 this.

5 CHAIRPERSON HILL: Okay. So, I'm just going to
6 have more discussion, Mr. Turnbull.

7 I appreciate what you're saying, and I would like
8 the Office of Planning to take a look at that because, again,
9 that was kind of some of what this argument was, that there's
10 all these different things that are coming forward. So, I
11 just want to continue having the discussion with you because
12 these are things that will be coming before us again, right,
13 in some capacity?

14 COMMISSIONER TURNBULL: Absolutely.

15 CHAIRPERSON HILL: So, do you think, then, that --
16 again, what I'm confused about in terms of this discussion
17 is that the neighboring property has like a second story,
18 right, on their garage? And then, the other couple of units,
19 a couple of units down, they also have garages and they have
20 bigger -- and actually, if the Applicant, since the Applicant
21 is there, wouldn't mind putting up that slide that had kind
22 of the block? Two back. Yes, right there.

23 So, again, in terms of like what you're saying,
24 which I'm not disagreeing with -- I'm just trying to
25 understand better because we're going to have this before us

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1 again, right? It is that you would like the Office of
2 Planning to kind of look at this context where there's a lot
3 of things happening in one particular lot; also, in addition
4 to the whole block kind of, correct?

5 COMMISSIONER TURNBULL: You're right, absolutely.

6 CHAIRPERSON HILL: Okay. Okay. Okay. I was just
7 trying to clarify.

8 COMMISSIONER TURNBULL: Yes.

9 CHAIRPERSON HILL: Okay. All right. All right.

10 COMMISSIONER TURNBULL: And I don't think in the
11 lot of the projects that we've had -- and I'm not getting
12 down on Mr. Mordfin or the Office of Planning totally. I'm
13 just saying I think that in the future I think we need better
14 context of the overall aspect of all these relief that's
15 being given and what the Office of Planning thinks, how these
16 really meet the regulations, and if we need to change some
17 of these regulations to address some of this relief.

18 I think we are getting to a point people are going
19 to -- I mean, we don't have any more property to build on in
20 the city. So, I mean, people are going to look to try to
21 encroach and get more and more. And that's fine, but I think
22 we need some better guidelines and instructions on how we
23 really look at this.

24 MEMBER JOHN: Just a couple of thoughts. And I
25 agree with those concerns and I think we should look at this,

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1 because looking at the previous case that we approved, one
2 of the previous cases, the request was for a penthouse
3 Special Exception, rear yard relief, rooftop. I mean a lot
4 of relief, and we typically don't consider that there is a
5 lot of relief requested if there is no impact; for example,
6 if it's not a variance. If they meet the criteria, even
7 though they're asking for a lot of relief, we still grant it.
8 And in that previous case, there was a 17-foot setback.

9 So, these are difficult situations, and I agree
10 with you it's difficult to know where the line should be
11 drawn. And so, I guess that's why we look at each case
12 individually, I suppose.

13 COMMISSIONER TURNBULL: Oh, I would agree, we have
14 to look at each one individually. I just think that -- well,
15 you know where I stand.

16 MEMBER JOHN: Yes. Yes.

17 COMMISSIONER TURNBULL: And the Chair needs to get
18 out of there. So --

19 CHAIRPERSON HILL: No, no, no. I mean, the reason
20 why I'm mentioning this, and the reason why I'm trying to
21 speak through this a little bit, Mr. Turnbull, is that I'm
22 imagining if this was -- I'm just looking at this picture
23 that's on the screen here. Again, I'm trying to imagine if
24 this was the only house that was trying to do this, right,
25 as opposed to this block is already kind of all mixed up,

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1 right, I mean, in my opinion. Because what you're speaking
2 to is the layering of all the different relief that's being
3 requested.

4 You obviously don't have the votes, and I'm not
5 trying to convince you at this point. I'm just kind of
6 talking through this thought process, which is that, -- and
7 this is what the Office of Planning now is being asked to
8 kind of look at -- is the layering of different relief, is
9 that something that, again, then gets to a point where we're
10 looking at it differently in some way? So, I'm just kind of
11 sharing that comment.

12 And again, as I'm looking at this picture, whether
13 it would have been any different to me had, again, it been
14 not -- had it really been changing kind of whatever is kind
15 of the character of the block.

16 Okay. Any last words? No?

17 COMMISSIONER TURNBULL: No, I understand where
18 you're coming from.

19 CHAIRPERSON HILL: Okay. All right. All right.

20 I'm going to go ahead and make a motion, then, to
21 approve Application No. 20144, as captioned and read by the
22 Secretary, and ask for a second.

23 MEMBER JOHN: Second.

24 CHAIRPERSON HILL: The motion is made and
25 seconded. All those in favor say aye.

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1 All those opposed?

2 Mr. Moy, the motion passes.

3 MR. MOY: Staff would record the vote as
4 3-to-1-to-1. This is on the motion of Chairman Hill to
5 approve the application for the relief requested. Seconding
6 the motion is Ms. John. Also in support is Vice Chair Hart.
7 Mr. Turnbull is opposed to the motion, and we have no other
8 members present.

9 CHAIRPERSON HILL: Okay. Thank you.

10 Thank you all very much and good luck to all of
11 you.

12 All right, Mr. Moy, we're going to keep chugging
13 along here.

14 MR. MOY: Thank you, Mr. Chairman.

15 If we can have parties to the table to Case
16 Application No. 20193, of Ideal Child Care Development
17 Center, LLC, captioned and advertised for a Special Exception
18 under the use provisions of Subtitle U, Section 203.1(h), to
19 expand a child development center from 16 children to 40
20 children and eight staff in the RF-1 zone. This is 805 Rock
21 Creek Church Road, Northwest, Square 3030, Lot 15.

22 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
23 Moy.

24 Could you please introduce yourselves from right
25 to left for the record? You need to push the button there.

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1 MS. DECELIAN-CADET: Yves-Carmel Decelian-Cadet.

2 CHAIRPERSON HILL: Could you spell your last name
3 for me?

4 MS. DECELIAN-CADET: D-E-C-E-L-I-A-N, hyphen,
5 C-A-D-E-T.

6 CHAIRPERSON HILL: Okay. Thank you.

7 MS. DECELIAN-CADET: Thank you.

8 MS. AKINSAN: Olivia Akinsan, the designer for
9 this project.

10 CHAIRPERSON HILL: Okay. Ms. Akinsan, I assume
11 you are presenting to us?

12 MS. AKINSAN: Yes, I am.

13 CHAIRPERSON HILL: Okay. Did you guys get sworn
14 in earlier?

15 MS. AKINSAN: Yes, we did.

16 CHAIRPERSON HILL: Okay. Great. All right. So,
17 if you want to go ahead and walk us through your proposal?
18 I don't have any specific questions. There might be some
19 questions we might have with the Office of Planning. But why
20 don't you go ahead and tell us what you're trying to do and
21 why you think you meet the criteria for us to grant the
22 application. I'm going to put 15 minutes on the clock, so
23 I know where we are, and you can begin whenever you'd like.

24 MS. AKINSAN: Okay. Good morning, Members of the
25 Board. Again, my name is Olivia Akinsan. I am the designer

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1 of this project. The name of the child development center
2 is the Ideal Child Care Development Center.

3 Mrs. Cadet here is requesting a Special Exception
4 for the establishment. She is the Executive Director.
5 Currently, we are in an RF-1 zone, which permits 16 children
6 and two staff members. Mrs. Cadet would like to increase the
7 amount of children by 24 children and six members of staff,
8 making for a total of 40 children and eight members of staff.

9 There will be no addition to the current building.
10 Due to the current number allowed of 16 children, the first
11 floor is currently not occupied. So, the additional children
12 would be housed in the first floor and would be --

13 MS. DECELIAN-CADET: And the lower level.

14 MS. AKINSAN: Yes. So, the basement would have
15 12 children and three staff; the first floor would have 12
16 children and three staff, and the second floor would have 16
17 children and two members of staff.

18 I'm going to let you discuss why you want the
19 relief.

20 MS. DECELIAN-CADET: Okay. We have witnesses here
21 that we brought along.

22 VICE CHAIRPERSON HART: Can you bring the mic
23 closer to you, please?

24 MS. DECELIAN-CADET: I'm sorry.

25 VICE CHAIRPERSON HART: That's fine.

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1 MS. DECELIAN-CADET: Hi.

2 VICE CHAIRPERSON HART: Thank you.

3 MS. DECELIAN-CADET: We have witnesses we have
4 brought here with us, parents. When we purchased the
5 building, it was already licensed for 16 children. When
6 we've done the work in it, right now we have the first floor
7 and the lower level that is vacant. So, we have a lot of
8 demand to increase our capacity. And so, we are asking to
9 have a Special Exemption, so we can accommodate our parents.

10 VICE CHAIRPERSON HART: Okay. Actually, I'm going
11 to kind of move us on here a little bit.

12 Does the Board have any questions of the
13 Applicant?

14 (No response.)

15 Can I speak to the Office of Planning or hear from
16 the Office of Planning?

17 MS. THOMAS: Yes. Good morning, Mr. Chairman,
18 Members of the Board, Karen Thomas with the Office of
19 Planning.

20 The Office of Planning is recommending approval
21 of the expansion of the child development center. We have
22 seen the Applicant has shown how the location -- where it is
23 located is an ideal location, in that it doesn't create an
24 objectionable traffic condition with respect to dropoff and
25 pickup. They have been doing this for quite some time, and

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1 DDOT has determined that the additional number of clients or
2 kids that come through there shouldn't create an
3 objectionable condition.

4 It's located near the Metro and adequate bus
5 stops, and the majority of the kids are walked to the center.
6 The offsite play area shouldn't have any objectionable
7 conditions, as only the older kids are taken to the
8 playground that is within walking distance of the child
9 development center. And trash and storage is not a factor
10 with respect to the continuous operation of that child
11 development center. They have been doing this for quite some
12 time.

13 So, with that, we think they have satisfied the
14 criteria, as well as the proposal wouldn't adversely affect
15 the use of neighboring property under Subtitle X. And with
16 that, thank you.

17 CHAIRPERSON HILL: Okay. Just a couple in terms
18 of your conditions. I understand the maximum number of staff
19 shall be eight; the hours of operation, 7:00 a.m. to 6:00
20 p.m., Monday through Friday, and any additional
21 recommendations from DDOT. The maximum number of children
22 shall be 40, and then, the final number is going to be
23 determined by OSSE. So, isn't it just that like whatever
24 OSSE says is kind of the final number?

25 MS. THOMAS: Yes. They can come and ask for 40.

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1 The Board could grant 40, but it determines what OSSE says,
2 their space conditions.

3 CHAIRPERSON HILL: So, what if OSSE says they can
4 do 45?

5 MS. THOMAS: No, they won't be able to 45
6 because --

7 CHAIRPERSON HILL: Okay. We're approving 40.

8 MS. THOMAS: Yes.

9 CHAIRPERSON HILL: Okay. All right. Okay.

10 Does the Board have any questions for the Office
11 of Planning?

12 COMMISSIONER TURNBULL: I just had one for the
13 Office of Planning. The neighbors are totally in support?

14 MS. AKINSAN: Yes, we have some neighbors here
15 today.

16 COMMISSIONER TURNBULL: Okay. All right. Thank
17 you.

18 CHAIRPERSON HILL: Okay. Two things for the
19 Applicant. I guess you know about the conditions from the
20 Office of Planning and you're comfortable with them, correct?

21 MS. AKINSAN: Yes, we are.

22 CHAIRPERSON HILL: Okay. And then, also, I didn't
23 see a report from the ANC. Did that come in? Oh, okay.

24 MS. AKINSAN: Yes.

25 CHAIRPERSON HILL: All right. Someone just told

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1 me that they're in support. It must have not been there when
2 I was reviewing it over the weekend. Okay.

3 Okay. Is anyone here wishing to speak in
4 opposition?

5 (No response.)

6 Is there anyone here wishing to speak in support?
7 If you could please come forward? Oh, great, let's all come
8 up. If you guys want to go ahead, yes, you can all -- well,
9 let me see.

10 All right. So, somebody just asked me a question.
11 The young woman who just asked me a question, could you just
12 come forward and ask the question over here? First,
13 introduce yourself for the record.

14 MS. ARIEL: Hi. I'm Tamar Ariel, here in support.
15 And I'm wondering if you need us. We're all happy to speak
16 in support, but if you're able to approve it without hearing
17 us, I am also happy to save you time.

18 CHAIRPERSON HILL: Okay. All right. Okay. Let
19 me just put it this way: I don't know, right? So, if you
20 all want to talk, you can talk. If you don't want to talk,
21 you don't have to talk.

22 Okay. Then, you all come forward. Yes. Okay.
23 As everyone is getting settled in, why don't you just go
24 ahead and introduce yourselves again for the record, even if
25 you did, please. From my right to left, go ahead, starting

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1 with you, please.

2 MS. LAMM: Hi. My name is Katherine Lamm. And
3 should I --

4 CHAIRPERSON HILL: Just give me your home address,
5 please.

6 MS. LAMM: My address is 938 Shepherd Street,
7 Northwest.

8 CHAIRPERSON HILL: Great.

9 MS. ARIEL: Tamar Ariel, 850 Quincy Street,
10 Northwest, Apartment 615.

11 MS. BATHEJA: My name is Amy Batheja, 722 Quincy
12 Street, Northwest.

13 CHAIRPERSON HILL: Could you spell your last name
14 for me, please?

15 MS. BATHEJA: B-A-T-H-E-J-A.

16 CHAIRPERSON HILL: Okay. Great. Thank you.

17 MS. HARPER: Hi. Heidi Harper, 725 Rock Creek
18 Church Road.

19 MR. KELLER: Hi. James Keller, 614 Rock Creek
20 Church Road.

21 MR. WARMBRODT: Hi. Zach Warmbrodt, 3561 10th
22 Street, Northwest.

23 CHAIRPERSON HILL: Could you spell your last name
24 for me?

25 MR. WARMBRODT: W-A-R-M-B-R-O-D-T.

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1 CHAIRPERSON HILL: Okay. Great.

2 Is there an additional person there?

3 MS. FITZPATRICK-BENNETT: Leslie-Anne Fitzpatrick-
4 Bennett, 445 Randolph Street, Northwest.

5 CHAIRPERSON HILL: Okay. Great.

6 Let's see, did everybody get sworn in?

7 Okay. Great. All right.

8 Oh, okay, please. Please stand and take the oath
9 administered by the Secretary to my left. That's okay. And
10 if there's anybody else who missed the swearing-in, if you
11 wouldn't mind standing now and get sworn in? Okay. Great.

12 (Witnesses sworn.)

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

14 CHAIRPERSON HILL: Okay. Great.

15 All right. So, to answer your question,
16 obviously, I don't know what's going to happen. So, you
17 might as well go ahead and speak. And you guys came all the
18 way down here and you're now on video. So, you can watch
19 yourself later tonight. So, you can just look up the BZA,
20 archived video, click on the case, and get to yourself.

21 So, each member of the public has three minutes.
22 You can use it if you like or you don't have to use all of
23 it. And we're going to go ahead and start with you, if you
24 wouldn't mind, and you can begin whenever you like.

25 MS. LAMM: Sure. Thank you.

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1 My name is Katherine Lamm. I live at 939 Shepherd
2 Street, Northwest. So, I am a resident of the ANC that this
3 proposal impacts, and I am also a parent of a child at Ideal
4 Child Care Development Center.

5 We have been extremely happy with the care that
6 our child has received at the daycare center and we strongly
7 support the expansion of the number of children who can
8 participate in the program. There is a serious lack of
9 quality child care in the District and in our neighborhood,
10 and the availability of an option that is so close to the
11 Metro I think makes it possible for families to stay in the
12 city and know that their kids are safe and comfortable and
13 well cared for during the day.

