

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 16, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:53 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Vice Chairperson  
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
MAXINE BROWN-ROBERTS  
STEPHEN COCHRAN  
ANNE FOTHERGILL  
CRYSTAL MYERS  
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.  
JACK RICE, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on December 16, 2020.

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

2 9:53 a.m.

3 CHAIRPERSON HILL: All right. Good morning, the  
4 meeting will please come to order. Good morning, ladies and  
5 gentlemen. We're convened and broadcasting this decision  
6 meeting by videoconference. This is the December 16, 2020  
7 public meeting set -- oh, wait a minute.

8 MR. MOY: I didn't want to say anything earlier,  
9 Mr. Chairman, because you were already on a roll. You kind  
10 of read that for the meeting.

11 CHAIRPERSON HILL: Oh, I read the hearing one?

12 MR. MOY: Yeah, that's why your sentiment that it  
13 was too long was correct, because that was for the hearing.  
14 But I couldn't interrupt you.

15 CHAIRPERSON HILL: I appreciate that, Mr. Moy. So,  
16 are we good?

17 MR. MOY: I think so, unless the OAG disagrees.

18 CHAIRPERSON HILL: All right. I don't see them  
19 raising their hands, so we're good then. Okay. All right.  
20 Then, Mr. Moy, you can call our first hearing case.

21 MR. MOY: Okay. Just before I do that, for the  
22 record, I'd like to announce previous case applications that  
23 were scheduled for this docket and, of course, the status of  
24 those cases.

25 So, Case Application Number 20336 of 1447 Maryland

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1 LLC was withdrawn by the applicant.

2 Application Number 20307 of Eckington Court LLC  
3 was postponed, rescheduled to January 27, 2021.

4 Application Number 20338 of Glennorth Investments  
5 LLC was postponed, rescheduled to February 3, 2021.

6 And Application Number 20280 of VBS Community  
7 Builders LLC was postponed, rescheduled to February 24, 2021.

8 Thank you, sir.

9 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
10 Moy. Whenever you'd like, you can call 20339.

11 MR. MOY: Okay. So, the first case in the hearing  
12 session is Application Number 20339 of Lee, L-E-E, Street  
13 Development LLC, as amended for special exception under the  
14 Voluntary Inclusionary Development requirements of Subtitle  
15 D Section 5206.2 and pursuant to Subtitle X, Chapter 10, for  
16 use variance from the permissions of Subtitle U Section  
17 201.1(b). This would construct three two-unit flats, R-2  
18 Zone, at premises 4404 Lee Street Northeast, Square 5125,  
19 Lots 868 and 869.

20 CHAIRPERSON HILL: All right, great. Thank you,  
21 Mr. Moy.

22 MR. MOY: And there is some preliminary matters to  
23 this one, sir.

24 CHAIRPERSON HILL: Sure. Mr. Young, is the  
25 applicant here?

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1 MR. YOUNG: Yeah, they are calling in, so I'm going  
2 to unmute the applicant and applicant's agent. They are both  
3 calling in.

4 CHAIRPERSON HILL: Okay. Can either the applicant  
5 or the applicant's agent hear me?

6 MR. DAVIS: Yes, the applicant can hear you.

7 CHAIRPERSON HILL: Okay. Could you introduce  
8 yourself, sir?

9 MR. DAVIS: My name is Alan Davis, I'm the owner  
10 of Lee Street Development LLC.

11 MR. SALLAH: Alex Sallah, the engineer.

12 CHAIRPERSON HILL: Mr. Sallah, are you the person  
13 who's going to be presenting or is it you, Mr. Davis?

14 MR. SALLAH: We have an attorney who is supposed  
15 to call in.

16 CHAIRPERSON HILL: Is that attorney with us?  
17 What's the name of the attorney?

18 MR. SALLAH: Christina --

19 MR. DAVIS: Christina Mohamed (phonetic).

20 CHAIRPERSON HILL: Christina Mohamed?

21 MR. DAVIS: Yes.

22 CHAIRPERSON HILL: Mr. Young, do you see a  
23 Christina Mohamed anywhere?

24 MR. YOUNG: I do not. I would need her phone  
25 number.

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1 CHAIRPERSON HILL: Okay. Mr. Davis, I think we're  
2 going to -- we have a bunch of stuff to deal with anyway, so  
3 let's see what happens first, and Mr. Sallah.

4 MR. SALLAH: Yes.

5 CHAIRPERSON HILL: Mr. Sallah or Mr. Davis, whoever  
6 would like to respond to all this, I mean, we don't have a  
7 report from the Office of Planning, we don't have a report  
8 from the ANC, I don't believe, and it seems as though there's  
9 a bunch of things you guys still need to take care of before  
10 you're back before us, so I think we're going to have to  
11 postpone this.

12 Do you, Mr. Davis or Mr. Sallah, understand what  
13 is still needed in terms of getting this organized to the  
14 point where we can hear it?

15 MR. SALLAH: Yes. Yes, this is Alex Sallah. Yes,  
16 I understand.

17 CHAIRPERSON HILL: Okay. So, when do you think  
18 you'd have everything back before us ready to go?

19 MR. SALLAH: Okay. The Office of Planning could  
20 not provide a report because the attorney didn't provide a  
21 burden of proof in time. So, but we do have the burden of  
22 proof, which was uploaded yester-night into the database.  
23 And so, the ANC letter, we should be getting it any time,  
24 this week or so. So, we should be ready whenever you are  
25 ready to take our case.

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1 CHAIRPERSON HILL: Ms. Fothergill, could you  
2 introduce yourself, please?

3 MR. SALLAH: Hello?

4 CHAIRPERSON HILL: On moment, Mr. Sallah.

5 MR. SALLAH: Okay, okay.

6 MS. FOTHERGILL: Good morning, Chairman Hill and  
7 members of the Board. I'm Anne Fothergill for the Office of  
8 Planning.

9 CHAIRPERSON HILL: So, Ms. Fothergill, do you know  
10 what they still need -- I mean, they understand they still  
11 need a bunch of stuff to deal with, right? And so, I guess  
12 I'll ask Mr. Moy. Mr. Moy, when do you think we'll be able  
13 to get them back here?

14 MR. MOY: Yeah, sorry for the pause. Well, I think  
15 the near-future dates that would accommodate the Board  
16 actually would be January 13, where the board has scheduled  
17 nine cases. After that, next three hearing dates, we're in  
18 double digits. But I don't have in front of me when the ANC  
19 is meeting between now and January 13.

20 CHAIRPERSON HILL: Mr. Moy, how does March look?

21 MR. MOY: March is better. March --

22 MR. DAVIS: January 13 would --

23 MR. MOY: March 3 would be good, we have seven  
24 cases on March 3.

25 CHAIRPERSON HILL: Okay.

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1 MR. MOY: That would give the applicant ample time.

2 CHAIRPERSON HILL: Okay. Mr. Davis and Mr. Sallah,  
3 we just have a lot of cases, we don't have an opportunity to  
4 put you on the docket until March 3.

5 We could go ahead, and it seems like you have a  
6 lot of work that you still -- I don't know exactly where you  
7 are in terms of discussions with the Office of Planning.  
8 It's necessary to work with the Office of Planning to figure  
9 out exactly whether or not, to get your case ready for us to  
10 hear. So, I'm going to go --

11 MR. DAVIS: Excuse me, is there any way that we  
12 could do January 13? Because we're kind of in a hardship  
13 over there with our loan and we really need to try to get a  
14 decision, if it's possible.

15 CHAIRPERSON HILL: What does January 13 look like,  
16 Mr. Moy? How many you got?

17 MR. MOY: Nine cases, sir. My only --

18 CHAIRPERSON HILL: We have nine now?

19 MR. MOY: Yeah, we have nine now, this would be the  
20 tenth case. My only concern is whether or not the applicant  
21 would have time to prepare his materials, return to the ANC,  
22 and allowing time for the Office of Planning to do their  
23 evaluation. So, I would also defer to Ms. Fothergill.

24 CHAIRPERSON HILL: Ms. Fothergill, do you have a  
25 rough idea as to where you think this is?

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1 MS. FOTHERGILL: It's hard to know, because we  
2 haven't -- we alerted the applicant to things we needed a  
3 long time ago and haven't heard back. The applicant  
4 mentioned that a revised burden of proof was uploaded to the  
5 record, but I don't see it. So, it's hard for me to say.  
6 It's in the applicant's hands to provide the information, and  
7 then we will do the analysis.

8 CHAIRPERSON HILL: All right. I'll tell you what,  
9 Mr. Sallah and Mr. Davis, we'll go ahead and put you on the  
10 13th of January. I don't necessarily --

11 MR. DAVIS: Okay.

12 CHAIRPERSON HILL: -- necessarily think you're  
13 going to be ready, right? And --

14 MR. DAVIS: We'll be ready, sir.

15 CHAIRPERSON HILL: -- if you're not ready --

16 MR. DAVIS: I'm sorry, we'll be ready. I think the  
17 ANC is onboard with the project, and we have pretty much  
18 everything together, so we'll be ready.

19 CHAIRPERSON HILL: Okay. I'm just letting you  
20 know, Mr. Davis, and I understand that you think and hope  
21 you're going to be ready, but the Office of Planning is an  
22 important key to --

23 MR. DAVIS: Okay.

24 CHAIRPERSON HILL: -- what is happening. So, the  
25 ANC, that's great, but you need to work with the Office of

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1 Planning, so you might not be ready.