14 So, as neighbors and as community members and as
15 parents, we strongly support the proposal.

16 CHAIRPERSON HILL: Thank you.

17 MS. ARIEL: I'm Tamar Ariel, also a neighbor of
18 Ideal Child Care Center. I also live in the ANC zone. I
19 live pretty much across the street.

20 I am, unfortunately, not a parent of a current
21 Ideal child. I'm a parent of a child who has been on the
22 wait list for Ideal since before she was born. My daughter
23 is eight months old. We first spoke with Ms. Cadet when I
24 was five months pregnant. We have been waiting for this
25 approval, so that we can stop having to take the Metro two

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1 stops, and then, walk 20 minutes in each direction to get our
2 child to daycare, and move her into our neighborhood.

3 And so, we are hoping that we can join our friends
4 and neighbors in our local daycare that is just across the
5 street. There is just such high demand that it's honestly
6 not surprising that we have this commute or that we have been
7 on a wait list this long.

8 CHAIRPERSON HILL: You take two Metro stops and
9 walk 20 minutes?

10 MS. ARIEL: Yes.

11 CHAIRPERSON HILL: Each way?

12 MS. ARIEL: Well, I will say it's mostly my
13 husband, and then, he just has another seven minutes to his
14 office. But, yes, it is a very long commute. We do love
15 this other daycare that we're at.

16 CHAIRPERSON HILL: Got you. That's good. I was
17 just trying to understand. It just seems long.

18 MS. ARIEL: Yes, it's a schlep.

19 CHAIRPERSON HILL: Right, right.

20 MS. ARIEL: No, it's really rough.

21 CHAIRPERSON HILL: Okay. All right. Great.
22 Thank you.

23 Next, please.

24 MS. FITZPATRICK-BENNETT: Hi. I'm Leslie-Anne
25 Bennett again. Like my neighbor next to me, I am a parent

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1 of a 10-month-old who is not currently at Ideal, but, like
2 my neighbor said, we have been requesting to be a part of the
3 daycare center for similar reasons. We currently have to
4 commute north of where we live to drop our child off, then
5 come back, get on the Metro, then go off to work, because
6 there's such a high demand for daycare and because Ideal
7 comes highly recommended. And so, we would love to have this
8 expansion done, so that we can have a better lifestyle for
9 our kid and ourselves.

10 CHAIRPERSON HILL: Okay. Great. Thank you.

11 Next?

12 MS. BATHEJA: Hi. My name is Amy Batheja. I have
13 two children, a 3-year-old and a 1-year-old. Our 3-year-old
14 is currently at Ideal and he's thriving and doing wonderful.
15 Our 1-year-old, 16 months, there's no space for her, so she
16 is at a different daycare, which is fine; we love it. But,
17 obviously, it would be wonderful for the convenience of our
18 family. We live just two blocks from the daycare center.
19 And so, it's great. We walk our son to school every day and
20 he loves it, but we would love the opportunity for our
21 daughter to participate as well.

22 Thank you.

23 MS. HARPER: Hi. Heidi Harper. I live at 725
24 Rock Creek Church Street Road, which is about 300 feet from
25 the daycare center. So, I am a neighbor, part of the ANC 4C.

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1 I'm also a parent. I have three children, two of which have
2 gone through Ms. Cadet's program for the past five years, and
3 one that is currently at a different daycare, who is five
4 months old. So, I have to get my child in the car, drive 10
5 minutes to drop off the infant, while I have a wonderful
6 program literally 300 feet from my house.

7 So, I am in support of this. I will also say that
8 Ms. Cadet has made our neighborhood a safer place. This
9 house that she bought and renovated used to be a drug house
10 that was raided by MPD next to the daycare about four years
11 ago. She renovated it, and it's been sitting renovated and
12 vacant for two years, trying to get support to expand the
13 center. So, I'm in strong support as a neighbor. It's made
14 the character of the block better. It's made the safety of
15 our block better. And obviously, as a parent, I would
16 strongly support being able to put my child in this daycare
17 center rather than drive him to a different daycare.

18 MR. KELLER: My name is James Keller. I live at
19 614 Rock Creek Church Road. I concur with a lot of the
20 statements just made.

21 My daughter is also -- she's 28 weeks old now.
22 Her name is Sophie. She has been waiting, on the wait list
23 essentially, since before she was born. I'm currently
24 driving her out to Tenleytown every day to drop her off,
25 which isn't too far from where I work, but, given that I'm

1 the one, that I need to do it, it's kind of a schedule
2 disruption and a lot of inconvenience for us as a family to
3 get her ready in the morning, when we have a quality daycare
4 center that is very closeby.

5 Unfortunately, in the neighborhood there is a lack
6 of similarly quality-level daycares that have vacancies for
7 her. So, I'm also strongly approving, in approval of this
8 application.

9 Thanks.

10 MR. WARMBRODT: Hi. My name is Zach Warmbrodt.
11 I live at 3561 10th Street, Northwest. So, I'm a neighbor.

12 I'm the father of a six-month-old, Amarilla Claire
13 (phonetic). I strongly support this expansion. Our current
14 option is several Metro stops away and we would like
15 something closer to home. The center has come highly
16 recommended. And I just want to do whatever I can to help
17 them expand.

18 Thank you.

19 CHAIRPERSON HILL: Okay. Great.

20 Let's how do you say your name again? I'm sorry.
21 The Applicant.

22 MS. DECELIAN-CADET: Cadet.

23 CHAIRPERSON HILL: Cadet. Just the last part,
24 Cadet? Okay, Ms. Cadet.

25 He knows French.

1 (Laughter.)

2 So, Ms. Cadet, you seem like you have a wonderful
3 place. You should be very proud of yourself.

4 So, this place has been empty for two years? You
5 need to speak into a microphone. You need to punch the
6 button.

7 MS. DECELIAN-CADET: Two years-plus.

8 CHAIRPERSON HILL: Why did it take you so long to
9 get before us?

10 MS. DECELIAN-CADET: Well, I don't know, sir.

11 MS. AKINSAN: We had some --

12 CHAIRPERSON HILL: You can speak. Yes, there is
13 a microphone there.

14 MS. AKINSAN: We had some planning issues, I
15 guess, putting the documents together, but --

16 CHAIRPERSON HILL: Okay. Architectural issues,
17 what have you?

18 MS. AKINSAN: Yes.

19 CHAIRPERSON HILL: I mean, it just seems like the
20 need is there and it's been there for a while. And if you
21 guys have been there for two years, I'm just curious, because
22 I know that we're not that slow.

23 Okay. All right. Okay. Mr. Moy, right, we're
24 not that slow?

25 So, all right. Does the Board have any questions

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1 for any of the witnesses?

2 COMMISSIONER TURNBULL: Well, I just had a
3 question for Ms. Cadet. How long will it take you to
4 complete the expansion?

5 MS. DECELIAN-CADET: Once we get the approval --
6 can we get the approval today? And I can get a CofO
7 tomorrow.

8 (Laughter.)

9 And I can go to Licensing Monday. I mean Tuesday.
10 Hopefully, we can open next week.

11 COMMISSIONER TURNBULL: Well, you've made a lot
12 of people here happy to get your schedule.

13 (Laughter.)

14 MS. DECELIAN-CADET: Thank you. Thank you.

15 CHAIRPERSON HILL: Okay. Yes, to answer your
16 question, you have to get a Summary Order. Well, you have
17 to get to Order first. And that will take -- you have to
18 talk to the Secretary, but a Summary Order is better than a
19 full Order by far. And so, I don't know how -- it's not as
20 long as -- it's quick. It's quick as it can be. You had a
21 question?

22 MS. DECELIAN-CADET: When you say "quick," how
23 long is that?

24 CHAIRPERSON HILL: Again, you'd have to talk to
25 the Secretary, which is Mr. Moy. Then, I think we're going

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1 to take a break after this.

2 Anyway, well, you guys, thanks for coming down.
3 It was really nice, as my last case of the day, to not be
4 something that's going to be difficult. And so, I appreciate
5 you all coming down. Thank you very much.

6 MS. DECELIAN-CADET: Thank you.

7 CHAIRPERSON HILL: No, no, no, you guys have got
8 to stay. The witnesses are going.

9 MS. DECELIAN-CADET: Oh, okay.

10 CHAIRPERSON HILL: Okay. I'm smiling again
11 because I get to leave on a good case.

12 All right. So, support? Opposition?

13 Does the Board have any further questions of the
14 Applicant?

15 (No response.)

16 Does the Applicant have anything they would like
17 to add at the end?

18 MS. AKINSAN: No.

19 CHAIRPERSON HILL: No? You have to say "no" into
20 the microphone.

21 MS. AKINSAN: No.

22 CHAIRPERSON HILL: Okay. Thank you.

23 MS. AKINSAN: No.

24 CHAIRPERSON HILL: I'm going to close the hearing.

25 Is the Board ready to deliberate? Would someone

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1 else like to go?

2 VICE CHAIRPERSON HART: Go ahead.

3 MEMBER JOHN: Yes. So, I thought that the
4 Applicant met the criteria for the expansion from 16 children
5 to 40 children. And I'm going to make it very simple because
6 I think OP went through all of the criteria and showed how
7 the Applicant meets the criteria for the expansion.

8 There is support from the ANC. And so, based on
9 the full record and OP's analysis, giving great weight to
10 OP's analysis and the recommendation of the ANC, I would
11 approve this application.

12 COMMISSIONER TURNBULL: I would concur and I would
13 be in support of this also.

14 CHAIRPERSON HILL: Okay. Great. Thank you.

15 I don't have a whole lot to add. I mean, I guess
16 I was kind of looking to Ms. John because I also just had no
17 idea how much the daycare is needed and how child care is
18 needed, and how quality child care is needed. And obviously,
19 this is one that has been thought of very highly in the
20 neighborhood, for this many people to come down and spend
21 half a day down here.

22 And so, I also agree with the analysis that has
23 been provided by my colleagues as well as the Office of
24 Planning. There was the conditions from the Office of
25 Planning which are in their report. I won't bother repeating

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1 them, but I do believe those conditions are going to be in
2 effect.

3 I am going to, therefore, make a motion to approve
4 the application of --

5 MEMBER JOHN: Mr. Chairman?

6 CHAIRPERSON HILL: Yes, please.

7 MEMBER JOHN: With respect to the number of
8 students, were we just going to state the number of students
9 without talking about what OSSE would do?

10 CHAIRPERSON HILL: I was just going to leave the
11 conditions in there the way they are written. Because it
12 basically seems to say that we, the Board, are permitting a
13 maximum of 40 children, regardless of what OSSE says, meaning
14 if they went over that. But if they get under that, then
15 they're only going to be able to get whatever OSSE says they
16 can have, if it's 38, or whatever the number is. So, I would
17 just leave the conditions the way they are written with the
18 Office of Planning's report.

19 So, we'll go ahead and make a motion.

20 Hold on one second. I'm going to reopen the
21 record because the Applicant seems to be raising their hand
22 and has a question. So, therefore, we're going to go ahead
23 and reopen the record.

24 Do you have a question?

25 MS. DECELIAN-CADET: Just one quick question.

1 With the 40 students, we need to say eight staff also because
2 that is taking --

3 CHAIRPERSON HILL: Can you say that again? I'm
4 sorry.

5 MS. DECELIAN-CADET: The 40 children --

6 CHAIRPERSON HILL: Yes?

7 MS. DECELIAN-CADET: -- in addition to them, eight
8 staff.

9 CHAIRPERSON HILL: Yes. In the conditions, I can
10 read through the conditions again. I don't know if you guys
11 -- I'm sure you've seen the Office of Planning report. But
12 "The maximum number of children shall be 40. The final
13 number of children allowed will be determined by OSSE at the
14 time of permitting and licensing. Two, the maximum number
15 of staff persons shall be eight. Three, the hours of
16 operation shall be 7:00 a.m. to 6:00 p.m., Monday through
17 Friday, and any additional recommendations from the
18 Department of Transportation."

19 MS. DECELIAN-CADET: Thank you.

20 CHAIRPERSON HILL: So, those are all the
21 conditions.

22 MS. DECELIAN-CADET: Yes.

23 CHAIRPERSON HILL: Okay. I'm going to go ahead
24 and close the hearing.

25 I'm going to make a motion to approve the

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1 application of 20193, as captioned and read by the Secretary,
2 including the conditions that I just read that were proposed
3 by the Office of Planning, and ask for a second.

4 MEMBER JOHN: Second.

5 CHAIRPERSON HILL: The motion has been made and
6 seconded. All those in favor say aye.

7 All those opposed?

8 The motion passes.

9 Mr. Moy?

10 MR. MOY: Staff would record the vote as
11 4-to-0-to-1, and this is on the motion of Chairman Hill to
12 approve the application for the relief requested, including
13 the four conditions as he has cited in his motion. Seconding
14 the motion is Ms. John. Also in support, Vice Chair Hart,
15 Zoning Commissioner Michael Turnbull, and no other members
16 present.

17 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

18 Thank you all very much.

19 MS. AKINSAN: Thank you very much.

20 CHAIRPERSON HILL: We're going to take a quick
21 break.

22 (Whereupon, the foregoing matter went off the
23 record at 11:18 a.m. and went back on the record at 11:36
24 a.m.)

25 VICE CHAIRPERSON HART: (presiding) Let's restart

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1 the hearing.

2 MR. MOY: Thank you, Mr. Vice Chair.

3 For the record, the Board is back in session and
4 the time is at or about 11:36.

5 So, if we can have parties to the table for the
6 next case, which is Application No. 20196 of Sonia Ahmed and
7 -- is it Farzaam? F-A-R-Z-A-A-M Esmaelian. I'm sorry I'm
8 bastardizing your name. E-S-M-A-E-I-L-I-A-N. I'm sorry.

9 And this is as amended for Special Exceptions
10 under Subtitle D, Section 5201, from the lot occupancy
11 requirements; Subtitle D, Section 304.1, rear yard
12 requirements of Subtitle D, Section 306.2, to replace the
13 rear deck addition to an existing attached principal dwelling
14 unit, R-3 zone. This is at 220 Ascot Place, Northeast,
15 Square 3557, Lot 69.

16 VICE CHAIRPERSON HART: Thank you, Mr. Moy.

17 Welcome.

18 If you could, please introduce yourselves, from
19 my right to left?

20 MS. AHMED: Sonia Ahmed, homeowner.

21 MR. ESMAEILIAN: Farzaam Esmaelian, homeowner as
22 well.

23 Good morning.

24 VICE CHAIRPERSON HART: Good morning.

25 So, I don't have any questions for you all. I

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1 don't know which of you are going to actually -- do you want
2 to do a presentation for this? I don't necessarily think we
3 need one. I think the record is fairly full.

4 And we have somebody standing up. Hold on. We
5 need a mic, and that's why I'm asking.

6 Why don't you come up and at least let us know who
7 you are? No, no. Oh, yes, that's fine.

8 MR. RIKARD: Okay. I'm Robert Rikard. I'm here
9 for the adjoining residence at 222 Ascot Place, in
10 opposition.

11 VICE CHAIRPERSON HART: Okay. Did you submit any
12 motion to be an opposition party or are you just here to
13 speak in opposition to it?

14 MR. RIKARD: Yes, I'm here to speak in opposition
15 to it.

16 VICE CHAIRPERSON HART: Okay. So, I will call you
17 up after the Applicant has had a chance to make a
18 presentation and we've heard from the Office of Planning.
19 Then, we have a chance for maybe if the ANC is here. Then,
20 we have a chance for people that are in opposition, who want
21 to speak in opposition or in support of it. They can come
22 up at that point.

23 But thank you very much.

24 Okay. So, I wasn't sure which one of you was
25 going to present.

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1 MR. ESMAEILIAN: I'll make it brief. I think you
2 all have the information you need online from the case.

3 But, as mentioned earlier, we're looking to build
4 a deck that's 10 foot in depth, 18 feet in width, bring us
5 with two Special Exceptions, lot occupancy and rear yard.
6 That's going to bring us 8 percent below the max occupancy
7 of 70 percent. So, we'll be at 62 percent.

8 We our first-time homeowners looking at a deck.
9 We enjoy just spending time outside. So, we want to enjoy
10 the same privileges as our other neighbors have with similar
11 deck sizes as well.

12 VICE CHAIRPERSON HART: Okay. Are there any
13 questions for the Applicant?

14 (No response.)

15 Okay. So, let's hear from the Office of Planning.

16 Good morning.

17 MR. COCHRAN: Thank you, Mr. Chair. For the
18 record, Steve Cochran, OP.

19 We're recommending approval of the revised
20 application for a Special Exception from the rear yard and
21 lot occupancy requirements. The Applicant would replace a
22 formerly existing 6-foot-deep deck with a new 10-foot-deep
23 deck. There is a pattern of similar decks along the alley.
24 There is an addition approximately that deep adjacent to the
25 Applicant's property. It's not inconsistent with the zone

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1 plan.

2 And that concludes OP's report, unless you want
3 to ask some questions.

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

6 (No response.)

7 I see some heads shaking. So, thank you very
8 much.

9 Does the Applicant have any questions for the
10 Office of Planning?

11 MR. ESMAEILIAN: No. That was pretty much in line
12 with what we agree with in terms of there will be no
13 substantial adverse effect to other parties, but we are
14 flexible and willing to work in the direction that the Board
15 guides us to.

16 Thank you.

17 VICE CHAIRPERSON HART: Thank you.

18 Okay. Is the ANC here?

19 (No response.)

20 Is there anyone here wishing to speak in support
21 of the application?

22 (No response.)

23 Anyone here wishing to speak in opposition?

24 It seems like we have somebody here. Mr. Rikard?

25 And I'm assuming you were sworn in earlier?

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1 MR. RIKARD: Yes.

2 VICE CHAIRPERSON HART: Okay. You will have, as
3 a member of the public, you have three minutes to say your
4 piece.

5 And, Mr. Moy, if you could, can we get three
6 minutes on the clock?

7 Actually, if you would please state your name and
8 address, and then, you begin after that whenever you would
9 like.

10 MR. RIKARD: All right. My name is Robert Rikard.
11 Address is 222 Ascot Place, Northeast, Washington, D.C. It's
12 adjoining the petitioner who is requesting this Special
13 Exception.

14 I heard the Planning Office makes reference to
15 similar decks next to the existing deck. My own deck is only
16 6-feet out. The one beside him on the opposite side is only
17 4-feet out. There are some other decks up and down the
18 driveway.

19 But this request will substantially and adversely
20 affect our living and our sight lines to the alleyway and
21 above the alleyway. Our property sits on a hill. Below,
22 then, their deck actually will be built a foot and a half
23 higher than ours, and with their structure the way it's being
24 put in, it will be way above our property line, which will
25 affect our sight and our enjoyment of our own property.

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1 There's a package there that I provided with
2 pictures of the damage that's done to the retaining wall in
3 which they had construction done last year and they damaged
4 that needs to be completely replaced and repaired. There's
5 photographs of the rear of their house where they removed the
6 6-foot deck and want to expand to a larger deck, which will
7 come 6 inches within my property and the adjacent property
8 on the other side. With the height of the guardrailing,
9 which is 3 feet 6 inches, it will completely block our view
10 from our deck if we're sitting on it because of the height
11 difference in the locations.

12 They're indicating that it will not affect us, but
13 it will because, once again, we will not be able to see
14 clearly from our own deck if they go out 10 feet, which is
15 an additional 6 to 8 feet further out. It would totally
16 block our view of our own alleyway.

17 I'm hoping that the package that I provided to you
18 will at least be reviewed and taken under consideration in
19 order for them to make a modification to the exact size, so
20 that we can continue to be on our own property and enjoy it
21 the way they want to do on theirs.

22 VICE CHAIRPERSON HART: Thank you.

23 And which property are you? Are you to the right
24 of --

25 MR. RIKARD: 222 --

1 VICE CHAIRPERSON HART: Are you to the right or
2 left of them? If you're looking at the houses, are you to
3 the right or left of them?

4 MR. RIKARD: To the right.

5 VICE CHAIRPERSON HART: Okay.

6 MR. RIKARD: I'll be down below -- my house, it
7 actually sits down below them because we're on a hill.

8 VICE CHAIRPERSON HART: Sure. I understand that.

9 MR. RIKARD: Yes.

10 VICE CHAIRPERSON HART: And does the Board have
11 any questions for Mr. Rikard?

12 MEMBER JOHN: Yes. I'm still having difficulty
13 trying to figure out where your house is. If you're looking
14 at the rear of the property, is your house to the right or
15 to the left of theirs?

16 MR. RIKARD: To the left.

17 MEMBER JOHN: To their left?

18 MR. RIKARD: Yes.

19 MEMBER JOHN: And is it a white house with white
20 siding and a tree in the back? Is that your house?

21 MR. RIKARD: No. No. No.

22 VICE CHAIRPERSON HART: She's looking at
23 photographs that they've provided as part of the application.

24 MR. RIKARD: That who provided?

25 VICE CHAIRPERSON HART: No, no, that the Applicant

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1 has provided --

2 MR. RIKARD: No, there's no tree in my yard.

3 MEMBER JOHN: Okay.

4 MR. RIKARD: But there's an enclosure. The
5 package that I provided with you, Photo D shows part of my
6 property directly adjoining his.

7 MEMBER JOHN: So, are you saying that they're
8 building the deck too close to your property?

9 MR. RIKARD: Correct. It's coming within 6 inches
10 of the property line, and they've already damaged a retaining
11 line and property line where the chain link fence is on right
12 now. And so, that new structure will have to be 6 inches
13 from my property, from the property line that divides us.
14 And by them being higher up, the deck will actually start a
15 foot and a half higher than my deck floor. Then, once they
16 put on their railing, which has horizontal slats to it, that
17 will become a blocking issue also.

18 MEMBER JOHN: So, those are your two issues?

19 MR. RIKARD: That's part, yes, part of it, the
20 main issues, that it going to -- it's oversized. It extends
21 out past the requirements by the rules and regulations. The
22 width I feel is too overwhelming.

23 MEMBER JOHN: Okay. Thank you.

24 VICE CHAIRPERSON HART: So, I have actually a
25 question. Have you had conversations with the Applicants?

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1 MR. RIKARD: Yes, just recently, before we got the
2 notice about coming here, they wanted to try, he wanted to
3 try to come to some resolution. And he showed me the
4 blueprints for the first time a couple of weeks ago, and I
5 brought those issues up to him. And also, the other day, I
6 had asked them, is there an issue with reducing the size of
7 the deck, so that it's further away from the property line
8 and the extension? And so, he said he had to ask his wife
9 first. And I haven't heard back from them.

10 VICE CHAIRPERSON HART: Okay. So, I'll ask the
11 Applicant if they could just kind of speak to this, as well
12 as speaking to the ANC, kind of that process as well. I know
13 we have an email between Ms. Ahmed and the ANC, or at least
14 we have -- or someone from that. So, it would be helpful for
15 us to understand that as well as this particular concern.

16 MR. ESMAEILIAN: Yes, sir. Sure. So, in regards
17 to the ANC, I had reached out to the ANC Chair back in
18 December to get on the agenda to present our case and what
19 we're attempting to do. There is a lot of emails from us to
20 the ANC over the course of two months. We couldn't get on
21 the agenda in time. So, we wanted to make sure that there
22 was correspondence attached to the case, so that the Board
23 can see that we were attempting with at least six or seven,
24 maybe eight, emails to the ANC, starting from December to get
25 on the December meeting. We couldn't get there, and then,

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1 tried to get on the January agenda. We couldn't get on the
2 January agenda, either.

3 And then, to discuss some of the issues brought
4 up to Robert, from Robert, I do want to point out that
5 everyone in the neighborhood, the whole neighborhood, the
6 Edgewood neighborhood is on a slant sloping downward. So,
7 everyone's --

8 COMMISSIONER TURNBULL: Could I interrupt just for
9 a --

10 MR. ESMAEILIAN: Yes, sir.

11 COMMISSIONER TURNBULL: But I'm looking at an
12 elevation of the back of the homes. It looks like your home
13 is actually lower than Mr. Rikard's? I mean, I'm looking at
14 -- I don't know what exhibit this is. I'm looking at the
15 rear photos. It looks like the homes are stepping down the
16 other way. Is that correct?

17 MR. ESMAEILIAN: I mean, which photo are you
18 looking at exactly?

19 COMMISSIONER TURNBULL: I've got to find, let me
20 find the exhibit. Thirty-six, 36, Exhibit 36.

21 MR. ESMAEILIAN: Are they the colored photos of
22 the properties?

23 COMMISSIONER TURNBULL: Yes.

24 MR. ESMAEILIAN: So, those are the properties
25 across from us that have decks. So, we wanted to show the

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1 other properties that had similar decks in width and/or size.

2 COMMISSIONER TURNBULL: Well, this shows pavers,
3 like two pavers in the back. Is that your house?

4 MS. AHMED: Yes, it is.

5 MR. ESMAEILIAN: Yes, you're looking at the
6 -- yes.

7 COMMISSIONER TURNBULL: Thirty-six. If I look at
8 36, it's the second photo.

9 MR. ESMAEILIAN: It looks like this?

10 COMMISSIONER TURNBULL: It looks like the home --

11 MR. ESMAEILIAN: Is this what you're looking at?

12 COMMISSIONER TURNBULL: Yes.

13 MR. ESMAEILIAN: Okay.

14 COMMISSIONER TURNBULL: But I'm looking up where
15 I can see the rooflines and everything. It looks like your
16 roofline is lower than Mr. Rikard's roofline. It looks like
17 your doorway is lower than his doorway.

18 MS. AHMED: Correct.

19 COMMISSIONER TURNBULL: Yes.

20 MS. AHMED: I believe it's actually the same
21 level. We haven't actually measured that. But our previous
22 deck that we had was similar to the Rikards' where it was
23 closed off completely. As you can see, it was almost like
24 an addition with a large awning, which was actually creating
25 more of an effect, I would say, on vision --

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1 COMMISSIONER TURNBULL: Sight.

2 MS. AHMED: -- than what we're proposing, which
3 is an open deck.

4 COMMISSIONER TURNBULL: I mean I was just trying
5 to get an overall feel for the heights. It is just looked
6 like your doorway height as you came out looks like it's
7 lower than Mr. --

8 MR. ESMAEILIAN: We have not measured in detail,
9 but, from the images, it is a similar --

10 COMMISSIONER TURNBULL: Are you the house at the
11 far left?

12 MR. ESMAEILIAN: So, we are to the west of him.

13 COMMISSIONER TURNBULL: Oh. Oh, I see. Okay.
14 I was confused. I thought you were on the other side. Got
15 it. All right. Thank you. Now I'm clear on whose --

16 MR. ESMAEILIAN: Okay. Sure.

17 VICE CHAIRPERSON HART: So, yes, I understand the
18 information that you had with the ANC, the kind of
19 conversation. It seems that there was a little bit of back-
20 and-forth between the two. They did actually want you to
21 have -- or they asked you if you had spoken to the neighbors
22 and they wanted to have written approval from the neighbors
23 on either side for them.

24 MR. ESMAEILIAN: Correct. So, we had gotten
25 written approval from the neighbor to our west, Mr. Lewis and

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1 his wife. We got approval from neighbors directly across
2 from us, from the alleyway, Jonas and his wife. I had spoke
3 with Robert, if he would be willing to sign a letter of
4 support because I wanted to make sure that there was enough
5 transparency with what we're trying to do, and I also want
6 to make it clear to him that we are flexible with whatever
7 direction the Board wants us to go in. I had asked if he
8 would be willing to sign a letter of support. I think he was
9 more reserved to sign one because I don't think he wanted to
10 have his name on anything. So, at that point, I didn't want
11 to push the matter any further. We did get other letters of
12 support from other neighbors on the same block.

13 VICE CHAIRPERSON HART: No, I understand. I just
14 wanted to make sure that it was I had that particular part
15 of it. In some ways, I'm almost thinking that there needs
16 to be additional conversations that you all need to have,
17 because I'm not sure if the -- while I understand what you're
18 requesting, I think that it is helpful, since we don't have
19 an ANC report and one of the next-door neighbors has a
20 particular issue with this, I'm wanting to have that part of
21 this resolved before, in my estimation, before I have a final
22 decision on it. Because I think that there may be some
23 change, but I don't know that, and I'd rather have that kind
24 of finality to that.

25 Having the ANC, whatever, however they've kind of

1 looked at it, because if they hadn't brought up having the
2 support from both next-door neighbors -- I understand that
3 you have folks from other parts of the block -- but the next-
4 door neighbor, the adjacent next-door neighbors on either
5 side are the ones that are going to be most impacted by this.
6 And one of them actually spent the good portion of this
7 morning to come here to actually say that they were not in
8 support of it.

9 And so, I think that that's, in my estimation, it
10 would be helpful. I don't know what my fellow Board members
11 are thinking about this as well.

12 COMMISSIONER TURNBULL: I would agree with you.

13 MEMBER JOHN: I agree with you, Mr. Vice Chair.

14 And I wanted to ask the Applicant about, it's not
15 within the jurisdiction of the Board, but, on page -- it's
16 1 of 6 of the Applicant's package --

17 MR. ESMAEILIAN: Yes.

18 MEMBER JOHN: I'm sorry, opposition's package.
19 There's a discussion about damage to the neighbor's property.
20 So, maybe when you are in conversations, you can discuss that
21 issue with the neighbor and try to resolve it.

22 MR. ESMAEILIAN: We had that discussion, yes, and
23 I had said that, as a resolution, to be flexible and
24 accommodating, there is an adjoining fence between both our
25 property lines and we could replace his fence and put in a

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1 new fence at the same time. No matter what, regardless, we
2 would have been fixing whatever damage he may be referring
3 to.

4 MEMBER JOHN: Right.

5 MR. ESMAEILIAN: So, we have absolutely been
6 accommodating toward our neighbor.

7 MEMBER JOHN: Okay. So, as the Vice Chair has
8 said that he's in favor of postponing this for you to go back
9 to the ANC and try to have their input, and maybe that's a
10 good opportunity for you all to come to some final agreement.
11 And I think, Vice Chair, that might be the way to go.

12 VICE CHAIRPERSON HART: So, right now, I think
13 that's what we're going to be asking you to do. I don't know
14 how much time you think you would need to be able to do that.

15 I don't know. Mr. Moy, when do you think we could
16 be able to hear back?

17 MR. MOY: Well, according to the schedule, I have
18 the ANC 5E meeting is February the 18th. After that, it's
19 March 17th. So, I don't know which calendar you're going to
20 be able to get on. If it's the latter one, March 17, then
21 the next hearing after March 17 would be -- just a second --
22 it would be March the 18, which I would not recommend, Mr.
23 Vice Chair, because we have two appeals that day. Then,
24 we're looking at March 25th.

25 VICE CHAIRPERSON HART: And we have already 10

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1 cases on that?

2 MR. MOY: March 25th, 14.

3 VICE CHAIRPERSON HART: Okay. So, you hear what
4 we're kind of trying to deal with. How long is it going to
5 take you to be able to -- I mean, how long would you need to
6 be able to try to come to an agreement or at least some
7 discussions with the Applicant (sic)? I mean, I'm not
8 telling you to get an agreement with him. I'm just saying
9 that I think the conversation is probably necessary for this
10 to see if there are any changes that are being proposed.