2 MR. DAVIS: Okay.

3 CHAIRPERSON HILL: And if you're not ready, please  
4 let us know ahead of time, because we're doing our best to  
5 do what we're supposed to do for the city, but having us do  
6 --

7 MR. DAVIS: Okay.

8 CHAIRPERSON HILL: -- double-digit cases a day, I'm  
9 starting to get pushback from different areas and it's  
10 starting

11 MR. DAVIS: Okay.

12 CHAIRPERSON HILL: -- to be difficult for us. So  
13 --

14 MR. DAVIS: Okay.

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: If you think you're not going  
17 to make it, I would let Mr. Moy know as soon as possible,  
18 because that March 3 date will also fill up and then you're  
19 going to get pushed back even farther.

20 MR. DAVIS: Got it, we --

21 CHAIRPERSON HILL: Okay.

22 MR. DAVIS: -- understand, thank you.

23 CHAIRPERSON HILL: All right.

24 MR. DAVIS: Yes, sir, thank you.

25 CHAIRPERSON HILL: Let's put it --

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1 MR. SALLAH: Thank you.

2 MR. MOY: Mr. Chairman?

3 CHAIRPERSON HILL: Sure.

4 MR. MOY: Mr. Chairman?

5 CHAIRPERSON HILL: Yeah?

6 MR. MOY: And this is your decision, if this is  
7 coming back for hearing on January 13, I want to be sure the  
8 Office of Planning has time to do --

9 MS. DOUGLAS: Hello?

10 MR. MOY: -- what they need to do, so --

11 MS. DOUGLAS: Hello?

12 CHAIRPERSON HILL: Hello?

13 MS. DOUGLAS: This is Commissioner Douglas. I  
14 submitted all my documents earlier, so you all should have  
15 that information in support of Mr. Johnson. So, that  
16 information was submitted. So, I wanted to stand corrected  
17 with that, Mr. Hill.

18 CHAIRPERSON HILL: Okay, Commissioner. Sorry, I  
19 didn't --

20 MS. DOUGLAS: I did sign it as Commissioner Douglas  
21 and I did sign it, I just wanted to let you know we sent in  
22 all the documents in reference to the Lee project and all.  
23 So, you have that, so I just wanted to make sure that was  
24 clear, the information was sent and so, you need to stand  
25 correct on that. And my letter of support and the ANC, so

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1 we are in support of Mr. Lee's project.

2           So, please check that and make sure, because I  
3 called several times and spoken in regards to that this  
4 morning so, but you all said you had not received it, but  
5 it's there. So, please check and make sure that announcement  
6 is saved. This is Commissioner Douglas, I want to wish  
7 everybody a happy holiday and Christmas.

8           I'm in support of the project and also the ANC is  
9 in support, they sent the Form 122 and also the Community  
10 Agreement as well. So, please check that to make sure. If  
11 anything else that he need, I'll agree with you all, he needs  
12 to get that ready for the Office of Planning. But we're in  
13 support of the project. Thank you.

14           CHAIRPERSON HILL: All right, Commissioner, thanks  
15 so much. I see all of that and I appreciate it. I'm sorry,  
16 it was my error. And, Commissioner, how long have you been  
17 a commissioner there now? Commissioner Douglas?

18           MR. MOY: She's muted. She's on mute, sir.

19           CHAIRPERSON HILL: That's all right, Commissioner.  
20 I was just going to say, you guys are pretty well organized  
21 also. Can you hear me, Commissioner Douglas? Can you hear  
22 me? I think you're off mute now, I should be able to hear  
23 you. Hello? Okay, that's all right.

24           All right, Commissioner. Well, we do have  
25 everything, we do see everything. I didn't see your name

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1 there originally, so I apologize for that, as I said. And  
2 also, happy holidays to you, as well. That's very kind of  
3 you, first time we've been wished happy holidays in a while,  
4 so that's great. All right.

5 So, we're still going to do, I guess -- I'll get  
6 you Mr. Moy. So, we're going to do January 13 for now and  
7 see what happens.

8 MR. DAVIS: Okay.

9 CHAIRPERSON HILL: And, Mr. Moy, you had a comment?

10 MR. MOY: Yes, I had a suggestion, Mr. Chair,  
11 because of the holidays and having this return on January 13,  
12 the schedule is kind of aggressive. But, if the applicant  
13 does continue to coordinate with Office of Planning, I would  
14 that the applicant make any supplemental filings by Monday,  
15 January 4. And then, I suppose, for the Office of Planning  
16 to submit any supplemental, well, their report later in that  
17 week.

18 CHAIRPERSON HILL: Ms. Fothergill, does that work?

19 MR. DAVIS: Yes, sir.

20 MS. FOTHERGILL: Yes, assuming we get everything  
21 we need, we can make that date. Thanks.

22 CHAIRPERSON HILL: Okay. Mr. Davis, can you hear  
23 me?

24 MR. DAVIS: Yes, sir.

25 CHAIRPERSON HILL: You really have to get with the

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1 Office of Planning, all right?

2 MR. DAVIS: Yes, sir.

3 CHAIRPERSON HILL: Like, you're going to miss this,  
4 if you don't -- like, holidays are now, we've just been  
5 wished happy holidays, there's only two weeks left in the  
6 year. And then, you've got to call somebody today.

7 MR. DAVIS: Okay, will do. We're on top of it.

8 CHAIRPERSON HILL: Okay.

9 MR. DAVIS: Okay.

10 CHAIRPERSON HILL: Okay. All right. Commissioner  
11 Turnbull?

12 MEMBER TURNBULL: I just want to just, sort of an  
13 administrative issue. On the 13th, I don't need to be on the  
14 -- since we've only had preliminary administrative  
15 discussions on this, whatever Zoning Commissioner is going  
16 to be on the 13th can handle, can take the case. I don't  
17 necessarily need to be there and add another cog into the  
18 whole thing.

19 CHAIRPERSON HILL: Okay.

20 MEMBER TURNBULL: So, just wanted to point that  
21 out.

22 CHAIRPERSON HILL: Okay, appreciate it. Okay. All  
23 right. Everybody, good luck to you, happy holidays as well,  
24 and we'll see you on January 13.

25 MR. SALLAH: Thank you.

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1 MR. DAVIS: Thank you.

2 CHAIRPERSON HILL: Thank you. All right. Mr. Moy,  
3 you can go to the next one, when you get a chance.

4 MR. MOY: All right. Thank you, Mr. Chairman. So,  
5 this would be Case Application Number 20331 of Magdalena, I  
6 think -- this is crazy. So, I'm just going to, rather than  
7 mispronouncing the name, I'm going to spell it out. A-C-E-V-  
8 E-D-O nee, N-E-E, and then, P-R-Z-Y-T-U-L-S-K-A.

9 And this is captioned for special exception from  
10 the accessory building use requirements of Subtitle U Section  
11 301.1(e), to demolish the existing garage and construct a  
12 two-story accessory building to be used as a second principal  
13 dwelling unit and a garage, RF-1 Zone at premises 314 Varnum  
14 Street Northwest, Square 3311, Lot 66. And the affidavit of  
15 posting, I believe, Mr. Chair, is three days late. So, it's  
16 a bit untimely.

17 CHAIRPERSON HILL: Okay. All right. Let's see.  
18 Could the applicant please introduce themselves?

19 MS. ACEVEDO: Good morning, everyone. My name is  
20 Magdalena Acevedo. Tom Raithel, our architect, is having  
21 trouble logging on. He can hear, but he can't be heard.

22 CHAIRPERSON HILL: And what's the name of your  
23 architect?

24 MS. ACEVEDO: Tom Raithel.

25 CHAIRPERSON HILL: Mr. Young, do you see somebody

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1 there like that?

2 MR. YOUNG: Yeah, I've brought him on as a  
3 panelist, I see him on here.

4 CHAIRPERSON HILL: Ms. Acevedo, could you repeat  
5 his name, please?

6 MS. ACEVEDO: Thomas Raithel, R-A-I-T-H-E-L.

7 CHAIRPERSON HILL: Mr. Raithel, can you hear me?  
8 Ms. Acevedo, I'm sorry, could you pronounce it again?

9 MS. ACEVEDO: Acevedo. I know, I switched from a  
10 tough last name to another tough last name.

11 CHAIRPERSON HILL: What was it before?

12 MS. ACEVEDO: Przytulaska.

13 CHAIRPERSON HILL: All right. Acevedo is a little  
14 easier.

15 (Laughter.)

16 CHAIRPERSON HILL: Okay.

17 MS. ACEVEDO: So --

18 CHAIRPERSON HILL: Go ahead, Ms. Acevedo.

19 MS. ACEVEDO: I know that he is present, even if  
20 you can't hear him. But if you have any questions for me,  
21 I should be able to answer them.

22 CHAIRPERSON HILL: Okay. You know that there's a  
23 21-day filing deadline waiver that you guys requested?

24 MS. ACEVEDO: That, I don't know about, but I can  
25 ask him. I know that we've had the notice up actually on our

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1 house for about four months now. I don't think we sent in  
2 the photograph in time, but --

3 CHAIRPERSON HILL: Okay. Actually, this is the  
4 update, the letter of authorization. And then --

5 MS. ACEVEDO: Oh, yes, I did sign --

6 CHAIRPERSON HILL: That's okay.

7 MS. ACEVEDO: -- that, yes, I did sign that.

8 CHAIRPERSON HILL: And then, the self-  
9 certification.

10 MS. ACEVEDO: Yes, I do remember signing both of  
11 those.

12 CHAIRPERSON HILL: Okay. Did you -- what you're  
13 presenting before us is what you presented in front of the  
14 ANC, correct?

15 MS. ACEVEDO: Correct.

16 CHAIRPERSON HILL: Okay. Okay. Unless the board  
17 has any issues, I'm going to grant the waiver. If the board  
18 has any issues, you can raise your hand. All right. I'm  
19 going to go ahead and grant the waiver. Filing deadline,  
20 let's see, so, Ms. Acevedo, are you going to be presenting  
21 to us?