11 MS. AHMED: Well, I think we're happy to discuss
12 revisions. That's why we're here. We have approached
13 Robert. My husband has approached Robert. I tried to talk
14 to his mom who owns the place as well when we first initially
15 were going down this route, just to talk to the neighbors.
16 But we were unsuccessful, which is why we're here now.

17 We are very happy to discuss and sit down with
18 everyone, so everyone can enjoy their property. We don't
19 want to be a bad neighbor in any case. So, we're happy to
20 do that. We, ideally, do not want to have to go through the
21 ANC process, just because it's been so difficult. And we
22 hope, if that's something that we don't have to do, that
23 would be great, because it's taken us a long time to just go
24 through this process in itself.

25 VICE CHAIRPERSON HART: No, I understand. I guess

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1 the problem that we have is that we didn't have the ANC or
2 all of the neighbors' kind of support. So now, we're kind
3 of left with -- and it is helpful for us to understand what
4 those concerns are because it is, you know, they are likely
5 the ones that would actually know if they are in opposition
6 or not.

7 And for the ANC, we are required to take that as
8 great weight, as we do with the Office of Planning reports.
9 So, that's why we look to have the ANC report as well.

10 But you were going to say something?

11 MR. ESMAEILIAN: So, if I may add, if ourselves
12 and our neighbor can come to a resolution, a conclusion to
13 conclude this matter, does it require us to still go to the
14 ANC, in your opinion, to expedite the process?

15 VICE CHAIRPERSON HART: I think that it would be
16 helpful to actually have some -- to let the ANC know where
17 you all are with the resolution, and then, be able to see if
18 they are going to hear this on one of their -- if they want
19 to hear it. I'm not even sure. But I think that you do need
20 to make some effort to be able to see if they're looking to
21 do that. They may find that they want to say something as
22 well, and I just don't know. I'm not going to presuppose
23 that I know what they're going to be thinking, but --

24 MR. ESMAEILIAN: Okay.

25 VICE CHAIRPERSON HART: Yes, I think it is helpful

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1 for us to actually have that. If you can get it, that's
2 great, and I understand that sometimes timing doesn't work.

3 So, I'm asking my fellow Board members, the 25th
4 now of March? I know it's a long way from now, but it would
5 at least give two opportunities for the ANC meetings, and we
6 would have enough time to be able to get new drawings, and
7 if there's some discussion with the next-door neighbor. I
8 know it's a lot of cases on this, but -- I don't know if you
9 have any thoughts on it.

10 Okay. That's fine.

11 COMMISSIONER TURNBULL: I'll make myself
12 available.

13 VICE CHAIRPERSON HART: Thank you.

14 So, I think we should move it to the 25th, and
15 we'll, hopefully, be able to get all this information back
16 from the Applicants, so that we can, then, move fairly
17 expeditiously through this.

18 So, I think that's it. You are, of course, more
19 than welcome to submit any comments in the future on this.
20 We'll leave the record open for this case. Okay.

21 MS. AHMED: Thank you.

22 VICE CHAIRPERSON HART: Thank you very much.

23 So, Mr. Moy, you can call the next case, please.

24 MR. MOY: All right. That would be Case
25 Application No. 20199, Robert William Pilkington and Peling

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1 Li. This is a request for Special Exceptions under Subtitle
2 E, Section 5201, from the side yard requirements of Subtitle
3 E, Section 207.4, and under Subtitle E, Sections 206.2 and
4 5203.3, from the rooftop architectural element requirements
5 of Subtitle E, Section 206.1(a). This would remove the
6 existing architectural rooftop element and to expand the
7 building to eliminate the side yard and convert the principal
8 dwelling unit to a flat in the RF-1 zone at 1026 4th Street,
9 Northeast, Square 774, Lot 34.

10 VICE CHAIRPERSON HART: Good afternoon. I guess
11 we're now in the afternoon.

12 If you could introduce yourselves from my right
13 to left?

14 MS. MALONEY: Hi. I'm Candace Maloney. I am the
15 designer on this project.

16 VICE CHAIRPERSON HART: That's Maloney? Could you
17 spell that?

18 MS. MALONEY: M-A-L-O-N-E-Y.

19 VICE CHAIRPERSON HART: Thank you.

20 MR. CROSS: And Michael Cross, architect.

21 VICE CHAIRPERSON HART: Thank you.

22 And I don't know who's going to present, Ms.
23 Maloney or Mr. Cross.

24 MR. CROSS: I think I'll present, and Ms. Maloney
25 will probably answer some questions.

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1 VICE CHAIRPERSON HART: I don't really have a lot
2 of questions on this, but let's put 10 minutes on the board
3 and we'll see where we are. Thanks.

4 MR. CROSS: That's plenty. Much appreciate it.
5 We're here seeking relief for elimination of side
6 yard, pursuant to E 207.4, as well as removal of
7 architectural rooftop elements, pursuant to E 206.1. This
8 project is proposed at 1026 4th Street, Northeast. It's on
9 the west side of the block between L and K Streets,
10 Northeast.

11 The project is somewhat unique in two ways. It
12 has a very small side yard on the south side, roughly 2 and
13 a half feet, that's not found in any of the adjacent
14 properties. And it's also in a row of structures that lacks
15 strong consistency and to which itself shares a weak
16 relationship.

17 The proposed project proposes to in-fill the side
18 yard and extend the entire footprint up to a three-story
19 volume and clad the front facade with brick, adding a bay
20 window, emulating the style of the five buildings across the
21 street.

22 VICE CHAIRPERSON HART: Mr. Cross?

23 MR. CROSS: Yes, sir?

24 VICE CHAIRPERSON HART: I'm sorry for
25 interrupting. I just noticed that we don't have an Affidavit

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1 of Maintenance for the project. At least I don't see one in
2 the record. I see the Affidavit of Posting.

3 MR. CROSS: Yes, it seems like maybe we failed to
4 post that. My apologies.

5 VICE CHAIRPERSON HART: To add the Affidavit of
6 Maintenance for this?

7 I'm asking OAG, so we would have to waive that,
8 if we thought that was necessary, if we thought that was
9 appropriate?

10 MS. NAGELHOUT: Yes. Yes, you can.

11 VICE CHAIRPERSON HART: Should we be requesting
12 that they add it?

13 MS. NAGELHOUT: That's up to you. If you look at
14 Subtitle Y, it gives you some guidance on when a waiver is
15 appropriate. It's 402.11.

16 VICE CHAIRPERSON HART: So, yes, just how long was
17 this posted?

18 MR. CROSS: So, I believe that the original
19 Affidavit of Posting was posted, but it's my understanding
20 that we did not post an Affidavit of Maintenance.

21 VICE CHAIRPERSON HART: Okay. But this was up for
22 the required amount of time?

23 MR. CROSS: Yes, sir.

24 VICE CHAIRPERSON HART: Okay. Okay. I mean, let
25 me think. We've got the ANC report. I didn't see any -- I

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1 mean, we got quite a number of letters of support for the
2 application. I'm actually okay with waiving the Affidavit
3 of Maintenance. I don't know if any Board members have
4 any --

5 MEMBER JOHN: I was wondering if it couldn't be
6 submitted today, if you're able to state that the notice has
7 been out and you've seen it, and you can -- okay.

8 MR. CROSS: We could add it to the record
9 following this hearing.

10 VICE CHAIRPERSON HART: That's fine. Thank you.
11 You can continue.

12 MR. CROSS: Thank you.

13 And so, we have met with the ANC. We actually met
14 with this ANC subcommittee prior to meeting with the full
15 ANC. And at that subcommittee meeting, they took some issue
16 with the original character, scale, and pattern of the
17 originally-proposed three-story bay window. And we,
18 subsequently, revised our proposal to that which is on the
19 screen here today, to be a two-story bay window, more
20 consistent with those across the street, the original
21 buildings across the street, as there is one three-story bay
22 across the street already, and in hope of further registering
23 datum of the two-story structures remaining in the
24 neighborhood.

25 As noted, in addition to letters of support from

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1 OP and ANC, we have a half dozen or so letters of support
2 from members of the community.

3 I'm happy to answer any questions you have.

4 VICE CHAIRPERSON HART: Does the Board have any
5 questions?

6 COMMISSIONER TURNBULL: Yes, I've just got one.
7 You're adding onto an existing structure, but what are you
8 adding on to? It looks like you're tearing down the whole
9 thing.

10 MR. CROSS: We are maintaining the entire party
11 wall that is attached, as well as the rear face of the
12 single-story portion at the rear of the building as we
13 extrude up, and then, demolishing the detached face as well
14 as the majority of the front facade.

15 COMMISSIONER TURNBULL: So, why doesn't this fall
16 under new construction? Don't you need a raze permit to tear
17 down as much as what you're doing?

18 MR. CROSS: So, we calculate that we are within
19 the 40 to 50 percent wall area remaining that's outlined by
20 the Zoning Administrator to qualify as a non --

21 COMMISSIONER TURNBULL: Have you done calculations
22 on that?

23 MR. CROSS: We have.

24 COMMISSIONER TURNBULL: Have you submitted them?

25 MR. CROSS: To this record, no.

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1 COMMISSIONER TURNBULL: I'm just concerned that
2 the amount you're doing -- Mr. Chair, I'm just concerned that
3 there's a -- it seems like a lot is being taken off of this
4 building to classify it as something that's being added onto.
5 Because if they go beyond that, they're going to need
6 variance relief. I don't know if the Office of Planning has
7 any comments on that.

8 VICE CHAIRPERSON HART: Yes, maybe we'll talk to
9 them after we've -- that is a question to try to understand.
10 And this is a self-certified application, correct?

11 MR. CROSS: Correct.

12 VICE CHAIRPERSON HART: Okay. I mean, that's
13 always the burden, that they're asking for the correct relief
14 and that there won't be additional relief that's required by
15 those in the future, if this is actually approved.

16 MEMBER JOHN: So, may I ask a question?

17 VICE CHAIRPERSON HART: Yes, go ahead.

18 MEMBER JOHN: So, are you saying the rear wall and
19 the one party line, party wall, that's 50 percent?

20 MR. CROSS: We're saying that it is between 40 and
21 50 percent. I think our calculations come to something like
22 42 to 45 percent wall area remaining.

23 VICE CHAIRPERSON HART: Okay. So, you've finished
24 your presentation? Yes?

25 MR. CROSS: Yes, sir.

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1 VICE CHAIRPERSON HART: Okay. Are there any other
2 questions for the Applicant?

3 (No response.)

4 We can turn to the Office of Planning.

5 Good afternoon.

6 MS. VITALE: Good afternoon, Mr. Vice Chair,
7 Members of the Board. Elisa Vitale with the Office of
8 Planning.

9 The Office of Planning is recommending approval
10 of the requested Special Exception relief for the rooftop
11 architectural element and for the side yard.

12 I'm happy to answer any questions. Thank you.

13 VICE CHAIRPERSON HART: It sounds like we have a
14 question around whether or not this is a raze that's actually
15 happening, a complete demolition.

16 MS. VITALE: We asked the same question of the
17 architect, and they gave the answer that they provided today,
18 that they were preserving between 40 and 50 percent of the
19 existing structure.

20 Questions of raze would be determined by the
21 Zoning Administrator. That's not something that the Office
22 of Planning would normally opine on. And as you indicated,
23 this is a self-certified application, and we are analyzing
24 the relief that was requested by the Applicant that's before
25 us today.

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1 VICE CHAIRPERSON HART: Thank you.

2 Commissioner Turnbull, do you have another
3 question for OP?

4 COMMISSIONER TURNBULL: No. I was just trying to
5 -- I'm looking at comparing floor plans, existing and new.
6 But just raising the question. I think you may be questioned
7 by the ZA. I think you might want to take a hard, long look
8 at that.

9 VICE CHAIRPERSON HART: Okay. Any other questions
10 for the Office of Planning?

11 (No response.)

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

14 MR. CROSS: We do not.

15 VICE CHAIRPERSON HART: Okay. Is there anyone
16 here from the ANC?

17 (No response.)

18 Anyone here wishing to speak in support of the
19 application?

20 (No response.)

21 Anyone here wishing to speak in opposition to the
22 application?

23 (No response.)

24 No hands have gone up.

25 So, it's back to us, to the Board. Are there any

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1 final questions for the Applicant?

2 (No response.)

3 And does the Applicant have any final statement
4 that they would like to make?

5 MR. CROSS: No, sir.

6 VICE CHAIRPERSON HART: Okay. So, with that, I'll
7 close the record.

8 Is the Board ready to deliberate? So, I can
9 start.

10 I think that the Applicant, that what they've
11 proposed is actually a fairly interesting design. I would
12 agree with the Office of Planning that it does meet the
13 relief, the criteria under the relief that they are
14 requesting.

15 I would raise the issue that my colleague just
16 raised with respect to whether or not this is a complete
17 raze. And I think that that is somewhat of an issue for this
18 case. But this is a self-certified application and they are
19 making the assertion that this is not a raze; that enough of
20 the house has been, existing house has been retained. And
21 I think we're going to have to use it as their word for this.
22 And if they need additional relief, then they're going to
23 have to come back and request that additional relief.

24 So, I would be recommending, I would be supporting
25 the application, but understanding that there may be this

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1 issue with regard to whether or not it is actually completely
2 a demolition or not. But I guess the ZA will be determining
3 that.

4 Do we have any other comment that the Board would
5 like to make?

6 MEMBER JOHN: I agree with you, Mr. Vice Chair.
7 And I thought that OP did a fairly good analysis of the
8 application, and I don't have any additional questions beyond
9 the issue of whether or not this is a raze. And in any
10 event, this is a self-certified application. So, the
11 Applicant is proceeding at its own risk.

12 And I thought that the porch renovation is
13 consistent with other similar porches -- I'm sorry -- bay
14 areas, projections, on the block. And so, I am supporting
15 the application.

16 VICE CHAIRPERSON HART: Okay. So, I'll make a
17 recommendation -- sorry -- make a motion to approve
18 Application No. 20199 of Robert William Pilkington and Peling
19 Li, as read and captioned by the Secretary. Do I have a
20 second?

21 MEMBER JOHN: Second.

22 VICE CHAIRPERSON HART: All those in favor say
23 aye.

24 Any opposed?

25 The motion carries.

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1 Mr. Moy?

2 MR. MOY: Staff would record the vote as
3 3-to-0-to-2, and it was on the motion of Vice Chair Hart to
4 approve the application for the relief being requested.
5 Seconding the motion is Ms. John. Also in support, Zoning
6 Commissioner Michael Turnbull, with two other members not
7 present.

8 VICE CHAIRPERSON HART: Thank you all very much.
9 And, Mr. Moy, we're rolling through.

10 MR. MOY: The next application is Case Application
11 20200, of 1368 Parkwood Place --but I'm going to say P-L --
12 LLC, captioned and advertised for Special Exception from the
13 residential conversion requirements, Subtitle U, Section
14 320.2, including a waiver from the rear addition requirements
15 of Subtitle U, Section 320.2(e). This would convert an
16 existing one-family dwelling into a three-unit apartment
17 house with a new three-story rear addition in the RF-1 zone
18 at premises 1369 Parkwood Place, Northwest, Square 2827S, Lot
19 136.

20 VICE CHAIRPERSON HART: Thank you, Mr. Moy.

21 If everyone could introduce themselves from my
22 right to left?

23 MR. SULLIVAN: Marty Sullivan, on behalf of the
24 Applicant.

25 MS. MALONEY: Candace Maloney, design.

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1 MR. CROSS: Michael Cross, architect.

2 MR. SCORZAFAVA: Matt Scorzafava, the Applicant.

3 VICE CHAIRPERSON HART: Could you spell your last
4 name? Sorry.

5 MR. SCORZAFAVA: Sure. It's S-C-O-R-Z-A-F-A-V-A.

6 VICE CHAIRPERSON HART: Okay. Thank you.

7 Mr. Sullivan, Mr. Cross, which of you -- are you
8 going to start, Mr. Sullivan, and then, hand it off?

9 MR. SULLIVAN: Yes, if the Board wants to -- we
10 filed some things yesterday. So, if you wanted to hear more
11 about that, I can explain that, and then, I would turn it
12 over to Mr. Cross to do the presentation.

13 VICE CHAIRPERSON HART: And there was a motion,
14 too, also, for late filing?

15 MR. SULLIVAN: Yes. Yes. Yes.

16 VICE CHAIRPERSON HART: If you could just talk
17 about that first?

18 MR. SULLIVAN: Sure.

19 VICE CHAIRPERSON HART: Hold on. Let me see if
20 there's something else. Okay. So, yes, it seems like that's
21 the only thing that we have that's kind of outstanding. If
22 you could talk about that a little bit?

23 MR. SULLIVAN: Sure. The first thing is Form 135,
24 as the lot occupancy number, relates to the addition of the
25 accessory building in the back. The accessory building was

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1 added to the plans, and those plans were filed in time. And
2 it was actually added after some discussions with the
3 neighbor, the immediate neighbor. They preferred us to have
4 an accessory building. So, added the accessory building.
5 But, fault of my office, neglected to update the Form 135 to
6 include the new lot occupancy number of 60 percent. So,
7 that's the only change in that one.

8 And the other changes to the shadow studies, we
9 noticed that it was done as existing versus proposed rather
10 than matter of right versus proposed. And so, we thought the
11 Board might want to see those as well. So, we thought that
12 it would be okay to upload those in case the Board wanted to
13 review that delta, as well as the one that we submitted.

14 Now the ANC, of course, and the Office of Planning
15 has reviewed it based on existing to proposed, and they're
16 okay with it, along with the immediate neighbor. So, that's
17 the extent of the additional information.

18 COMMISSIONER TURNBULL: So, the Office of Planning
19 has seen these?

20 MR. SULLIVAN: They haven't -- I don't know if
21 they -- no, I don't think they have seen the existing -- my
22 understanding is that they've evaluated the case based on
23 existing versus proposed. The revised shadow study would
24 show matter of right versus proposed, which would,
25 presumably, show a lot less of an impact. So, they've

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1 reviewed it based on the shadow studies that would show more
2 of an impact.

3 VICE CHAIRPERSON HART: You're saying that it's
4 a more conservative --

5 MR. SULLIVAN: Yes, that's what I'm trying to say.

6 VICE CHAIRPERSON HART: -- impact that you're
7 talking about for the existing versus proposed?

8 MR. SULLIVAN: Correct.

9 VICE CHAIRPERSON HART: More impacts would be
10 shown for that --

11 MR. SULLIVAN: Correct.

12 VICE CHAIRPERSON HART: -- as opposed to the one
13 that they've -- that you've now --

14 MR. SULLIVAN: That's what I was trying to say,
15 yes.

16 VICE CHAIRPERSON HART: Okay. So, that's fine.

17 MR. SULLIVAN: Thank you.

18 VICE CHAIRPERSON HART: So, I think that I'm fine
19 with waiving the 21-day filing requirement. I would like to
20 have these images in here, and I understand kind of why we're
21 getting them. So, I don't know if the Board has any other
22 comments on that.

23 COMMISSIONER TURNBULL: No.

24 VICE CHAIRPERSON HART: Okay. So, we're going to
25 waive that. So, they'll be -- I guess they already are in

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1 the record.

2 MR. SULLIVAN: Thank you.

3 VICE CHAIRPERSON HART: Ten minutes? Okay. You
4 can begin whenever you would like. Thank you.

5 MR. CROSS: Thank you.

6 So, as noted, this is seeking relief for a three-
7 unit conversion in the RF-1 zone, pursuant to Subtitle
8 U 320.2. The project is being proposed at 1369 Parkwood
9 Place, Northwest. It's on the north side of the block
10 between 14th and Holmead. And it's immediately adjacent to
11 an alley which runs behind the properties that face 14th
12 Street.

13 In an effort to reduce the impact on the solar
14 panels located on the adjacent structure, we designed the
15 third --

16 VICE CHAIRPERSON HART: Can you show that on the
17 images? Just a plan view of other --

18 MR. CROSS: Of the adjacent properties?

19 VICE CHAIRPERSON HART: Do you have like a plan
20 of like the -- this is fine. At least it's able to see some
21 of the neighbor.

22 MR. CROSS: Okay. The only attached neighbor has
23 solar panels on their project, and there is a full solar
24 study analysis by a solar engineering company in the record
25 showing the effect. And in an effort to reduce the impact

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1 on those solar panels, we set back our limited third-floor
2 addition to the rear of the property. And as such, we're
3 seeking a waiver to exceed the 10-foot rear addition
4 requirement to allow us to go back 20 feet in order to
5 compensate for this reduced third story.

6 Otherwise, the proposed project is conforming.
7 There's no modification to rooftop elements. Again, this was
8 a change. After working with some of the neighbors, we kept
9 the front roof as well as the entire porch below. And we're
10 providing the required parking spaces.

11 In addition to letters of support from ANC and OP,
12 we do have a letter of support from the adjacent neighbor.
13 That is, again, the neighbor who has the solar panels, which
14 we have worked with extensively on this project for the solar
15 as well as the additional projection. And as Mr. Sullivan
16 pointed out, all the way down to coordinating some of the
17 garage work between the two properties.

18 I'm happy to answer any questions that you have.

19 VICE CHAIRPERSON HART: Does the Board have any
20 questions for the Applicant?

21 (No response.)

22 If you could pull up just a -- actually, this is
23 fine. In this section, one of the things that you're saying
24 is that this addition, this floor, was pushed back because
25 there were some solar panels on the building that's to the

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1 east. And so, you're trying to keep any shadows from
2 affecting that solar panel. So, because you're on the north
3 side of the street, all of the shadows are now going to kind
4 of not fall on this.

5 And where did you say that the solar panels were
6 exactly? Or do they end at this? Are they on the entire
7 roof or are they just on the front of the adjacent neighbor's
8 roof?

9 MR. CROSS: I so have the solar study. It's in
10 a separate file. I wasn't planning to present it today
11 because it's kind of a supporting document here. But the
12 solar panels on the adjacent roof are located on the portion
13 of that structure which is original, right? And so, by us
14 going back the 20 feet, we're putting our addition on top of
15 that rear projection, basically, behind all of the existing
16 solar panels on the adjacent property.

17 VICE CHAIRPERSON HART: Okay. And right now, the
18 addition, is that where this line, the dotted line is here?

19 MR. CROSS: Yes.

20 VICE CHAIRPERSON HART: The third floor?

21 MR. CROSS: The addition is circled there.

22 VICE CHAIRPERSON HART: No, I know that. I'm just
23 saying that it's not only on there. I was looking at the
24 section. Part of it is on the existing building? And I was
25 trying to figure out if that's that line that's here, if

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1 that's where that third-floor addition starts.

2 MR. CROSS: You're right.

3 VICE CHAIRPERSON HART: Okay.

4 MR. CROSS: My apologies.

5 VICE CHAIRPERSON HART: That's fine. I understood
6 what you were saying. I was just trying to make sure I
7 understood on the drawing where that was.

8 And so, the solar panels themselves would be here,
9 but, actually, are there any that are there at all? They're
10 all in the front portion of the house that's adjacent?

11 MR. CROSS: To my recollection, yes. I'm glad to
12 pull up the solar study from the record, if you wish.

13 VICE CHAIRPERSON HART: Is it an exhibit? That
14 would be helpful, too. I can't recall now.

15 MR. SULLIVAN: It would be Exhibit 11.

16 VICE CHAIRPERSON HART: I see it now.

17 MR. CROSS: It's on the screen here, if you wish.

18 VICE CHAIRPERSON HART: Thank you.

19 So, there are a couple of them, but, for the most
20 part, they are on, towards the front of the houses, except
21 for the two panels that are, I guess, on the top. And you
22 also said that the neighbor has signed a letter of support
23 for the application as well. Okay.

24 MR. CROSS: That's correct. And just one note.

25 VICE CHAIRPERSON HART: Sure.

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1 MR. CROSS: As you see on the screen here, the
2 report is showing that our impact is less than the 5 percent
3 allowed under this section of the Code.

4 VICE CHAIRPERSON HART: Yes, I'm looking at page
5 5 of this report, and it actually shows some of that impact.
6 Page 8 also shows a little bit of the impact. Okay.

7 Any other questions for the Applicant?

8 COMMISSIONER TURNBULL: Yes, I've got one,
9 Mr. Chair --

10 VICE CHAIRPERSON HART: Sure.

11 COMMISSIONER TURNBULL: -- Vice Chair.

12 On the front of the building at the left, right
13 at the roof there is a structure which appears to look almost
14 like a chimney on the original, as if it's an original
15 chimney or something. So, what's happening there?

16 MS. MALONEY: There's currently an existing
17 mansard roof. So, it's pretty much the supporting wall for
18 that mansard.

19 COMMISSIONER TURNBULL: But the very front of it
20 has a cap.

21 MS. MALONEY: Yes.

22 VICE CHAIRPERSON HART: It looks like you can see
23 it in this image here. Is that what you're talking about?

24 COMMISSIONER TURNBULL: Yes. What's going on up
25 there?

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1 MR. CROSS: It's existing to remain. We're not
2 touching it, and it is, to my knowledge, it is purely
3 ornamental. It's, as Candace stated, just the kind of
4 decorative end to the row where they have a party-wall-type
5 condition that terminates that row of mansard roofs.

6 COMMISSIONER TURNBULL: Well, you're sort of
7 showing that part of it is going to be gone at the top.

8 MR. CROSS: That may just be graphical. We're
9 proposing no change to the mansard roof, as we're not
10 requesting any relief to that section of it.

11 COMMISSIONER TURNBULL: No, I'm just saying that
12 there's -- I'm on the wrong one. That right there, I'm not
13 sure what it is, but your drawings don't show anything.

14 MS. MALONEY: We're planning on keeping it. We
15 can definitely add it into the treaty image.

16 COMMISSIONER TURNBULL: Okay. Okay.

17 VICE CHAIRPERSON HART: Okay. I don't think we
18 have any other questions.

19 Oh, yes, please.

20 MEMBER JOHN: Just to clarify, the addition itself
21 is 20 feet, is that correct? Starting from -- where do we
22 start the addition, from here or there?

23 MS. MALONEY: So, we're removing the white
24 addition and replacing some of that back. So, we can see in
25 the site plan -- maybe if we can zoom in a little? Yes, that

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1 portion.

2 MEMBER JOHN: So, beyond what's already there,
3 you're going an additional -- are you just replacing this
4 with 20 feet or what?

5 MS. MALONEY: We're going back to the existing
6 structure line, and then, just extending 20 feet from that
7 portion.

8 MEMBER JOHN: Is it 20 feet from where I just drew
9 that line?

10 MS. MALONEY: No, it's 20 feet from where we drew
11 that second line.

12 MR. CROSS: The 20 feet is measured from the rear
13 wall of the adjacent building. Both our property and the
14 adjacent building have a series of additions, ours being
15 enclosed, theirs being all decks. And so, we are demolishing
16 our covered porch as well as the rear addition, and then,
17 we're projecting back 20 feet, which, as you're noting, is
18 a footprint that already exists there today. However, that
19 footprint is largely comprised of a covered porch and is
20 already extending beyond the furthest-most rear wall of the
21 adjacent building. Therefore, it needs relief.

22 VICE CHAIRPERSON HART: Any further questions?

23 (No response.)

24 Okay. Now I just can't remember. I don't think
25 I've gone through this yet.

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1 We have not talked to the Office of Planning. So,
2 maybe we should do that.

3 Welcome. Good afternoon.

4 MR. MORDFIN: Good afternoon.

5 I'm Stephen Mordfin. And the Office of Planning
6 is in support of this application and stands on the record,
7 and is available for any questions.

8 Thank you.

9 VICE CHAIRPERSON HART: And, Mr. Mordfin, you saw
10 these updated renderings now or have you seen them yet?

11 MR. MORDFIN: I have seen them and it does not
12 affect our analysis.

13 VICE CHAIRPERSON HART: Thank you.

14 Does the Board have any other questions for the
15 Office of Planning?

16 MEMBER JOHN: Just one question. Can you talk
17 about the rear yard relief? Because it's such a contentious
18 issue that comes up from time to time.

19 MR. MORDFIN: The fact that in this case the
20 Applicant is going back 20 feet instead of the 10 feet?
21 Well, in this case, this is an end-unit building. So, there
22 is nobody on the other side. It's an alley. So, there is
23 nobody to affect there.

24 And let's see. Wait a minute.

25 And we also reviewed the shadow studies. The

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1 Applicant updated the shadow studies, and, still, we don't
2 find that that's going to have a significant impact on the
3 adjoining property. It should not unduly affect them. So,
4 that's why, even with the changes to the studies that were
5 submitted, we don't see that this is going to have an effect
6 on that adjoining property. The sun goes -- basically, the
7 shadows are in the opposite direction. So, the house, the
8 adjoining house on the east side should not have any
9 shadowing that will adversely affect it.

10 VICE CHAIRPERSON HART: Well, there will be some
11 shadows. It's not unduly affecting them, is what you're --

12 MR. MORDFIN: Correct. You're always going to
13 have shadows.

14 VICE CHAIRPERSON HART: Yes.

15 MR. MORDFIN: Whether or not it unduly affects it,
16 and also the direction that the sun goes, it should be
17 minimal, more so in the afternoon than at any other time.

18 VICE CHAIRPERSON HART: Okay. Any other questions
19 for the Office of Planning?

20 (No response.)

21 Does the Applicant have any questions for the
22 Office of Planning?

23 MR. SULLIVAN: No, thank you.

24 VICE CHAIRPERSON HART: Is the ANC here?

25 (No response.)

1 Is there anyone here wishing to speak in support
2 of the application?

3 (No response.)

4 Anyone here wishing to speak in opposition to the
5 application?

6 (No response.)

7 Seeing no hands, Mr. Sullivan, do you have any
8 other final comments that you would like to make?

9 MR. SULLIVAN: Just to point out that, in
10 addition, on the shadow study issue, when there's a house to
11 the east, it's generally seen as being less impacted than the
12 house to the west because the majority of the sun is during
13 the early part of the day.

14 And then, also, I would point out the support
15 letter from the neighbor is very detailed and they had some
16 specific conditions that the Applicant is happy to meet, and
17 it was more than your standard support letter, I would say.
18 There was significant interaction with the neighbor and with
19 the SMD Commissioner on these issues, which led to this
20 letter with these specific conditions. And so, just to note
21 that the neighbor is fully aware of the whole plan and that
22 they have looked into it in great detail.

23 Thank you.

24 VICE CHAIRPERSON HART: Thank you.

25 And some of these, it's not really in our purview.

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1 The one question I did have was -- I'm just trying
2 to understand this a little further -- well, I guess they
3 said that the Applicant and the neighbor kind of agreed to
4 these things. "The rear addition shall be fully wrapped on
5 all sides in attractive siding and not left unfinished."?
6 I don't even know what that means. How do you leave
7 something unfinished?