22 MS. ACEVEDO: I don't know, depending on what your  
23 questions are, I have some basic information, which is  
24 essentially that we're trying to put an apartment above our  
25 garage so my father-in-law can move in with us when he

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1 retires soon. And I know that we did receive support from  
2 the ANC. There were -- there's no one opposed from the ANC  
3 and nobody opposed --

4 CHAIRPERSON HILL: Okay.

5 MS. ACEVEDO: -- from our neighborhood as well.

6 CHAIRPERSON HILL: Okay. Sorry, I was having a  
7 little bit of difficulty here myself. Commissioner Goodman,  
8 are you there?

9 MR. GOODMAN: I am.

10 CHAIRPERSON HILL: Commissioner, is there some  
11 testimony you'd like to give?

12 MR. GOODMAN: Sorry, not necessarily. I have  
13 another case today, so I'm just listening to this hearing.  
14 We are in full support of Ms. Acevedo's application.

15 CHAIRPERSON HILL: Okay. I'm going to turn to the  
16 Office of Planning.

17 MS. VITALE: Good morning, Mr. Chair, members of  
18 the board. Elisa Vitale with the Office of Planning, for BZA  
19 Case 20331. And the Office of Planning is happy to rest on  
20 the record in support of the requested relief. I'm happy to  
21 answer any questions that you might have. Thank you.

22 CHAIRPERSON HILL: Okay. The affidavit of posting,  
23 right, so that's the 21-day, all right. Does the board have  
24 any questions for the Office of Planning? Ms. Acevedo, do  
25 you have any questions for the Office of Planning?

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1 MS. ACEVEDO: I do not.

2 CHAIRPERSON HILL: Mr. Young, is there anyone here  
3 wishing to testify?

4 MR. YOUNG: We do not.

5 CHAIRPERSON HILL: All right. Ms. Acevedo, is  
6 there anything you would like to add in conclusion?

7 MS. ACEVEDO: No, I'm happy to answer any  
8 questions, but I don't have anything to add.

9 CHAIRPERSON HILL: Okay. If the board has any  
10 questions, please raise your hand, otherwise, I'm going to  
11 close the hearing. I don't see anyone raising their hand.  
12 All right. I'm going to close the hearing and the record.  
13 Mr. Young, if you can excuse everyone from the hearing room.  
14 Okay.

15 I thought, for me, this was pretty  
16 straightforward, I didn't have any issues. I thought that  
17 the analysis that the Office of Planning had provided was  
18 good and efficient. And I thought that, I understood how  
19 they're meeting the burden for us to grant the relief  
20 requested, as is the testimony that was provided by the  
21 applicant. Also, ANC 4C has provided their support and  
22 analysis. So, I will be voting in support of this.

23 Mr. Turnbull, is there anything you would like to  
24 add?

25 MEMBER TURNBULL: No, I would concur with your

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1 analysis and just point out that it complies with the zoning  
2 regs 301.1(e) and it is fully compliant, there's been no --  
3 the ANC is in support, the neighbors appear to be in support.  
4 So, I would be following your lead and voting in support  
5 also.

6 CHAIRPERSON HILL: Okay. Thank you. Mr. Smith?

7 MEMBER SMITH: I second the analysis that you gave,  
8 Chairman Hill, and also the analysis gave by Mr. Turnbull.  
9 For all of the reasons that both of you highlighted, I would  
10 be in support as well.

11 CHAIRPERSON HILL: Thank you. Vice Chair John?

12 VICE CHAIRPERSON JOHN: I support the application  
13 as well and agree with all of the comments so far as to how  
14 the application meets the requirements for relief.

15 CHAIRPERSON HILL: All right. In that case, I'm  
16 going to make a motion to approve Application Number 20331,  
17 as captioned and read by the secretary, and ask for a second,  
18 Ms. John.

19 VICE CHAIRPERSON JOHN: Second.

20 CHAIRPERSON HILL: The motion has been made and  
21 seconded. Mr. Moy, could you please take a roll call vote?

22 MR. MOY: Thank you, Mr. Chairman. When I call  
23 your name, if you would please respond with a yes, no, or  
24 abstain to the motion made by Chairman Hill to approve the  
25 application for the relief requested, the motion was seconded

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1 by Vice Chair John. Zoning Commissioner Michael Turnbull?

2 MEMBER TURNBULL: Yes.

3 MR. MOY: Mr. Smith?

4 MEMBER SMITH: Yes.

5 MR. MOY: Vice Chair John?

6 VICE CHAIRPERSON JOHN: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: We have a board seat vacant. Staff would  
10 record the vote as 4-0-1, and this is on the motion of  
11 Chairman Hill to approve the application for the relief  
12 requested, the motion was seconded by Vice Chair John, also  
13 in support of the motion is Mr. Smith and Zoning Commissioner  
14 Michael Turnbull. The motion carries, 4-0-1.

15 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
16 Moy. Please feel free, Mr. Moy, when you can, to call our  
17 next case.

18 MR. MOY: The next case before the board is  
19 Application Number 20332 of, I'm going to spell it, S-C-H-F,  
20 VEG, V-E-G, LLC, captioned and advertised for a special  
21 exception under the use provisions of Subtitle U Section  
22 513.1(1) to permit a veterinary hospital in an existing  
23 mixed-use building in the MU-10 Zone at premises 2311 M  
24 Street Northwest, Square 36, Lot 51.

25 And the only preliminary, Mr. Chairman, is Lee's

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1 untimely public notice to leasee.

2 CHAIRPERSON HILL: Okay. Let's see. Ms.  
3 Bloomfield, are you representing the applicant?

4 MS. BLOOMFIELD: Yes, good morning.

5 CHAIRPERSON HILL: Good morning. Could you  
6 introduce yourself for the record, please?

7 MS. BLOOMFIELD: Absolutely. Jessica Bloomfield  
8 with the Law Firm of Holland and Knight.

9 CHAIRPERSON HILL: Okay. And, Ms. Bloomfield, who  
10 is here with you?

11 MS. BLOOMFIELD: I'm here with Ashley Shoults and  
12 Jennifer Hanlon. Ashley is our architect and Jennifer is  
13 representing the applicant. And they're both on the call  
14 right now.

15 CHAIRPERSON HILL: Okay, great. Well, first of  
16 all, Ms. Bloomfield, welcome. Is this the first time you've  
17 been virtual with us or no?

18 MS. BLOOMFIELD: I think it's my first time virtual  
19 at BZA, I've been at Zoning Commission a couple of times.

20 CHAIRPERSON HILL: Oh, all right. Well, we're  
21 better than them.

22 MS. BLOOMFIELD: I've been watching, I know. I  
23 know, you're doing great.

24 (Laughter.)

25 CHAIRPERSON HILL: Thanks. All right. Let's see.

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1 So, there was -- no offense to the Zoning Commission, of  
2 course, they're wonderful as well. Let's see. The untimely  
3 notice about the leasees, could you explain that, please?

4 MS. BLOOMFIELD: Sure. So, we requested a waiver  
5 from Subtitle Y 402.1(e), because the notices of the public  
6 hearing were not sent to the leasees of the existing building  
7 within the 40-day requirement.

8 We did send the list and the addresses with our  
9 application, as required by the zoning regulations, but the  
10 Office of Zoning did not actually send them out with the rest  
11 of the 200-foot property owner list. As soon as we found  
12 out, we did send them directly, as did the Office of Zoning.

13 They also did receive constructive notice, the  
14 property was properly posted. It was also, the hearing was  
15 timely published in the DC Register. So, they were on notice  
16 even though they did not receive the direct notice from the  
17 Office of Zoning.

18 And again, the applicant did complete all of the  
19 requirements, it was the Office of Zoning's oversight and we  
20 worked with them to fix the problem as soon as we found out.

21 CHAIRPERSON HILL: Have you had any concerns from  
22 the other leasees?

23 MS. BLOOMFIELD: None at all.

24 CHAIRPERSON HILL: Okay. All right. Unless the  
25 board has any issues, I'm going to go ahead and grant the

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1 waiver. If you have an issue, please raise your hand. No?  
2 All right, okay. We're going to go ahead and grant that  
3 waiver.

4 Ms. Bloomfield, I guess, if you want to go ahead  
5 and just walk us through your presentation and how you  
6 believe the applicant is satisfying the criteria for us to  
7 grant the relief requested, and you can begin whenever you  
8 like.

9 MS. BLOOMFIELD: Sure thing. Thank you. Again,  
10 Jessica Bloomfield with the office of Holland and Knight.  
11 We are here requesting a special exception to permit a  
12 veterinary hospital use in the partially below-grade retail  
13 space of an existing building, located at 2311 M Street  
14 Northwest.

15 The property is mid-block on M Street and is  
16 surrounded to the east and west by private property, which  
17 are improved with existing buildings. The building contains  
18 two levels of below-grade parking, community-serving offices,  
19 including medical offices, on floors one through five, and  
20 then, residential units on floors six through ten.

21 The proposed veterinary hospital space would be  
22 located in a partially below-grade level between the parking  
23 levels and the first floor, which contains a dry cleaner and  
24 a medical office. This space is approximately 4200 square  
25 feet in size and it will not abut any residential uses.

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1           The filings in the case record provide detailed  
2 reasons for how the application meets the special exception  
3 standard, particularly as they relate to the mitigation of  
4 any potential noise, odor, or waste that could be generated  
5 by this veterinary hospital use.

6           Accordingly, we believe that we meet the special  
7 exception standards and that the use will be in harmony with  
8 the general purpose and intent of the zoning regulations and  
9 zoning map and will not adversely affect the use of any  
10 property. The applicant has worked with the Office of  
11 Planning and DDOT, and we are pleased to have support from  
12 both of those agencies in the case record, neither of which  
13 identified any concerns or conditions to approval.