8 MR. SCORZAFAVA: I wasn't sworn in, but I can
9 speak to that, if you want me to.

10 VICE CHAIRPERSON HART: That's always helpful to
11 know.

12 Actually, hold on. If anyone else is here that
13 needs to be sworn in, please stand at this time.

14 No, you can stand as well, too, sir. Thank you.
15 (Witnesses sworn.)

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

17 VICE CHAIRPERSON HART: Thank you.

18 And thank you for your candor.

19 MR. SCORZAFAVA: Yes.

20 So, the next-door neighbor, there was an addition
21 to a building behind them in the alley that was unfinished
22 CMU block from a number of years ago that's bothered them.
23 So, they just wanted to make sure that we were not going to
24 leave any CMU block. That was their request and why it's in
25 the letter.

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1 VICE CHAIRPERSON HART: Okay. That's helpful to
2 know. I just was kind of scratching my head at that one.

3 Okay. And I'm not even sure the rest is --
4 actually, with the exception of maybe the second one, I just
5 don't see these as being things that we would necessarily put
6 in. I mean, I'm glad that you all have an agreement. I'm
7 just not sure that that's something that we would be taking
8 into -- adding as part of the condition. But, anyhow.

9 So, are there any final questions for the
10 Applicant before I close the record?

11 (No response.)

12 Okay. So, I will close the record. Is the Board
13 ready to deliberate? Yes? Okay.

14 So, I can start. I am in support of the
15 application. I think that they've met the criteria. I
16 appreciate the sun studies and the additional sun studies
17 that we have to show the impacts of kind of light and air and
18 shadows.

19 As I noted, I'm not in favor of adding the
20 conditions that the next-door neighbor had. I'm glad that
21 they have an agreement with the Applicant to do those things,
22 but I just didn't think that they went to the relief that was
23 being requested.

24 As I noted earlier, I think that the Office of
25 Planning put forward a recommendation to approve this

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1 application. I would be in agreement with that.

2 I didn't have really much else to add to this.
3 And I didn't know if my fellow Board members had anything
4 they'd like to say.

5 MEMBER JOHN: I thought this was a full record,
6 and the addition of the shade studies, that was very helpful
7 in trying to look at the impact on the adjoining property
8 that was most affected.

9 And so, I can support the application, and I give
10 great weight to ANC's -- to OP's analysis.

11 VICE CHAIRPERSON HART: Yes, and it looks like the
12 ANC also was in support of the application as well.

13 Commissioner Turnbull?

14 COMMISSIONER TURNBULL: Yes, I would concur with
15 the two of you.

16 VICE CHAIRPERSON HART: Okay. So, with that, I'd
17 like to make a motion to approve Application No. 20200, of
18 1369 Parkwood Place, LLC. Do I have a second?

19 MEMBER JOHN: Second.

20 VICE CHAIRPERSON HART: All those in favor say
21 aye.

22 Any opposed?

23 The motion carries.

24 Mr. Moy?

25 MR. MOY: Staff would record the vote as

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1 2-to-0-to-2. And this is a motion of Vice Chair Hart to
2 approve the application for the relief requested. Seconding
3 the motion is Ms. John. Also in support, Zoning Commissioner
4 Michael Turnbull, and we have two members not present.

5 VICE CHAIRPERSON HART: Thank you very much.

6 Thank you all very much.

7 I need to take a five-minute break before we get
8 to this last one. Sorry. But we will finish with that and
9 that will be the last one. We're not going to take lunch.
10 I think that we just have one more case to go.

11 Thank you.

12 (Whereupon, the foregoing matter went off the
13 record at 12:41 p.m. and went back on the record at 1:00
14 p.m.)

15 VICE CHAIRPERSON HART: Mr. Moy, you can bring us
16 back whenever you'd like.

17 MR. MOY: Thank you, Mr. Vice Chair.

18 For the record, the Board is back in session and
19 the time is about one o'clock p.m.

20 And I see the Applicants have rushed to the table.

21 And this is Case Application No. 20201, DC
22 Superpack, LLC, captioned for Special Exception under the
23 Downtown-Use requirements of Subtitle I, Section 303.1(a),
24 and pursuant to Subtitle X, Chapter 10, for a variance from
25 the MU-Use Group E requirements of Subtitle U, Section

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1 513.1(a)(2), which would permit an animal care and boarding
2 use in an existing mixed-used building D-4-R zone. This is
3 at 450 Massachusetts Avenue, Northwest, Square 517, Lot 50.

4 VICE CHAIRPERSON HART: Thank you, Mr. Moy.

5 If you could introduce yourselves from my right
6 to left?

7 MR. KAMPF: Good Afternoon. I'm Daniel Kampf, co-
8 owner of Atlas Dog House.

9 MR. LEVIN-STANKEVICH: Matthew Levin-Stankevich,
10 co-owner of Atlas Dog House.

11 VICE CHAIRPERSON HART: Could you spell your last
12 name?

13 MR. LEVIN-STANKEVICH: Levin-Stankevich. It's
14 L-E-V, as in victory, I-N, hyphen, Stankevich,
15 S-T-A-N-K-E-V-I-C-H.

16 VICE CHAIRPERSON HART: Thank you.

17 MR. VARGA: Stephen Varga, Cozen O'Connor, on
18 behalf of the Applicant.

19 MS. MOLDENHAUER: Good afternoon. Meredith
20 Moldenhauer. I'm from Cozen O'Connor on behalf of the
21 Applicant.

22 VICE CHAIRPERSON HART: Thank you.

23 So, I'm assuming, Ms. Moldenhauer, you're going
24 to start the presentation or give the presentation?

25 MS. MOLDENHAUER: Yes. We can walk through the

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1 presentation. I think the record is fairly comprehensive.
2 So, we'll try to give a very brief and short presentation.

3 So, just first --

4 VICE CHAIRPERSON HART: And if you could focus on
5 the -- I think you're right, it is a pretty -- there's a lot
6 of information in the record as we have it. Actually, there
7 are kind of two things that I would like to get some, one,
8 I want to get some clarity around, and two, I'd like to just
9 -- I guess both of them I want some clarity around.

10 One of them is with regard to the relief that is
11 necessary and really understanding there's an aspect of the
12 regulations that deals with the boarding use that is under
13 residential and, also, boarding use on the same floor as
14 residential. And I just want to make sure that we're -- if
15 you could at least speak to the boarding as it is on the same
16 floor as residential, that would be helpful.

17 And the other issue is with regard to the kind of
18 exceptional condition aspect of this. And I think that we
19 just need to have a little bit more understanding about this.
20 In particular, I think one of the -- I guess it's how it's
21 leading to a practical difficulty for the owner of the space,
22 of the building, and not necessarily just for the Applicant
23 -- or I guess I shouldn't say "the Applicant" -- the person
24 that is leasing the building, because that's how we have to
25 look at it, as you're probably well aware. But I'd like to

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1 have a little bit more information as to how you're seeing
2 that.

3 So, I wanted to preface that, but I will give you
4 -- I don't know how much time you would like -- 10 minutes.
5 So, you can begin when you like. Thank you.

6 MS. MOLDENHAUER: Sure. Thank you.

7 I'll just briefly start off that we did present
8 the case to the ANC to see and received unanimous support.
9 It's in the case record at Exhibit 34. We also, pursuant to
10 kind of a communication from the Office of Zoning, reached
11 out to the abutting ANC and have communications, if the Board
12 would like, and emailed with both the SMD Commissioner,
13 Marriott, as well as the Chair, Commissioner Nigro, and
14 communicated and provided them with copies of the
15 documentation. The Office of Planning has recommended
16 support, and OP has recommended no opposition.

17 I will just identify just kind of the property
18 here. You can see an image of the existing building. The
19 property, as indicated in the record, is represented in a
20 D-4-R zone, which is a commercial, downtown, high-density,
21 mixed-use zone.

22 I can obviously have the Applicants kind of walk
23 through a little more of the detail of the use and the
24 intended layout, if you would like, but it seems like kind
25 of the main focus that you have is on the variance standard.

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1 So, if you would like, obviously, our clients are present to
2 kind of walk through some of those factors.

3 But we have kind of modified some of the design
4 and worked with the Office of Planning regarding some of the
5 waste management and other factors and sound aspects of the
6 building in regards to the sound-proofing. But, unless the
7 Board has specific questions about that, we'll just simply
8 move forward to the Special Exception and the variance
9 standards.

10 So, the property is requesting Special Exception
11 relief and, as the Board indicated, one variance relief under
12 the existing requirements. One, the property is located on
13 a ground floor of the building. And two, the property is in
14 a non-residential zone. So, obviously, I think to Board
15 Member or Vice Chair Hart's question, first of all, there are
16 your residential zones, your R, RFs, and RAs. This property
17 is obviously not located in a residential zone, but is,
18 rather, located in the D commercial zone.

19 The Special Exceptions standard does outline that,
20 when the property is located in a mixed-use building, the use
21 should not be on the same floor as a residential use and to
22 not be on a horizontal separation as any residential units
23 on the first floor for non-residential use.

24 So, here, we are asking for a variance. The
25 property, obviously, has some unique factors. It already has

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1 a large concrete slab separating the existing building and
2 the practical difficulty of trying to eliminate those
3 residential units on the existing first floor rather than,
4 obviously, maintaining the existing commercial layout.

5 The building is already designed as it currently
6 is, and it is incorporating two existing commercial spaces.
7 As the Office of Planning identified, two have the commercial
8 building within the existing building of the first floor
9 only. It would not be possible to provide the two-floor
10 separation between the proposed use and the residential
11 units.

12 VICE CHAIRPERSON HART: Can I just interrupt for
13 a second? Could you go back a slide?

14 So, what I was trying to also get to is this is
15 from the perspective of the owner of the business?

16 MS. MOLDENHAUER: Yes.

17 VICE CHAIRPERSON HART: Not the owner of the
18 building?

19 MS. MOLDENHAUER: No, no.

20 VICE CHAIRPERSON HART: That's the part that I'm
21 trying to get, I'm trying to also understand. So, how are
22 you saying that -- I understand that the building has a
23 residential use on the first floor as well as on the second
24 floor and above. But what I'm trying to get to is, they
25 could use another use. This could be another use. It

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1 doesn't have to be this particular use. So, I'm just trying
2 to understand how this particular business owner --

3 MS. MOLDENHAUER: You mean the property owner, not
4 the business owner?

5 VICE CHAIRPERSON HART: Well, I'm saying I
6 understand how the business owner has a particular issue, but
7 the property owner, I'm not sure what that is. And that's
8 what I'm trying to get more information on.

9 MS. MOLDENHAUER: So, yes, I think that the
10 uniqueness here and the practical difficulty are
11 approximately related because the challenge of having to
12 obviously, one, utilize an existing retail space which is
13 already designed in there, and the challenge of having an
14 existing residential unit -- to either, one, eliminate that
15 residential unit would be practically difficult to simply
16 eliminate the first-floor residential units.

17 The property is, this commercial space is uniquely
18 located where it's already fronting on the street. And so,
19 there really is only one small portion of it that does have
20 the proximity to the residential unit that will come into
21 play here. And given that smaller section that does connect
22 with that residential unit, that is where, from a property
23 owner perspective, it seems it is conducive to having this
24 type of use, but, obviously, would create practical
25 difficulty to, then, eliminate and have a wasteful condition

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1 of saying, well, we're no longer going to have that
2 residential unit there because it is, otherwise, separated
3 from the residential --

4 VICE CHAIRPERSON HART: No, I understand that, but
5 what it sounds like you're leading to is that they either
6 have the choice of having this use or removing the
7 residential use from this floor. And there's another issue.
8 There's another alternative, which is have a different use,
9 have a use that doesn't require this. So, that's the part
10 that I'm trying to kind of understand further.

11 MS. MOLDENHAUER: Well, I understand that you have
12 that question, but I think the standard is not a question of
13 a use variance here. This is still a Special Exception. And
14 the way in which, Vice Chair Hart, you phrase that of, "Well,
15 what other uses could possibly be utilized?" is under a use
16 variance legal standard. Here, the question is just simply,
17 is there a practical difficulty associated with removing or
18 no longer having the abutting nature of residential and this
19 dog Special Exception use? And here, we believe that, yes,
20 there is, given the fact that there is no other abutment on
21 all other aspects of this commercial space except for a small
22 portion that connects with a residential unit.

23 And so, if this was a situation in which it
24 connected on all sides with residential units, that might be
25 a different factor here. But it is a very limited aspect.

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1 Were you going to provide supplemental
2 information?

3 MR. LEVIN-STANKEVICH: Vice Chair Hart, it is a
4 small space, and we've been working for the past few months
5 with the landlord specifically on our design, so that, even
6 minimal to the one unit that abuts the space that we're
7 hoping to utilize, a large portion of that is going to be a
8 bathroom wall, a laydown area. So, even a very small portion
9 of that one unit is actually abutting our space where dogs
10 will be.

11 And in addition to that, we've reached some
12 special conditions with the landlord that we're going to be
13 putting up additional sound materials on that wall and our
14 acoustic sound boards on that wall as well. And even
15 further, we're looking into a sound engineer right now to do
16 a sound study on that wall as well, at the landlord's
17 request. So, we're going back and forth with the landlord
18 still, making sure that that tenant in that apartment will
19 not be able to hear the animals in that space.

20 VICE CHAIRPERSON HART: Go ahead.

21 MEMBER JOHN: So, Counsel, I'm having difficulty
22 with how you're applying the variance standard. Isn't the
23 issue the practical difficulty -- no, the special condition
24 must affect the owner of the property or is it the tenant?
25 And in looking at these cases, we've always required that the

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1 owner come in and explain why another use cannot be put in
2 this space. We have had cases like this where the owner has
3 come in and said, "Well, we have tried to rent this space.
4 We have tried to get other types of businesses to come in,
5 and we have been unsuccessful." Here, what you're asking us
6 to do is to say that we should grant a variance because this
7 particular use will not fit in this space because of the
8 requirement that it be horizontally separated. And that's
9 the difficulty I'm having with the argument.

10 MS. MOLDENHAUER: Well, I can respond to the legal
11 issue, and then, I may turn to my client to respond maybe to
12 the factual issue, if there are some additional facts that
13 are available.

14 But if you are requesting a use variance -- so,
15 let's say that this was in a RA zone and we were coming in
16 and saying, "We would like to put a commercial dog facility
17 here," then, yes, Commissioner John, I would say we have to
18 prove that no other by-right use is vital. But we are not
19 asking -- we are asking for a limited variance under a
20 Special Exception requirement. And under that standard,
21 there is no legal obligation for the Board to find that all
22 other relief or any other use is required. The higher
23 standard of kind of exhausting all other use remedies is only
24 required in the use variance.

25 Here, what we do have to show -- that was for the

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1 property owner, and I agree, not the tenant, not my client,
2 but the property owner -- that the property owner has a
3 unique condition, which here they do. They have one long-
4 vacant commercial retail space, and they have a second space
5 that they're going to combine that just so happens, when it
6 was originally built, abuts a small portion of one ground-
7 floor retail space.

8 A lot of times in these larger buildings you have
9 no ground-floor retail -- sorry -- ground-floor residential
10 space. In most of these mixed-use buildings you have retail
11 on one floor, sometimes a lobby, an amenity space, but you
12 typically don't have ground-floor residential units. Here,
13 this property does have a unique situation where they do have
14 a single residential unit at the far side abutting this
15 commercial space. That is unique.

16 And the challenge of, then, having to either
17 counter a commercial or allowing or maybe discontinuing that
18 residential use is the practical difficulty here, and the
19 fact that it is not a situation in which it abuts this
20 commercial use on multiple corners, but, rather, a small
21 portion, and that this commercial use has uniquely its own
22 front street access. It is typically on the other portions
23 of it abutting a hallway and in all other factors is
24 separated. From the property owner's perspective, how this
25 unit is laid out and how this building is laid out is the

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1 uniqueness and the practical difficulty for the owner. And
2 then, that leads to the fact that, obviously, this satisfies
3 the variance test under this one section of the Special
4 Exceptions standard.