14           We've also worked with the ANC for a while now and  
15 they voted -- that's ANC 2A. They voted unanimously in  
16 support of the project. And from what we hear, they're very  
17 excited to have this use in the neighborhood.

18           Finally, we did receive one letter in support to  
19 the case record, but other than that, we haven't heard any --  
20 we heard virtually zero opposition or concerns with this use,  
21 everyone's very excited.

22           I would love to turn it over to Jennifer Hanlon,  
23 if that's helpful, to talk a little bit about this particular  
24 veterinary hospital use and why it's unique and doesn't  
25 really quite exist in the District, if that's helpful.

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1 Otherwise, we can just close our presentation there and turn  
2 it over to questions.

3 CHAIRPERSON HILL: Sure. Actually, go ahead, Ms.  
4 Hanlon, if you want to tell us a little bit about the  
5 project.

6 MS. HANLON: Sure. Hi, everyone, good morning.  
7 My name is Jennifer Hanlon. I work for Veterinary Emergency  
8 Group, based out of Westchester, New York. My business  
9 address is 7 Legion Drive, Valhalla, New York, 10595.

10 So, essentially, Veterinary Emergency Group is a  
11 rapidly growing group of emergency and urgent care hospitals  
12 for pets. We operate 24 hours a day, 365 days a year, to  
13 provide the community with a dedicated emergency service.  
14 We currently operate 17 locations throughout the country,  
15 mainly on the East Coast, but we do have locations in New  
16 York, New Jersey, Massachusetts, Florida, Texas, Colorado,  
17 and Illinois.

18 We're very excited to come to the D.C. area,  
19 because currently, the only emergency provider is up in  
20 Tenleytown. They are Friendship Animal Hospital. So, we  
21 have identified the West End of D.C. as a location that could  
22 greatly benefit from our services.

23 We consider ourselves an extension of the daytime  
24 practices in the area. I'm not sure who all on this call has  
25 a pet, but your typical general practice is open 9:00 to

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1 5:00. If you have an emergency after hours, that's kind of  
2 where we step in. We also offer dedicated daytime emergency,  
3 because a lot of general practices, because they do work on  
4 appointment only, they just don't have the time or the  
5 facilities to handle really big emergencies.

6 And we're very different than your typical  
7 emergency provider. If you've ever taken your pet to any  
8 type of animal hospital, be it a GP or an emergency,  
9 typically you go in, you're brought to either the waiting  
10 room or a exam room and then, your pet is taken to the back.  
11 That is 100 percent night and day from what we do at VEG.

12 When you come into a VEG, everyone goes directly  
13 to the treatment area with your pet and you can stay with  
14 your pet for every single procedure they are getting. If  
15 they're getting blood drawn, you can be there. If they're  
16 getting x-rays, you can look through the window. We've  
17 actually had people watch surgeries. A lot of people don't  
18 want to do that, but they're welcome to.

19 That's a really big basis for what we do as a  
20 company, is keeping people and their pets together, and we  
21 like to say that we always find a way to say yes. If your  
22 pet is hospitalized with us overnight, if you want to stay  
23 overnight, sure, we'll pull you up a chair, you can sit  
24 there, you can watch them. If you want to Facetime with  
25 them, you can do that as well. We always try to find a way

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1 to make that and keep that connection with people and their  
2 pets.

3           That's pretty much a good overview of us. We're  
4 very excited to be in the area, we think we're going to be  
5 a really great service to the community. And that specific  
6 location is very important to us, because we think a lot of  
7 people will be able to see us, since we are a destination.  
8 Unfortunately, you don't kind of go shopping and run into a  
9 VEG, so it's nice that people will be able to see us and  
10 we'll be top-of-mind when they are having that 2:00 a.m.  
11 emergency.

12           CHAIRPERSON HILL: Okay, great. Well, Ms. Hanlon,  
13 that's kind of interesting to hear about. I mean, I have a  
14 small dog myself and so, I'm looking at your website, it's  
15 kind of interesting.

16           MS. HANLON: Oh, perfect.

17           CHAIRPERSON HILL: So, let's see. Yeah, I mean,  
18 if this passes, that area is a great area for you guys. All  
19 right. Let me see, does the board have any questions for the  
20 applicant? All right. I'm going to turn to the Office of  
21 Planning.

22           MR. MORDFIN: All right. Good morning. I'm  
23 Stephen Mordfin with the Office of Planning. And the Office  
24 of Planning recommends approval of this application, finding  
25 that it is in conformance with all of the criteria necessary

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1 for the granting of a veterinary animal hospital, and is  
2 available for questions. Thank you.

3 CHAIRPERSON HILL: Okay, great. Does anybody have  
4 any questions from the Office of Planning? Does the board  
5 have any questions for the Office of Planning? Does the  
6 applicant have any questions for the Office of Planning?

7 MS. BLOOMFIELD: No, thank you.

8 CHAIRPERSON HILL: Mr. Young, is there anyone here  
9 wishing to speak?

10 MR. YOUNG: We do not.

11 CHAIRPERSON HILL: Okay. Does the applicant have  
12 anything they would like to add at the end?

13 MS. BLOOMFIELD: No, we would just respectfully  
14 request that you deliberate and vote to approve this  
15 application. Thank you.

16 CHAIRPERSON HILL: Okay, thank you. All right.  
17 Okay. I'm going to go ahead and excuse, I'm going to close  
18 the hearing, close the record, and excuse everyone from the  
19 hearing room. Everyone have a nice holiday. All right.

20 I can go ahead and begin. I would agree with the  
21 testimony that the applicant has put forward as to how  
22 they're meeting the criteria for us to grant the relief  
23 requested.

24 I would also note that the Office of Planning's  
25 report, which is in support, is also, I believe, well

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1 written, and I would also agree with their analysis  
2 concerning how they're meeting the criteria for us to grant  
3 the relief requested.

4 It is also nice to see that the ANC had no issues  
5 or concerns and that DDOT had no objections. So, I'm going  
6 to be voting in favor.

7 Mr. Turnbull, Commissioner, is there anything you  
8 would like to add?

9 MEMBER TURNBULL: No, I would concur with your  
10 analysis, Mr. Chair. I would just add that, to me, the most  
11 critical thing for a veterinary hospital or any kind of  
12 animal facility like this is U 5103.1(I), and that's the  
13 mitigation. And it looks like they've got a pretty good  
14 program for mitigation of noise and smells. So, I will be  
15 voting in favor also.

16 CHAIRPERSON HILL: All right. Thank you,  
17 Commissioner. Thank you for adding that. Mr. Smith?

18 MEMBER SMITH: I concur with you, Chairman Hill,  
19 and also the comments provided by Mr. Turnbull. I would be  
20 in support of this application and do give great weight to  
21 OP's report, it was a very thorough analysis on the reasoning  
22 why we can grant this relief. So, I will support it.

23 CHAIRPERSON HILL: Vice Chair John?

24 VICE CHAIRPERSON JOHN: I agree with the comments  
25 so far and I agree especially with Commissioner Turnbull's

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1 comments. I think in these types of applications, the most  
2 important thing for me is the lack of any significant impact  
3 on the residential use. And so, I can support this  
4 application.

5 CHAIRPERSON HILL: Okay, great. Thank you. All  
6 right. I'm going to go ahead and make a motion then to  
7 approve Application Number 20332, as captioned and read by  
8 the secretary, and ask for a second, Ms. John.

9 VICE CHAIRPERSON JOHN: Second.

10 CHAIRPERSON HILL: The motion has been made and  
11 seconded. Mr. Moy, could you please take a roll call?

12 MR. MOY: Thank you, Mr. Chairman. When I call  
13 your name, if you would please respond with a yes, no, or  
14 abstain to the motion made by Chairman Hill to approve the  
15 application for the relief requested. Seconding the motion  
16 is Vice Chair John. Zoning Commissioner Michael Turnbull?

17 MEMBER TURNBULL: Yes.

18 MR. MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 MR. MOY: Vice Chair John?

21 VICE CHAIRPERSON JOHN: Yes.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: We have a board seat vacant. But staff  
25 would record the vote as 4-0-1, and this is on the motion

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1 made by Chairman Hill to approve, motion seconded by Vice  
2 Chair John, also in support of the motion Mr. Smith and  
3 Zoning Commissioner Michael Turnbull, board set vacant.  
4 Motion carries, 4-0-1.

5 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
6 Moy. When you get a chance, Mr. Moy, you are welcome to call  
7 our next case.

8 MR. MOY: This would be Application Number 20335  
9 of Jeffrey Wagener, as amended, for special exceptions under  
10 Subtitle E Section 5201 from the rear addition requirements  
11 of Subtitle E Section 205.5, lot occupancy requirements of  
12 Subtitle E Section 304.1.

13 This would construct a two-story rear addition and  
14 an accessory building in the rear of an existing attached  
15 principal dwelling unit, RF-1 Zone at premises 741 12th  
16 Street Southeast, Square 995, Lot 55.

17 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.  
18 Let's see. Is it Mr. Crawford, is he here? I thought I saw  
19 him a second ago.

20 MR. CRAWFORD: Yes, I'm here.

21 CHAIRPERSON HILL: Okay. Mr. Crawford, could you  
22 please introduce yourself for the record?

23 MR. CRAWFORD: Yes. I'm Douglas Crawford, I'm the  
24 architect and agent for the owner of the property, Jeffrey  
25 Wagener. And I reside at 4335 Harrison Street Northwest in

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1 D.C.