5 But I'll also turn to see if there's any
6 additional testimony maybe that kind of goes to the facts and
7 the background of your question as well.

8 MR. LEVIN-STANKEVICH: And more anecdotal, I live
9 on 5th and M, Northwest, which is approximately four or five
10 blocks from this location. It's been vacant for over a year
11 and a half with a rental sign in front. It is split into two
12 units right now. One is a dry cleaner that's been there for
13 13 years. The other was a convenience store. Nearly two
14 years, that went out of business. And they have been trying
15 to rent that space for a year and a half.

16 What was explained to us is that, due to the
17 nature of the current empty space, which is only about 850
18 square feet, it limits the interest that they have had in
19 that space. And the applicants that they've previously had
20 did not qualify financially to even rent that 850 square
21 feet, which was too small for us. Therefore, they have
22 expanded into that dry cleaner space, renting the whole
23 space. And so, we're hopeful that we can add a new presence.

24 In addition, the landlord and the tenants of the
25 building are -- it's a pretty dog-friendly neighborhood.

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1 There's a park right across the street on actually both
2 adjacent corners, which is the primary dog space in that
3 neighborhood. And so, we do have a letter of support from
4 the landlord as well that this would add to that neighborhood
5 and, specifically, to that building where they try to promote
6 themselves as a dog-friendly building.

7 VICE CHAIRPERSON HART: And so, are you also
8 saying that, because of the building, that there are -- I
9 don't know; I don't want to say more dogs -- but there are
10 dog owners that are also in the building that will be using
11 this? Is this primarily for the building?

12 MR. KAMPF: Yes, the building has a very high
13 density of dogs. In fact, the whole area there does. And
14 that is why the landlord was seeking us out, because it would
15 be considered an amenity to his building because so many of
16 them would be our clients right off the bat.

17 VICE CHAIRPERSON HART: Do you have any
18 documentation of that or are you just --

19 MR. LEVIN-STANKEVICH: We do actually. So, when
20 Dan started the business more than two years ago, he was
21 specifically a dog walker. So, when we started this business
22 two years ago together, he actually had a high saturation.
23 That was actually his dog-walking path in the Mount Vernon
24 Triangle when he first started. So, we do have a client
25 list, and our density of dogs even currently for clients of

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1 ours -- we own another LLC called Dog Walking DC, and our
2 density of clients, both at Atlas, our H Street location, and
3 our dog-walking business, the Mount Vernon Triangle is the
4 highest density of clients that we currently have. And we
5 actually have a high saturation of clients. Out of the 50,
6 on average, dogs that go to H Street, about 10 of those dogs
7 live in Mount Vernon and drive every day to our business over
8 on H Street to drop off their dog.

9 VICE CHAIRPERSON HART: Thank you.

10 Any other questions?

11 (No response.)

12 Okay. Sorry, I know we've been chopping up your
13 presentation. So, you can continue.

14 MS. MOLDENHAUER: No, sometimes it's helpful to
15 address the questions that the Board has, and that's why
16 we're going to this.

17 VICE CHAIRPERSON HART: Yes, it's helpful to hear
18 this. So, you can continue.

19 MS. MOLDENHAUER: Well, I'll just continue. I was
20 indicating that, yes, we can walk through some of the other
21 requirements in regards to creating no objectionable
22 conditions to abutting property owners. Here, obviously, the
23 landlord who owns the building, and obviously that owns the
24 residential units as well, is committed to maintaining that.
25 And we have, obviously, worked to ensure that the surrounding

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1 public space is protected and that the design is the best,
2 the animal boarding designed with best practices. There
3 would be no external yards provided for this facility, as
4 well as any animal waste, obviously, maintaining it in the
5 highest quality with storing it in a closed waste disposal
6 container, utilizing weekly-based pickups, and utilizing air
7 filtration programs.

8 Finally, we believe that this would not result in
9 a practical difficulty. I think we have even heard today
10 that there would obviously be a benefit both to the building
11 and the residents in the Mount Vernon Triangle area. We
12 believe that it is harmonious with the high-density both
13 residential and mixed-used community, and that the focus on
14 ensuring that there would be no odor, no waste concerns,
15 obviously, also addresses that, as well as the ANC's letter
16 in support.

17 Given that, there are some pictures of some their
18 other facilities and a picture of the project's community
19 involvement.

20 But we would, then, leave that for any questions
21 from the Board and welcome those.

22 VICE CHAIRPERSON HART: Does the Board have any
23 questions?

24 COMMISSIONER TURNBULL: Yes. Thank you, Vice
25 Chair.

1 Ms. Moldenhauer, I am still struggling with the
2 exceptional condition for the variance. OP does not mention
3 anything about any exceptional conditions. And I think we
4 need to clarify that. What is the exceptional condition for
5 this property that allows you to want to do this?

6 MS. MOLDENHAUER: So, OP does. I mean, on page
7 2 of OP's report, they find that -- and a lot of times on
8 OP's report they combine, I think naturally, the first prong
9 of exceptional condition with practical difficulty because
10 the uniqueness has to directly relate to the practical
11 difficulty here.

12 And here, there is a nexus. There is currently
13 an existing building with a thick concrete slab. And it
14 would be practically difficult, given the existing condition
15 of the structure -- as we heard testimony, a year-and-a-half-
16 long opportunity to try to rent the facility, the commercial
17 space -- to potentially break through the concrete and try
18 to further separate a commercial space from the residential
19 spaces would be practically difficult. And given the fact
20 that it only abuts a small portion of the first floor, but
21 the rest of the building abuts, as it says, commercial
22 spaces, a hallway space, and the public street, that the
23 existing condition of the structure, the building as it
24 stands today, leads to practical difficulty in complying with
25 this requirement to separate itself from residential uses on

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1 a horizontal plane, and that there would be no substantial
2 adverse impacts, as OP outlines and as we obviously have
3 articulated.

4 COMMISSIONER TURNBULL: Are you representing the
5 owner?

6 MS. MOLDENHAUER: We are authorized to represent
7 the owner through a letter of authorization that is in this
8 application, but we are, obviously, representing Atlas Dogs
9 as the tenant. But we have to, as pointed out by Vice Chair
10 Hart, have to represent the property, that the property owner
11 is adversely -- or sorry -- is under a practical difficulty
12 in order to satisfy the variance test.

13 COMMISSIONER TURNBULL: The owner, you're saying?

14 MS. MOLDENHAUER: You have to prove that, that it
15 is the --

16 COMMISSIONER TURNBULL: And are you proving that?

17 MS. MOLDENHAUER: Yes, I believe that we have.

18 MEMBER JOHN: Ms. Moldenhauer, I am really still
19 having difficulty because the owner still has to show some
20 practical difficulty in the use. Because, really, we're
21 talking about the use. It's permitted, but the owner is
22 saying that "I have a practical difficulty in allowing this
23 use in this space." And that's the part I have difficulty
24 with because the only testimony we have had is that the owner
25 has not been able to rent the space for a year and a half,

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1 or something like that.

2 And I need to think about that some more. I don't
3 know what the other Board members think. But I hear what
4 you're saying, and I guess I'd also like to hear from the
5 Office of Planning, but please feel free to respond. And if
6 there is any case law you want to cite, that would be good.

7 MS. MOLDENHAUER: I'll grab some in a moment for
8 my closing.

9 But I just want to go to the specific section.
10 Okay? And I can pull it up here, so we can all look at it
11 together.

12 And I'll even do a lovely issue here, highlighter.
13 The issue that we have to show is not the use, but that we
14 are having a practical difficulty with the same floor of a
15 residential use shall be horizontally separated. Okay? This
16 is the question here. It is not a question of could some
17 other use go here. The question is, is it unique and is
18 there a practical difficulty in rearranging, taking away
19 residential use at this building, to allow for and create a
20 compliance?

21 So, the question is, right, the variance standard
22 under Gilmartin says the strict compliance with the
23 regulation must be shown to be practically difficult. Here,
24 strict compliance with this specific section. Allowing the
25 same floor as residential uses to be horizontally separated

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1 -- here, the only way that the property owner could
2 horizontally separate the commercial space would be to
3 demolish, to get rid of a residential unit on its first
4 floor. And that's practically difficult.

5 It goes to the building has already been designed.
6 The building had a very small commercial footprint. This is
7 a very old building. It would be a different situation if
8 we were coming in here as the property owner saying, "We want
9 to build a brand-new building, and we want to put doggy
10 daycare right next, smack-dab, to residential building. And
11 then, I could understand; you could say, "You know what? Ms.
12 Moldenhauer, as the owner, you need to prove that no other
13 use can go there, because you're building it. You can change
14 it." Right? You can build something different. I would
15 agree with that.

16 But we're dealing with a situation in which the
17 building already exists. And the question is, is it
18 practically difficult to change the current floor plan, which
19 has a concrete slab, to change the current configuration of
20 where the current existing commercial space exists? In that
21 regard, I think that we have shown that it is not as though
22 the residential units, again, envelope this commercial space.
23 But, rather, there is a small portion and the property owner,
24 and obviously, our client, has done everything to mitigate
25 this variance request. And that the inability to either,

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1 one, wastefully get rid of a residential unit -- because they
2 could, right? I mean that's the practical; they could get
3 rid of a residential unit on the first floor and say, well,
4 we're going to compromise one residential unit for allowing
5 this commercial use. We believe that asking that of the
6 property owner is a practical difficulty.

7 MEMBER JOHN: I get the practical difficulty. But
8 I think, in my view -- and maybe we should have some of the
9 other Board members weigh in -- you have just blown a hole
10 through the regulation because what you are saying is that
11 it's fine to locate a business like this there if you can't
12 separate, you know, do the horizontal separation. So,
13 basically, what happens to this rule after that? You don't
14 have to show practical difficulty because any existing
15 building that doesn't have the separation is fair game.
16 Right?

17 MS. MOLDENHAUER: We are showing that there is a
18 uniqueness and that it leads to the practical difficulty.
19 Not every building would be able to show that. And I think
20 every property is unique. This is a mixed-use building in
21 a D zone. We're not a mixed-use building where it is in a
22 lot of other zones. I think that it's a unique property.
23 It's on the corner. This is a commercial location that is
24 on that corner of that street.

25 Let me go to kind of where --

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1 MEMBER JOHN: So, all of that goes to the adverse
2 impact. We're still stuck on -- I have no difficulty with
3 the practical difficulty part of it. I cannot get to the
4 exceptional condition because any mixed-use building in this
5 similar situation, somebody can come in and make the same
6 argument. So, we have just carved out another exception
7 right here.

8 That's all. I don't want to monopolize the
9 conversation.

10 VICE CHAIRPERSON HART: And I would actually like
11 to also hear from the Office of Planning on this. And there
12 may be some things that we are actually looking for as well
13 as part of this application.

14 Good afternoon.

15 MR. MORDFIN: Good afternoon. I'm Stephen Mordfin
16 with the Office of Planning.

17 And the Office of Planning does support this
18 application. And with reference to what the Board has been
19 discussing, the exceptional situation is that we found that,
20 okay, it's an existing building. It's an existing mixed-use
21 building that allows both commercial and residential uses.
22 But in this case what happens is, although three sides of
23 this building -- actually, a little more than three sides of
24 this building -- three-and-a-half sides don't abut any
25 commercial uses. Some of it is external to 5th Street and

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1 to I Street, and some of it is internal to a service corridor
2 within the building that separates it from other uses within
3 the building. And then, that last part does abut an existing
4 residential use.

5 And we thought that the exceptional situation was
6 that it's not possible in this building to locate anything
7 that does not abut any residential uses, just because of the
8 way the building, the existing building is designed. And so,
9 we found that to be the exceptional situation. And the
10 practical difficulty is that they cannot make it so that it
11 does not abut any commercial -- I mean, I'm sorry -- any
12 residential uses.

13 So, that was the Office of Planning's analysis of
14 this application.

15 MEMBER JOHN: So, your exceptional condition is
16 based on the use that's proposed?

17 MR. MORDFIN: Well, it's not based on the uses.
18 It's based on that you cannot locate this use so that it does
19 not abut a residential use within the building. So, it's
20 based on the adjoining residential uses, not the use that the
21 Applicant is proposing.

22 VICE CHAIRPERSON HART: So, I guess the issue that
23 I had with the thinking is that it seems almost like we don't
24 need to have this part of the regulations at all because it
25 just doesn't seem like you would be able to enforce that part

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1 of the regulation. Or it would be just so haphazard. I
2 guess that's why I'm having a hard time with it.

3 I mean, I heard the Applicant talk about that they
4 -- I mean, did you take into account the fact that they had
5 said that there was dog owners in the building and there
6 aren't that many places in the immediate area to be able to
7 have dogs to be able to go outside, and that they have that?
8 I mean, were there other issues that you brought into this?
9 Or were you primarily looking at this as this particular use,
10 because of the building configuration and because of where
11 this use is in the building, that it was really primarily
12 only attached or connected to a residential use on one side?

13 MR. MORDFIN: No, we looked at it as to this use
14 in this particular location. We didn't look at any other
15 uses within the neighborhood or whether or not there are or
16 aren't other dog facilities in the neighborhood, because
17 that's not really relevant to this application. We have to
18 look at it, this application at this site on this piece of
19 property, not what other aspects of the neighborhood may
20 offer the community.

21 VICE CHAIRPERSON HART: Okay. I don't have any
22 other questions.

23 Does the Applicant have any questions for the
24 Office of Planning?

25 MS. MOLDENHAUER: No, we have no questions for the

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1 Office of Planning.

2 VICE CHAIRPERSON HART: Okay. So, I think you've
3 heard some of the questions that we have for this. And so,
4 what I also understand is that you are going for, you are
5 looking for an area variance as opposed to a use variance,
6 which is why you are saying that it's -- I don't want to say
7 less of a standard -- but it is not as high a bar as the use
8 variance would be.

9 And it is interesting, and I'm trying to
10 understand this more fully. And I don't know if it's maybe,
11 as the Office of Planning has stated, about the configuration
12 of the building. I know that you've brought that up as well
13 or during this conversation we've heard this issue about
14 there's only one wall that's actually connected to the
15 residential part of the first floor, and that is going to
16 have some extra sound barrier to try to alleviate some of
17 that issue. I'm not sure if I have a question here. It's
18 more of a statement, I guess.

19 Yes, sir?

20 MR. LEVIN-STANKEVICH: I do want to say that we
21 did look for a long time in the Mount Vernon Triangle area,
22 due to our current client saturation. And the new buildings
23 that are being built, reaching out to them is nearly cost-
24 prohibitive these days for a retail space. And when we did
25 look at older buildings, mainly in that corridor there, they

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1 all had abutting units for any space that we went to look at.

2 So, we always knew that this was going to be an
3 item that comes up and why we're here before you. It is very
4 difficult in a heavily dense neighborhood like that to find
5 something that wouldn't require a use -- and I'm not familiar
6 with all the codes that you're speaking of. But it is a very
7 tough area, with that level of density of apartments, to not
8 be in this situation and provide the service.

9 MS. MOLDENHAUER: So, I would just conclude that
10 there is, though, a very unique aspect of this property.

11 VICE CHAIRPERSON HART: You're not giving a
12 concluding statement yet, are you?

13 MS. MOLDENHAUER: Oh, no.

14 VICE CHAIRPERSON HART: You said you would
15 conclude that. I just wanted to make sure.

16 MS. MOLDENHAUER: I'm sorry, I will wait --

17 VICE CHAIRPERSON HART: No, that's okay.
18 I haven't done the ANC in support.

19 MS. MOLDENHAUER: Oh, that's right. I apologize.

20 VICE CHAIRPERSON HART: And so, I wouldn't to get
21 that before you started a conclusion statement. I can do
22 that now, if you would like.

23 MS. MOLDENHAUER: No.

24 VICE CHAIRPERSON HART: Okay. So, I'll do, if
25 there's anyone here from the ANC?

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1 (No response.)

2 Anyone here wishing to speak in support of the
3 application?

4 (No response.)

5 Anyone here wishing to speak in opposition to the
6 application?

7 (No response.)

8 Okay. So, Ms. Moldenhauer, you can make a
9 concluding statement. I think there are some things that we
10 may want to ask about this or at least request, but you can
11 do that, if you'd like.

12 MS. MOLDENHAUER: Yes, and we would be, obviously,
13 happy if there are -- our goal is to ensure that we provide
14 the required evidence to meet the burden. So, if there are
15 additional documents or information that the Board feels
16 would be helpful, if we have not yet satisfied that, we would
17 obviously be hopeful to provide it. But I wanted to kind of
18 provide a closing argument and provide some case law to Board
19 Member John's comment.

20 And I'm just reading now from -- sorry, I need to
21 make sure I'm saying the right case. We have a million cases
22 in here. The Oakland condominium case, this is a case where
23 they specifically kind of talk about the difference between
24 use variances and area variances. And this case, when it
25 went to the Court of Appeals, it quotes and talks about

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1 how --

2 VICE CHAIRPERSON HART: What's the number? What's
3 the --

4 MS. MOLDENHAUER: The citation is 22 A.3d 748.
5 It was a case in the Adams Morgan area where there was a --
6 the subject matter is completely irrelevant. But they had
7 a very detailed discussion of the case from the Court of
8 Appeals about the difference between area variances and use
9 variances.

10 And it talks about the fact that a user variance,
11 rather than an area variance, as Gilmartin discusses, there
12 is a more strict test for determining whether applicants are
13 entitled to relief. "Petitioner set forth the undue hardship
14 tests for a use variance." So, it goes on, then, to
15 distinguish between when you are talking about use variances
16 and area variances.

17 And then, it goes forward to talk about how --
18 sorry -- petitioner challenges that self-created hardship
19 should be a bar. Then, it goes through and it goes back to
20 older cases where it references the fact that self-created
21 hardship is only a bar and will not support a granting for
22 a use variance. It, then, quotes old, literally American Law
23 of Zoning. So, we're going back to kind of the standard
24 concepts of laws of zoning, where it identifies and discusses
25 the difference between when a self-created hardship should

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1 apply.

2 And I think the questions of, can no other use --
3 is this a self-created hardship, I think I've heard some of
4 those comments coming from the Board; and that only in an
5 instance in which we would be asking for relief under
6 Subtitle U, which we are not, would the obligation for us to
7 prove that no other commercial or D-zone-permitted uses could
8 be done here without any variance.

9 What we do have to prove, however, is the variance
10 test. And I pulled the section which I thought was relevant.
11 And the question here is, under I think Gilmartin, the
12 question of, is this particular property unique amongst its
13 neighboring properties and does it create a practical
14 difficulty? And I think that, as OP indicated, there is a
15 nexus. And as you heard testimony from the property owner,
16 this area -- and I just want to make sure that we understand
17 where it is. It is this corner section here that I'm
18 highlighting in the image of this large, commercial, mixed-
19 use parcel.

20 The commercial parcel is separated from
21 residential except for a small portion. But, for that
22 connection, this section would comply with the requirement.
23 But it is not able to comply because of the fact that a small
24 portion, not all of it -- and then, that I think goes to the
25 severity and the amount of relief being requested here. I

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1 think that this would rise to maybe even a different level
2 of the variance standard if we were asking for a commercial
3 space that did not comply with this Subsection of the Special
4 Exception relief which was completely surrounded by
5 residential units, or if a single residential unit, even one,
6 completely surrounded it.

7 But that isn't the case. We have a corner where
8 we have corner street fronting to public commercial-facing;
9 we have another commercial-facing area; we have hallway space
10 -- all separated from residential. But we have one corner
11 which we believe creates that practical difficulty because,
12 again, it's a unique layout of the originally-designed
13 commercial space.

14 Compliance would require either decommissioning
15 a residential unit in a building, which is not, obviously,
16 desired by the city or public policy or the ANC, or asking
17 for a variance, which we believe we satisfy.

18 And so, the degree of the portion -- maybe we can
19 get this for the Board, if they think that would be helpful
20 -- but the amount of the square footage of the space that
21 actually does connect with the residential we believe is
22 small, and that that amount of relief, obviously, then,
23 should be granted in regards to the variance test.

24 We also feel as though all of the mitigating
25 factors in regards to the third prong of the variance test

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1 would not create any adverse impact to the Zone Plan or the
2 public good. We believe that has been proven both by the ANC
3 letter in support and the good-faith statements of the future
4 user that they would do all necessary work to ensure that
5 there would be no sound mitigation or any adverse impact to
6 that one residential unit that would be abutting.

7 And we do believe that this is a unique situation
8 where we're talking about the D zone or this high density.
9 You have an older building that is not, obviously, currently
10 being designed. But we feel as though we satisfy the
11 standard. We're more than happy to supplement or obtain
12 additional information if the Board feels that's necessary.

13 VICE CHAIRPERSON HART: Thank you.

14 I think that I would like some other information.
15 I don't know about the rest of the Board. After getting
16 that, I'd probably also like to have a continued hearing to
17 actually further have that discussion, because I think that
18 this is the one part that we've been -- and you've heard --
19 that we've been having some issue with. So, there are a few
20 things that are interesting that I think that we may need to
21 have to help understand this a little further.

22 One is the discussion by the owners of the dog
23 business. They've talked somewhat about the saturation of
24 dog owners in this area. And I'd like to understand what
25 that means exactly. And so, any documentation that goes to

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1 that, if it is points on a map or if it's blocks that show,
2 that would be helpful.

3 I'd also like to see if there's any information,
4 and I think it was -- give me a sec. I don't know. I can't
5 remember who actually brought this up. Maybe it was Mr.
6 Levin-Stankevich that brought it up, about the owner of the
7 building seeing this as an amenity for the building; and
8 that, because of the number of dog owners in the building,
9 that this would be an amenity that they would like to bring
10 to the building. But the issue that we, then, run into is
11 we can't -- this would not be allowed under zoning because
12 of the issue about the first floor and what's happening on
13 the floor above it. So, some sort of letter from the owner
14 saying that they're seeing this as, you know, what they're
15 seeing this amenity as bring or this use as being.

16 And there was some discussion about other sites
17 in the area. And I don't know; just to understand if there
18 are other buildings in the area that would also like to --
19 I don't want to say "if you looked at," but if there were
20 other places that you were looking to that were similar to
21 this site, older buildings that have residential on the first
22 floor. Maybe it's the block to the east or the block to the
23 west. I'm not looking for all of Mass Avenue. I'm just
24 trying to understand that a little further.

25 And I don't know, Ms. Moldenhauer, do you have an

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1 image of the first floor? And so, what part of this is --
2 where is the residential? Do you have an image that shows
3 that?

4 MS. MOLDENHAUER: We did not give an image that
5 shows that, but we can. We can do that separately.

6 VICE CHAIRPERSON HART: Because I think that will
7 be helpful to at least understand that.

8 I think, Mr. -- and I'm going to get your name
9 wrong -- Levin-Stankevich --

10 MR. LEVIN-STANKEVICH: That's fine.

11 VICE CHAIRPERSON HART: I don't do first names.

12 But if we could have some information that talks
13 about what's adjacent to this? So, you were talking about
14 some hallway as being there and what the residential is
15 there. And I don't really have an idea what that is right
16 now. And I think it would be helpful to at least understand
17 what that impact might be to that neighborhood. I understand
18 there may be more than one residential unit on this first
19 floor, but if there isn't, that's fine. I just need to
20 understand what that is.

21 And what other aspects of the first floor are
22 there? Like vertical circulation, where is that with respect
23 to this? You're saying that two sides of this use are going
24 to be on streets and the other portions that are adjacent to
25 this use are interior. And I just don't know what that

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1 interior is. So, residential, and then, if there are any
2 vertical circulation or any other types of mechanical space,
3 or whatever, that may be in close proximity to this.

4 And I think that was it, actually. I think there
5 are three things, four things. Saturation of dog owners,
6 however you want to describe that or however you want to
7 provide that; letter from the owner, and specifically, that
8 they're looking at this as being an amenity for the building.
9 The third thing is similar sites in the area. Again, it
10 doesn't have to be exhaustive, just an understanding of that
11 that is. And then, finally, what is first floor at least
12 adjacent to this? I'm not sure if you want to do the entire
13 first floor. That might be helpful, but at least to
14 understand what that is with respect to this portion of the
15 building and what's adjacent to it.

16 So, I don't know if my fellow Board members want
17 any other information.

18 COMMISSIONER TURNBULL: I would just like to
19 supplement what you talked about in a letter from the owner.
20 We have an authorization in the file, and it simply says to
21 submit an application before the Board. I'd like to see that
22 strengthened as to what that really means, "submit an
23 application"; what it really authorizes them to speak for on
24 behalf of the owner.

25 Ms. Moldenhauer says we have heard from the

1 property owner, but we really didn't. We heard from the
2 tenant who supposedly represents the owner, but we don't
3 really have that language that says what they can or cannot
4 say. I would like to know that the owner, getting back to
5 what we talked about earlier, the property owner needs to
6 talk about the practical difficulties for the owner of the
7 property. I want to hear the owner of the property saying
8 that exactly.

9 I also need them to talk about what the owner
10 feels is the exceptional condition. We've been hearing from
11 the tenant sort of representing -- but I don't know if we
12 have that. I can't rely on this authorization letter right
13 that I see in front of me to really say that, yes, this is
14 really what the owner -- I really want to see that in writing
15 from the owner. So, I want a letter from the owner that's
16 going to clarify like the points that you said, but I want
17 this beefed-up quite a bit more, so that we've got a good
18 feeling that it's the owner that's making these conditions.

19 It was talked about that they've talked to the
20 owner about sound protection and remediation, what they're
21 going to do. I would like to see information on that, what
22 they're going to do. So that the owner agrees to do this,
23 that this facility is going to be totally separated, how
24 they're going to do it.

25 So, that's what I'd like to see. I'd like to see

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1 more information from the owner's standpoint being brought
2 to bear on this.

3 MEMBER JOHN: So, Mr. Vice Chair, I agree that
4 there's been a lot of discussion about the practical
5 difficulty. I get all of that, but the first prong has to
6 be satisfied. And that is, there has to be an exceptional
7 condition affecting the property. And that exceptional
8 condition must drive the practical difficulty. We're not
9 asking for undue hardship. It's the lowest standard that
10 we're asking for. But there has to be some exceptional
11 condition that's not tied to the proposed use. I agree this
12 is a strange regulation, but, you know, for better or worse,
13 that's what the regulation says.

14 So, I appreciate all of the discussion about the
15 configuration of the building and all of that, but, as we
16 have heard, there is nothing from the property owner that
17 explains why there is an exceptional condition affecting the
18 property. And then, that condition must cause the inability
19 to comply with the regulation.

20 And so, that's what I would like to see beefed-up.
21 I don't need anything else because I think that the record
22 is full in terms of all of the conditions that you all have
23 intuited in terms of waste removal, and so on. I think it's
24 a great business, but we just have this hurdle with the
25 exceptional condition, as far as I'm concerned.

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1 VICE CHAIRPERSON HART: Okay. I think you
2 understand what we're looking for. I don't know how long it
3 would take you all to actually be able to have something
4 submitted to us. I know that we have a couple of pretty big
5 meetings coming up. We don't have a meeting next week, but
6 we do have meetings at the end of February and, then,
7 beginning of March. And I think those are kind of heavy
8 ones, but I'll leave that to Mr. Moy.

9 How much time would you need for this, Ms.
10 Moldenhauer? And you can talk to the client.

11 MS. MOLDENHAUER: I think we could probably get
12 this filed within a week, but that would probably, then, put
13 us back for a decision potentially on the 26th. And I
14 know --

15 VICE CHAIRPERSON HART: Well, we're going to have
16 a continued hearing --

17 MS. MOLDENHAUER: Yes.

18 VICE CHAIRPERSON HART: -- because I think we're
19 going to have a conversation.

20 MS. MOLDENHAUER: Yes, additional dialog, I agree.

21 VICE CHAIRPERSON HART: Yes, yes.

22 MS. MOLDENHAUER: But I'm saying I will be back
23 on the 26th, not that that matters at all to you. But we
24 could submit this by the 19th to give the Board a week to
25 review it, if that's possible.

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1 VICE CHAIRPERSON HART: I don't know. I think the
2 26th is kind of -- I don't know. I'll ask Mr. Moy if the
3 26th or March 4th.

4 MR. MOY: I would not recommend the 26th, Mr. Vice
5 Chair, unless you want to --

6 VICE CHAIRPERSON HART: Okay.

7 MR. MOY: -- because really you have two appeals
8 on the --

9 VICE CHAIRPERSON HART: Yes, I thought it was
10 going to be a pretty heavy day.

11 MR. MOY: Yes. And after that, we're into March.

12 VICE CHAIRPERSON HART: Yes.

13 MR. MOY: Depending on Mr. Turnbull, we could add
14 an 11th case to March the 4th, because, after that, we have
15 appeals for the next two hearings after --

16 VICE CHAIRPERSON HART: How about we set it for
17 the 4th?

18 MR. MOY: Yes.

19 VICE CHAIRPERSON HART: The continued hearing for
20 the 4th?

21 MR. MOY: Yes.

22 VICE CHAIRPERSON HART: And, Mr. Turnbull, you can
23 come back for that on the 4th?

24 COMMISSIONER TURNBULL: Yes.

25 VICE CHAIRPERSON HART: And maybe we'll do it

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1 earlier in the day, so we can -- not that this is that late,
2 but I don't know what else we have on the schedule. So,
3 we'll try to get this in as early as we can, so that we can
4 kind of go through this.

5 But I think that the additional information will
6 be helpful just for the record and, also, for us as we have
7 to make this decision on the case, if we do that on the 4th.

8 MS. MOLDENHAUER: If we do it on the 4th, we'd
9 love to have, then, to the 26th to file --

10 VICE CHAIRPERSON HART: That's fine.

11 MS. MOLDENHAUER: -- to just make sure that
12 everything is buttoned up.

13 VICE CHAIRPERSON HART: That's fine. Or do we
14 need -- I'm looking at OAG -- do we need something before the
15 26th? The 26th is fine? Which is a Wednesday before -- yes?
16 Okay.

17 So, if you could read the dates back again, Mr.
18 Moy?

19 MR. MOY: So, the Applicant would file by
20 Wednesday, February 26th, and the Board will continue hearing
21 the remainder of this application on March the 4th.

22 VICE CHAIRPERSON HART: I think that it's probably
23 a limited-scope hearing, that we're kind of focused just on
24 this stuff that we've asked for and the response to that.
25 And I think we can go from there.

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1 I don't think we need anything else from the
2 Office of Planning, unless you really want to do something.
3 I don't think we need anything from the Office of Planning.

4 So, that's it. Thank you all very much.

5 MS. MOLDENHAUER: Thank you, and we look forward
6 to our supplementing the record and addressing all the
7 Board's questions.

8 VICE CHAIRPERSON HART: Excellent. Thank you.

9 MS. MOLDENHAUER: Thank you.

10 VICE CHAIRPERSON HART: So, Mr. Moy, do we have
11 anything left on the agenda?

12 MR. MOY: Staff does not have anything for the
13 Board.

14 VICE CHAIRPERSON HART: Okay. So, I will call the
15 hearing adjourned.

16 (Whereupon, at 1:56 p.m., the hearing was
17 adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 02-12-20

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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