2 CHAIRPERSON HILL: Okay. And Mr. Wagener is here?

3 Mr. Wagener --

4 MR. WAGENER: Yes, sir, I --

5 CHAIRPERSON HILL: -- could you introduce yourself  
6 for the record, please?

7 MR. WAGENER: Yes. Jeff Wagener, I live at 741  
8 12th Street Southeast, Washington, D.C.

9 CHAIRPERSON HILL: Okay. All right. Let's see.  
10 Mr. Crawford, if you could go ahead and walk us through your  
11 application and why you believe you're meeting the standards  
12 for us to grant the relief requested. I'm going to put 15  
13 minutes on the clock there, just so I know where we are, and  
14 you can begin whenever you like.

15 MR. CRAWFORD: All right. Thank you very much,  
16 thanks for everyone's time this morning. As is stated, we  
17 are here seeking special exception for Subtitle E 205.5 for  
18 the rear wall extension, as well as Subtitle E 304.1 for the  
19 lot occupancy.

20 We're hoping to extend the rear wall extension to  
21 do an addition to the rowhome, having an addition be 20-foot-  
22 six, so it will align with the rear addition to the adjacent  
23 property to the south.

24 And we are also doing an improved semi-enclosed  
25 garage at the rear of the property, which is why we need the

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1 lot occupancy increased above 60 percent. The total lot  
2 occupancy would reach a proposed 69.4 percent, which is what  
3 we're seeking relief for within the zone.

4 And, overall, we feel that we're, yeah, meeting  
5 the intent of what's allowable within the zoning regulations  
6 for these special exceptions. You can see within the design  
7 package that was uploaded as part of our application the  
8 overall massing and size of the project conforms to the  
9 general fabric of the rest of the block and doesn't exceed  
10 the rear boundaries of any of the other properties that have  
11 also received rear extensions and generally suitable to the  
12 overall massing of the neighborhood.

13 We've also received approval or support from the  
14 ANC, from the Office of Planning, as well as from the  
15 adjacent neighbors.

16 CHAIRPERSON HILL: Right. So, you're saying 739  
17 12th Street, I'm looking for their testimony. You have heard  
18 from them, the neighbor to the north?

19 MR. CRAWFORD: Yes, we have. They, I believe the  
20 -- it was either an email or a written notice was uploaded  
21 to our application.

22 CHAIRPERSON HILL: Do you recall where that is in  
23 the record?

24 MR. CRAWFORD: I don't have it at the moment, but  
25 I can pull it up here.

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1 CHAIRPERSON HILL: What's the person's name?

2 MR. CRAWFORD: Mr. Wagener might be able to speak  
3 to that, I don't know the name off the top of my head.

4 MR. WAGENER: Yeah, Claude and Rachel Harriott.

5 CHAIRPERSON HILL: Harriott, okay, I see it here.  
6 Okay. Mr. Wagener, it seems like their property is also  
7 under conception, or you don't know?

8 MR. WAGENER: Yes, they have plans in the works  
9 right now for an extension as well.

10 CHAIRPERSON HILL: And they're probably going to  
11 come to us or you don't know?

12 MR. WAGENER: I don't know, sorry.

13 CHAIRPERSON HILL: Okay. All right. You're aware  
14 that, I guess, the Capitol Hill Restoration, Restoration,  
15 CHRS is opposed to your application. Can you, Mr. Crawford,  
16 speak to that a little bit?

17 MR. CRAWFORD: I actually was not aware of this.  
18 We have had a hearing, separate hearings with the ANC  
19 specific to the historic nature of the project, where we  
20 received support from the ANC, as well as the Office of  
21 Historic Planning. I was not particularly directly made  
22 aware of any opposition of any kind.

23 CHAIRPERSON HILL: That's all right. Well, I mean,  
24 their opposition seems to be a variety of things. The main  
25 reason, I guess, is the fact that you're going 20 feet beyond

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1 the rear wall. But you're going to match up that with the  
2 one that's to the south of you. Does the board have any  
3 questions of the applicant?

4 MEMBER TURNBULL: Well, I just wanted to point out  
5 for Mr. Crawford that it's Exhibit Number 38 in our records,  
6 it's Exhibit 38. Basically, what they're --

7 MR. CRAWFORD: Okay.

8 MEMBER TURNBULL: Basically, what they're concerned  
9 about is that they're saying that the deck and spiral stairs  
10 may not have been included in the lot occupancy calculations,  
11 and they're talking about a railing on the roof deck, which  
12 I believe is now a parapet, which may make the matter moot.  
13 But I don't -- anyways, was, I guess, was the deck and the  
14 stairs included in your lot occupancy calcs?

15 MR. CRAWFORD: So, I've pulled up Exhibit Number  
16 38 now, this is the first time I've seen this, it appears  
17 this was put there two days ago, and I'm briefly glancing  
18 over it.

19 So, the deck and the spiral staircase are not  
20 included in the calculation for lot occupancy. It is my  
21 understanding that it was only to include the building  
22 footprint area for enclosed space, which includes the garage  
23 and the limits of the building.

24 And you are correct that there is no longer a  
25 railing on the roof, there is a parapet that has been raised.

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1 And that had been since we submitted and received approval  
2 from the Historic review, but I have had discussions with the  
3 Historic staff and they have agreed that the parapet is in  
4 keeping with their understanding or in keeping with their  
5 approval.

6 MEMBER TURNBULL: All right. Well, the other thing  
7 that they're oppose to is, of course, you're going 20 feet  
8 back. So, we can check with OP on the lot occupancy calcs  
9 and just confirm that your analysis is correct.

10 MR. CRAWFORD: Yeah, I would be interested to hear  
11 an evaluation of that. That would be news to me.

12 MEMBER TURNBULL: Mr. Chairman, that was my only  
13 question. I just wanted to point out what was in the record.

14 CHAIRPERSON HILL: I was on mute. Thank you,  
15 Commissioner, I was asking whether there was anybody else who  
16 had any questions? No? Oh, Ms. John?

17 VICE CHAIRPERSON JOHN: Just one question. What  
18 is the height of the deck, Mr. Crawford?

19 MR. CRAWFORD: The height of the deck? The back  
20 of the -- so, the overall existing parapet seen from 12th  
21 Street is 30 feet 11 inches. The height of the rear parapet  
22 would be 29 foot six inches, so it's below the existing  
23 height of the overall building. The deck is set three feet  
24 below the parapet height.

25 CHAIRPERSON HILL: Anyone else. All right. I'm

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1 going to turn to the Office of Planning.

2 MS. MYERS: Hi, Crystal Myers for the Office of  
3 Planning. Let's see, my radio's on, here we go. The Office  
4 of Planning is recommending approval of this case and stands  
5 on the record of the staff report. I know there is a  
6 question about whether or not the deck, if it's required on  
7 lot occupancy.

8 Now, the applicant did not request relief beyond  
9 the 69.4 percent, I believe, so that's all, in this case, is  
10 under review. But if the deck is over four feet, then, yes,  
11 it would be, I believe it would be required in the lot  
12 occupancy percentage.

13 MR. CRAWFORD: Would that be the entirety of the  
14 deck or just the amount of the deck that extended beyond the  
15 four feet?

16 MS. MYERS: I'm actually not quite sure. I mean,  
17 you may want to double-check with the Zoning Administrator  
18 to be sure. But, yeah, at this point, you would only be  
19 allowed the 69.4 percent, so if you are over that, then that  
20 would be something you would have to ask for additional  
21 relief on.

22 MR. CRAWFORD: Okay.

23 MS. MYERS: And if you go over 70 percent, it's a  
24 variance relief requirement.

25 MR. CRAWFORD: Right.

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1 CHAIRPERSON HILL: So, as of now, you, Ms. Myers,  
2 do not think that they need more relief from us?

3 MS. MYERS: For what we reviewed, for the 69.4  
4 percent, we are satisfied, we recommend approval. If this  
5 deck actually does go over, then they would need additional  
6 relief.

7 CHAIRPERSON HILL: All right. So, Mr. Crawford,  
8 do you understand?

9 MR. CRAWFORD: I do, yes. I think we'd like to  
10 proceed with what we have requested for at this time. We'll  
11 evaluate the deck moving forward and, if needed, seek  
12 variance.

13 CHAIRPERSON HILL: Okay. Ms. Myers, I'm just kind  
14 of looking at the plans. Like, that screening for the first  
15 floor there or the -- is that something that you all talked  
16 about or is that something that the applicant put forward?

17 MS. MYERS: That's something they put forward, we  
18 didn't make a recommendation either way on that.

19 CHAIRPERSON HILL: Mr. Crawford, just -- I mean,  
20 like, I like the screening, it's kind of like more than we  
21 normally see. How did you guys come up with that?

22 MR. CRAWFORD: The thought of having the screen was  
23 just truly for privacy of the neighbors, as well as for that  
24 are in the property. We felt that it -- there's existing  
25 fence and so, it's sort of a keeping of the general fencing

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1 privacy nature of the site as it is today.

2 CHAIRPERSON HILL: I see. Okay. Does anybody have  
3 any more questions for the Office of Planning? Fellow board  
4 members?

5 MEMBER SMITH: I think I have a clarification  
6 question, when it comes down to the rules of measurement for  
7 lot occupancy. Does an areaway count against lot occupancy?

8 MS. MYERS: I'm sorry, can you ask that again?

9 MEMBER SMITH: Does an areaway count against lot  
10 occupancy? Or a basement, a stairway into a basement?

11 MS. MYERS: Honestly, I'm not sure.

12 MEMBER SMITH: Okay.

13 MS. MYERS: It would be something that, I guess,  
14 would have to be asked by the Zoning Administrator to be  
15 clear on that.

16 MEMBER SMITH: Okay. Thank you.

17 CHAIRPERSON HILL: Okay. Anyone else for the  
18 Office of Planning? Oh, Ms. John?

19 VICE CHAIRPERSON JOHN: I was just going to say  
20 that there are standards for when it will count and I believe  
21 the standards are in the regulations or clarified by the  
22 Office of Zoning. OAG might want to chime in, but that's my  
23 recollection, that the areaway depends, I believe on the  
24 size, but I might not be accurate on that.

25 MS. CAIN: Not sure of the issue in terms of the

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1 stairs, I believe that the way they have been covered, it is  
2 not counted in determining lot occupancy.

3 MEMBER SMITH: Yes, I see that provision that says  
4 uncovered stairs, landings, and wheelchair ramps that, I  
5 guess, that serve the main floor. So, I guess, what is the  
6 main floor, I guess? But that's clarification I guess they  
7 need from the Zoning Administrator. But I guess this is  
8 beside the point. Thanks.

9 CHAIRPERSON HILL: Okay. Anyone else? Does the  
10 applicant have any questions for the Office of Planning?

11 MR. CRAWFORD: Not at this time.

12 CHAIRPERSON HILL: All right. Okay. Mr. Young,  
13 is there anyone here wishing to speak?

14 MR. YOUNG: We do not, no.

15 CHAIRPERSON HILL: Okay. Mr. Crawford, do you have  
16 anything you would like to add at the end?

17 MR. CRAWFORD: No, we appreciate your time and  
18 appreciate your consideration and thank you.

19 CHAIRPERSON HILL: All right, great. I'm going to  
20 go ahead and close the hearing and the record. Mr. Young,  
21 if you could please excuse everyone from the hearing room.  
22 Okay. Since I've been talking for a little while, Mr.  
23 Turnbull, may I start with you?

24 MEMBER TURNBULL: Sure. Thanks, Mr. Chair. Since  
25 I'm in the Capitol Historic Neighborhood, I always listen to

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1 CHRS's comments, but I think most of them have been  
2 addressed, the railing, the parapet issue.

3           The 20 feet going back, I mean, going back beyond  
4 the matter-of-right ten, that's always an issue, I'm always  
5 concerned about that. But since both neighbors are in  
6 support of this and there might be another one going on next  
7 door, I really can't get too hung up on that.

8           I guess it has been progressing down the alley  
9 anyway, I guess. So, I'd be willing to accept it in this  
10 particular case, I'm not really in favor of it in a lot of  
11 cases, but in this case, I think it's okay.

12           When we talk about the lot occupancy, this is a  
13 self-certifying application, so if there's any issues and the  
14 Zoning Administrator brings it up, they're going to have to  
15 go back, they have to make changes. So, I guess I will be  
16 voting in favor of this.

17           CHAIRPERSON HILL: Thank you, Commissioner. Mr.  
18 Smith?

19           MEMBER SMITH: I second Mr. Turnbull's comments.  
20 I did have some concerns as it relates to the Capitol Hill  
21 Restoration Society's letter. But I think they have been  
22 addressed, to what Mr. Turnbull has alluded to.

23           I did have some concerns that there wasn't a  
24 verification. I understand it's a self-cert, I do have some  
25 concerns that it wasn't verification as part of OZ or OP,

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1 whether they are requesting the correct relief, whether it's  
2 a special exception or a variance.

3           But I do recognize that if it isn't in compliance  
4 with the lot occupancy regulations, the applicant will have  
5 to make modifications to their application or come back  
6 before us to request a variance. So, in that, I am  
7 comfortable with approving this request for a special  
8 exception.

9           CHAIRPERSON HILL: Okay, thanks. Ms. John?

10           VICE CHAIRPERSON JOHN: I'm comfortable with the  
11 application as well and I agree with all of the comments so  
12 far. I think with respect to the 20-foot addition, the  
13 addition is similar to other houses on the block. And so,  
14 I did have some concerns about the deck myself, but the  
15 applicant would have to address that, if having the deck  
16 would require a variance. So, I'm okay, I'm able to support  
17 the application.

18           CHAIRPERSON HILL: Okay. I also would agree with  
19 my colleagues' comments. I mean, I thought that it was  
20 interesting that, again, they're matching the property to the  
21 south, in terms of the 20 feet. I think that -- I mean,  
22 we'll see what happens.

23           I mean, the two properties to the north also seem  
24 as though they can now come out to the 20 feet, so it's even  
25 going to match the third property to the north. I mean, I

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1 don't know if that, each case is on their own, but it's an  
2 interesting way that this is, and the Zoning Commissioner can  
3 see how these things kind of play out, obviously, now, which  
4 you guys kind of decide at a higher level.

5 But I would agree with the Office of Planning's  
6 analysis, as well as DDOT. And I will also be in favor of  
7 this application. I'm going to go ahead and make a motion  
8 to approve Application Number 20335, as captioned and read  
9 by the secretary, and ask for a second, Ms. John?

10 VICE CHAIRPERSON JOHN: Second.

11 CHAIRPERSON HILL: The motion has been made and  
12 seconded. Mr. Moy, if you could please take a roll call  
13 vote?

14 MR. MOY: Thank you, Mr. Chairman. So, when I call  
15 your name, if you would please respond with a yes, no, or  
16 abstain to the motion made by Chairman Hill to approve the  
17 application for the relief requested, seconded by Vice Chair  
18 John. Zoning Commissioner Michael Turnbull?

19 MEMBER TURNBULL: Yes.

20 MR. MOY: Mr. Smith?

21 MEMBER SMITH: Yes.

22 MR. MOY: Vice Chair John?

23 VICE CHAIRPERSON JOHN: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. MOY: We have a board seat vacant. Staff would  
2 record the vote as 4-0-1, and this is on the motion made by  
3 Chairman Hill to approve the application, the motion was  
4 seconded by Vice Chair John, also in support of the motion  
5 Mr. Smith and Zoning Commissioner Michael Turnbull, we have  
6 a seat vacant. The motion carries, 4-0-1.

7 CHAIRPERSON HILL: Great. Thank you, Mr. Moy. Can  
8 we all do one more and then we'll take a break? Okay. Mr.  
9 Moy, you can call our next when you get a chance.

10 MR. MOY: Okay. Thank you, Mr. Chairman. So, the  
11 next application before the board is Number 20337 of Ayanna,  
12 A-Y-A-N-N-A, C. Kelley, captioned and advertised for a  
13 special exception under the R-use requirements of Subtitle  
14 U Section 203.1(h) to permit the operation of a child  
15 development center for ages 2 through 12 years old in the R-  
16 1-B Zone at premises 4501 16th Street Northwest, Square 2702,  
17 Lot 805.

18 And the preliminary here, Mr. Chairman, is --  
19 where are we? Yeah, this is the -- the applicant filed a  
20 second or amended burden of proof outside of the 21-day  
21 deadline.

22 CHAIRPERSON HILL: Okay. Could the applicant  
23 please introduce themselves?

24 MS. KELLEY: Yes. Good morning, Mr. Chairman and  
25 members of the board. My name is Ayanna Kelley.

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1 CHAIRPERSON HILL: Ms. Kelley, are you the  
2 applicant?

3 MS. KELLEY: I am.

4 CHAIRPERSON HILL: Okay. Are you going to be  
5 presenting to us, Ms. Kelley?

6 MS. KELLEY: I'm here to answer any questions that  
7 you may have about the application.

8 CHAIRPERSON HILL: Okay.

9 MS. KELLEY: Yes, sir.

10 CHAIRPERSON HILL: Is Ms. Brown here with you? Is  
11 that who's with us?

12 MS. KELLEY: Yes.

13 CHAIRPERSON HILL: And who is Ms. Brown?

14 MS. BROWN: Yes.

15 CHAIRPERSON HILL: Ms. Brown, could you introduce  
16 yourself for the record, please?

17 MS. BROWN: Yes. Good morning, Mr. Chairman and  
18 members of the committee. I am part of the executive board  
19 for this proposal.

20 CHAIRPERSON HILL: Okay. All right. Ms. Kelley,  
21 if you could please tell us a little bit about your  
22 application and why you believe you're meeting the standard  
23 for us to grant the relief requested?

24 MS. KELLEY: Sure. So --

25 CHAIRPERSON HILL: Hold on, one thing. So, then,

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1 you also just submitted a new burden of proof, correct?

2 MS. KELLEY: I did. I did, after I'm speaking to  
3 someone, they emailed me about my initial burden of proof.  
4 I did not submit the correct information, so I had to  
5 resubmit it. So, the initial burden of proof did not speak  
6 to the standards specified in U 203.1(h).

7 CHAIRPERSON HILL: Okay.

8 MS. KELLEY: So, I resubmitted it directly to those  
9 standards.

10 CHAIRPERSON HILL: Okay. And the presentation that  
11 you gave to the ANC, it's the same one that's before us,  
12 correct? There's nothing different?

13 MS. KELLEY: Yes, there's nothing different. Well,  
14 actually, I didn't present to the ANC, they approved it  
15 without me presenting to them.

16 CHAIRPERSON HILL: Well, you have to submit  
17 something to the ANC.

18 MS. KELLEY: Yeah, I submitted a PowerPoint deck  
19 information about my business and the school and its mission  
20 and vision, but I didn't speak directly during the meeting.

21 CHAIRPERSON HILL: So, nothing has changed from  
22 your PowerPoint presentation that you submitted to the ANC?

23 MS. KELLEY: Exactly, no.

24 CHAIRPERSON HILL: Okay. All right. I'm going to  
25 go ahead and approve the waiver unless the board has any

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1 issues, and if so, please raise your hand. Okay. All right.  
2 I'm going to go ahead and allow that into the record. All  
3 right. Ms. Kelley, you can go ahead and begin.

4 MS. KELLEY: Sure, thank you. So, as stated  
5 before, we are asking for a special exemption under the R-use  
6 requirement to open up a child development center located at  
7 4501 16th Street Northwest. The hours of operation would be  
8 from Monday through Friday, 7:30 a.m. to 6:00 p.m.

9 We are asking for this exemption, even though  
10 there were other schools located at 4501 16th Street, because  
11 of the ages of the children, we had to come through the  
12 process in order to ask for the exemption.

13 The school is located in Simpson-Hamline United  
14 Methodist Church, where there's already built-out spaces for  
15 schools, because prior to me being there, there were two  
16 other schools located there. I got the opportunity to talk  
17 to the administration of the last school that occupied the  
18 space to ensure that we will be able to meet some of the  
19 standards as specified in U 203.1.

20 Beginning with the facility located in the area  
21 where there will be no objectionable traffic and unsafe  
22 conditions for picking up and dropping off, as stated in  
23 Exhibit Number 28, we have outlined plans for parents to drop  
24 off students and be able to pick them up without causing any  
25 unsafe traffic conditions. That has been uploaded to my

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1 file.

2           Based on the previous school being there, they  
3 have already got approval from DDOT in order to put up no  
4 parking signs during specific hours of the school day. And  
5 so, we will continue to utilize that in order to ensure there  
6 is safe pick-up and drop-off procedures.

7           The offsite play area that we'll utilize during  
8 the day, when weather is permitted, is about six-minutes  
9 walking distance from the facility. We plan to utilize  
10 Upshur Park. We hope to utilize streets where there's less  
11 traffic, sufficient sidewalk space, so that the caregivers  
12 and staff are able to walk students from the school to Upshur  
13 Park in order to utilize that play area space.

14           CHAIRPERSON HILL: Okay. Ms. Kelley, you're aware,  
15 I guess, of the condition that the Office of Planning has put  
16 forward in terms of no more than 31 students, 2 to 12 years  
17 of age, staff will be limited to no more than six person,  
18 hours limited to 7:30 a.m. to 6:00 p.m. Monday through  
19 Friday?

20           MS. KELLEY: Yes.

21           CHAIRPERSON HILL: And you're in agreement with  
22 those conditions?

23           MS. KELLEY: Yes, that's my initial application.  
24 Speaking with the board, if we decide to expand that, we will  
25 just come back through the process. But that is our first

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1 initial numbers of students and also staff.

2 CHAIRPERSON HILL: Okay. Does the board have any  
3 questions for the applicant? No? All right. I'm going to  
4 turn to the Office of Planning.

5 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
6 members of the BZA. This is Maxine Brown-Roberts  
7 representing the Office of Planning on BZA Case 20337. The  
8 applicant requests a special exception for a child  
9 development center under Subtitle U Section 203.1(h).

10 As noted in our report, there is an assigned drop-  
11 off/pick-up area with specified times to accommodate the  
12 children coming to the center and should not have a  
13 significant impact on traffic in the area and should not be  
14 unsafe.

15 In addition to the onsite play area, as the  
16 applicant said, the children will be taken to the Upshur Park  
17 at 4300 Arkansas Avenue. And then, there is no special  
18 recommendation as there are no outside changes to the  
19 building or the property. There are no other child  
20 development centers within a thousand feet, as stated by the  
21 applicant.

22 The Office of Planning therefore recommends  
23 approval of the special exception. We also recommend  
24 consideration of the conditions outlined in our report.  
25 Thank you, Mr. Chairman, and I'm available for questions.

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1 CHAIRPERSON HILL: Okay. Ms. Brown-Roberts, just  
2 a couple of questions. For one, could you speak to the  
3 general intent of the zoning regulations and how they're kind  
4 of meeting those, if you wouldn't mind? And then, also, in  
5 terms of the thousand feet, it sounds like there was one  
6 1,060 feet away?

7 MS. BROWN-ROBERTS: Pardon me? I didn't hear the  
8 last part of the question.

9 CHAIRPERSON HILL: First, could you speak to some  
10 of the general intent of the zoning regs, in your opinion?  
11 And then, second, there appears to be another center 1,060  
12 feet away, does that concern the Office of Planning?

13 MS. BROWN-ROBERTS: In answer to the last question,  
14 no. I think that with the specified drop-off area, which is  
15 assigned, and the number of children, I don't think that  
16 there would be that impact on the traffic. In relation to  
17 the general specifications, the development or the child  
18 development center will not have an impact on adjacent  
19 properties.

20 As you can see from the pictures, the building is  
21 an L-shaped building and the child development center is  
22 within one wing of the L-shape. And therefore, where the  
23 children will be outside will be sort of buffered from the  
24 adjacent residential area.

25 And it won't have any impact on the light and air,

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1 because there's not going to be any additions to the  
2 property. And therefore, we think that the proposal meets  
3 those regulations.

4 CHAIRPERSON HILL: Okay. Does the board have any  
5 questions for the Office of Planning?

6 VICE CHAIRPERSON JOHN: I have a question, but for  
7 the applicant. I forgot to ask where the pick-up lines would  
8 be. Would that be on the side street, not on 16th Street?

9 MS. KELLEY: Yes, Ms. John, it will be on the  
10 Allison Street side.

11 VICE CHAIRPERSON JOHN: Okay.

12 MS. KELLEY: That's where the signs are currently  
13 located, right in front of the entrance to the school.

14 VICE CHAIRPERSON JOHN: Okay, thank you.

15 MS. KELLEY: You're welcome.

16 CHAIRPERSON HILL: Okay. Anyone else?

17 MEMBER SMITH: To that point, and I'm asking  
18 questions of Ms. Brown-Roberts, would that pick-up and drop-  
19 off point be kept on record in the OZ? Who keeps that on  
20 record?

21 MS. BROWN-ROBERTS: Who --

22 (Simultaneous speaking.)

23 MS. BROWN-ROBERTS: I'm not understanding. You're

24 --

25 MEMBER SMITH: Okay.

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1 MS. BROWN-ROBERTS: -- asking the --

2 MEMBER SMITH: I was also looking for the pick-up  
3 and drop-off plan, I didn't see it, so I'm glad Ms. John  
4 asked the question. But my question is, would that pick-up  
5 and drop-off point be kept on record somewhere with DCRA or  
6 somewhere to validate it in the future?

7 MS. BROWN-ROBERTS: It's usually -- DDOT is the one  
8 who usually enforces it and they have that in their record.  
9 Because when they go for the building permit, when they go  
10 for their permit, that will also be assessed. And also, as  
11 a child development center, OSSE also looks at that.

12 MEMBER SMITH: Okay. Thanks for the clarification.

13 MS. BROWN-ROBERTS: Okay.

14 CHAIRPERSON HILL: Okay. Does the applicant have  
15 any questions for the Office of Planning?

16 MS. KELLEY: No, I don't. Thank you.

17 CHAIRPERSON HILL: Mr. Young, is there anyone  
18 wishing to speak?

19 MR. YOUNG: We do, we have one person signed up.

20 CHAIRPERSON HILL: Okay. If you could please allow  
21 them into the hearing room. Hello, can the witness hear me?

22 REV. MERCER-STATEN: Good morning, I can hear you  
23 well, thank you.

24 CHAIRPERSON HILL: Thank you.

25 REV. MERCER-STATEN: Okay. I am Reverend Dr.

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1 Yvonne Mercer-Staton. I'm the pastor at Simpson-Hamline  
2 United Methodist Church, where Ms. Ayanna Kelley is seeking  
3 permission for her school.

4 I'd just like to offer that one of the reasons the  
5 school has not had difficulty going through the process is  
6 because our church has been working with the ANC and all of  
7 the other organizations and we have successfully become good  
8 neighbors in our community and, therefore, there have not  
9 been any objections raised to the school being serviced out  
10 of our church.

11 We worked with Ms. Kelley for almost a year and  
12 a half, to make sure that her church brings clear the vision  
13 that we have offered to our community. We've had two other  
14 schools in our facility and we hold a high standard for those  
15 people who bring schools into our facility, because of our  
16 good neighbor relationship.

17 CHAIRPERSON HILL: Well, thank you, Reverend.

18 REV. MERCER-STATON: Thank you for your time.

19 CHAIRPERSON HILL: Thank you.

20 REV. MERCER-STATON: I thank you for your time.

21 CHAIRPERSON HILL: Thank you. Welcome. Can you  
22 hear me?

23 REV. MERCER-STATON: Thank you. Yes, I hear you  
24 fine, thank you.

25 CHAIRPERSON HILL: Happy holidays.

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1 REV. MERCER-STATEN: And the very same to you, and  
2 to all of you.

3 CHAIRPERSON HILL: Yeah. Crazy holiday season,  
4 huh?

5 REV. MERCER-STATEN: Oh my, oh my.

6 CHAIRPERSON HILL: Are you doing everything online?

7 REV. MERCER-STATEN: We're doing everything online.  
8 We're good neighbors. Everything online.

9 CHAIRPERSON HILL: I'm sure you're good neighbors.  
10 All right. Does anybody have any questions for the Reverend?  
11 No? All right. Does the applicant have any questions for  
12 the Reverend?

13 MS. KELLEY: I don't, thank you.

14 CHAIRPERSON HILL: Okay. All right. Reverend,  
15 thank you.

16 REV. MERCER-STATEN: Thank you, sir.

17 CHAIRPERSON HILL: All right. Let's see. Mr.  
18 Young -- okay. Does the applicant have anything they would  
19 like to add at the end?

20 MS. KELLEY: No, I just want to thank everyone for  
21 their time, for hearing this case, and happy holidays.

22 CHAIRPERSON HILL: Happy holidays. All right. I'm  
23 going to close the record and the hearing and excuse everyone  
24 from the hearing room. Okay. Let's see.

25 So, I'm going to go ahead and start. I did not

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1 have an issue with the application. I thought they put a  
2 good presentation together, in terms of how they're meeting  
3 the standard, in terms of any concerns that I might have with  
4 granting this relief.

5 I also would agree with the analysis of the Office  
6 of Planning, as well as that of the ANC. There was, I guess,  
7 some conditions that the Office of Planning had put forth  
8 that I would also agree with, in terms of mitigation of any  
9 adverse impact. And I will be voting in favor.

10 Mr. Turnbull, Commissioner, would you like to add  
11 anything?

12 MEMBER TURNBULL: I would agree with your analysis,  
13 Mr. Chair. Wouldn't mind going to this church, it's a  
14 beautiful looking building. It's a really wonderful daycare  
15 to have in this building.

16 I would agree with the Office of Planning's  
17 analysis also and would include their recommendations as  
18 conditions for the order. I know you were concerned about  
19 the only 1,060 feet and they're just like 60 feet over the  
20 1,000, but I think Office of Planning gave a pretty good  
21 response. And so, I would be voting in favor of this also.

22 CHAIRPERSON HILL: Okay. Mr. Smith?

23 MEMBER SMITH: I agree with Mr. Turnbull's  
24 recommendations. I do believe that OP has provided excellent  
25 analysis on some of my concerns as it relates to your same

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1 concern, Mr. Chairman, about the similar use within 1,060  
2 feet of the proposed use.

3           So, I believe that the report was excellent in  
4 explaining or laying out why the OP recommends the relief  
5 requested. And I will also support OP's position and support  
6 the application.

7           CHAIRPERSON HILL: Thank you. Vice Chair John?

8           VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.  
9 I agree with all of the comments so far and I would just like  
10 to add, it's refreshing to have a very straightforward  
11 application for a child development center. I am familiar  
12 with that church and I used to go there at one point, and I  
13 think the facility is a really good place for a child  
14 development center.

15           And so, I support the application. And I agree  
16 with OP's analysis, DDOT's analysis, and I want to thank the  
17 pastor for coming to speak on behalf of the applicant and  
18 endorsing the good neighbor policy, which we do here at the  
19 board.

20           CHAIRPERSON HILL: Great. Thank you, Ms. John.  
21 All right. I'm going to go ahead and make a motion then to  
22 approve Application Number 20337, as captioned and read by  
23 the secretary, and ask for a second, Ms. John?

24           VICE CHAIRPERSON JOHN: Second.

25           CHAIRPERSON HILL: The motion has been made and

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1 seconded. Mr. Moy, could you please take a roll call vote?

2 MR. MOY: Thank you, Mr. Chairman. So, when I call  
3 your name, if you would please respond with a yes, no, or  
4 abstain to the motion made by Chairman Hill to approve the  
5 application along with the Office of Planning's conditions.  
6 The motion is seconded by Vice Chair John. Zoning  
7 Commissioner Michael Turnbull?

8 MEMBER TURNBULL: Yes.

9 MR. MOY: Mr. Smith?

10 MEMBER SMITH: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIRPERSON JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: And we have a board seat vacant. Staff  
16 would record the vote as 4-0-1, and this is on the motion  
17 made by Chairman Hill to approve the application for the  
18 relief requested along with the Office of Planning's  
19 conditions, seconded by Vice Chair John, also in support Mr.  
20 Smith and Zoning Commissioner Michael Turnbull, board seat  
21 vacant. Motion carries, 4-0-1.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. All right.  
23 Let's take a break, okay? And then, we'll come back. Let's  
24 maybe take 15 minutes. Thank you.

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

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1 record at 11:12 a.m. and resumed at 11:34 a.m.)

2 CHAIRPERSON HILL: All right. Mr. Moy, you can  
3 call our next case and call us back in when you like.

4 MR. MOY: Thank you, Mr. Chairman. The BZA is back  
5 in session and the time is at or about 11:35 a.m.

6 The next case application before the board is  
7 Application Number 20376 of 210 Varnum Street Northwest, LLC,  
8 as amended, for special exceptions under the new residential  
9 development requirements of Subtitle U Section 421.1,  
10 Subtitle F Section 5201 from the side yard requirements of  
11 Subtitle F Section 306.2(a), and under Subtitle C Section  
12 1504.1 from the penthouse requirements of Subtitle C Sections  
13 1500.6 through 1500.10 and Subtitle C Section 1502, to  
14 convert the existing principal dwelling unit into a four-unit  
15 apartment house. This is in the RA-1 Zone at 210 Varnum  
16 Street Northwest, Square 3317, Lot 104.

17 And there are a couple of preliminary matters, Mr.  
18 Chairman.

19 CHAIRPERSON HILL: Okay. All right. Good morning,  
20 Ms. Moldenhauer. Could you introduce yourself, please? And  
21 could everyone mute themselves unless they're speaking? It's  
22 just kind of -- there's a bunch of gargle stuff. Thank you.  
23 Ms. Moldenhauer, could you please introduce yourself?

24 MS. MOLDENHAUER: Good morning, Chairman Hill and  
25 members of the board. My name is Meridith Moldenhauer from

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1 the Law Firm of Cozen O'Connor, and here today on behalf of  
2 the applicant.

3 CHAIRPERSON HILL: Okay, great. And who is with  
4 you, Ms. Moldenhauer?

5 MS. MOLDENHAUER: I have two representatives of the  
6 applicant. They can unmute themselves and introduce  
7 themselves.

8 CHAIRPERSON HILL: Okay.

9 MR. FAMIGLIETTI: Can anybody hear me?

10 CHAIRPERSON HILL: Yes.

11 MR. FAMIGLIETTI: Okay. My name is Allen  
12 Famiglietti, I'm one of the owners of 210 Varnum.

13 CHAIRPERSON HILL: Okay.

14 MR. PALMER: And I'm John Palmer, and I'm one of  
15 the owners of 210 Varnum as well.

16 CHAIRPERSON HILL: Okay. And Commissioner Goodman,  
17 is that you?

18 MR. GOODMAN: That is me again, yes.

19 CHAIRPERSON HILL: If you could introduce yourself  
20 for the record, please?

21 MR. GOODMAN: Sure. Commissioner Goodman, SMD  
22 4C10.

23 CHAIRPERSON HILL: Okay, great. Thank you,  
24 welcome, Commissioner. Ms. Moldenhauer, you can go ahead and  
25 walk us through the application. Before you do, I guess we

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1 can talk about some of the preliminary issues. But also --  
2 well, let's do the preliminary issues first. What is it --  
3 you're asking for a waiver or no?

4 MS. MOLDENHAUER: Yes, Chairman Hill. We're asking  
5 for two waivers. One, a waiver from the 21-day requirement  
6 to add two areas relief, based on communication with the  
7 Office of Planning. Those are areas of relief for the side  
8 yard setback requirement, as well as relief from the  
9 penthouse setback requirement. We have noticed the property  
10 with those two areas of relief.

11 We have also informed the ANC. Their resolution  
12 incorporates and supports those two new areas of relief. And  
13 the Office of Planning's report does as well. So, that is  
14 one request that we are making. I'll answer any questions  
15 about that before going on to the second waiver.

16 CHAIRPERSON HILL: Okay. I mean, again, this is  
17 the same, as you said, application which you put forth before  
18 the ANC, correct?

19 MS. MOLDENHAUER: Correct.

20 CHAIRPERSON HILL: Okay. Does the board have any  
21 issues with granting this waiver? And if so, please raise  
22 your hand. I do not as well, I think it is fine, so I'm  
23 going to go ahead and grant the waiver. Ms. Moldenhauer,  
24 what's the next issue?

25 MS. MOLDENHAUER: The second issue is that under

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1 Subtitle U 421.4, the RA-1 special exception references the  
2 need for the applicant to provide the board with a grading  
3 plan. We were informed that the Office of Zoning deemed our  
4 application deficient after the period that is required under  
5 Section Y 400.1, and we then added a request to waive that  
6 section.

7           We believe that section can be waived under Zoning  
8 Section Y 101.9, which allows the board to waive any sections  
9 for good cause shown in the subtitle. And we would say that,  
10 legally speaking, what you have here is you have what's  
11 called like a Russian doll.

12           Section Y 101.9 incorporates and allows you to  
13 waive any of the subsections of that title. Part of that  
14 title is Section Y 300.2, which says that the Office of  
15 Zoning deemed the application complete. In addition to that,  
16 there is Section 300.8(e), which then references the special  
17 exception requirements under Section 901 and, obviously, this  
18 is one of the subsection requirements.

19           And so, the board has the ability either to, one,  
20 which I believe the board has for many, many years, looked  
21 at Section Y 101.9 as granting them the ability to grant this  
22 type of relief, to either, one, waive the need to have a  
23 grading plan and deem the application complete, which is what  
24 is Section Y 300.2, or the board could look at the  
25 application and find that multiple documents that we have in

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1 the application, since the term grading plan is not a  
2 specifically defined term, that the elevations provided in  
3 the plan are sufficient to satisfy the grading requirements  
4 of this section. So, I think the board has those two options  
5 here today.

6 CHAIRPERSON HILL: Okay. I was a little -- as I  
7 was kind of reviewing the record and kind of thinking through  
8 something, do you have -- is there a lot of grading that is  
9 going on?

10 MS. MOLDENHAUER: There is zero grading occurring.  
11 There is no change in the grading. You can look at the  
12 Google image of the property. The front elevation is not  
13 changing at all and the rear elevation is staying the same.

14 You can look at the application, sorry, the  
15 building permit page, if you want to look at what's in the  
16 application, Exhibit, the architectural plan, which is  
17 Exhibit 6 A0300, so that's A0300, which is Page 14 of the  
18 Exhibit 6, shows the existing grade and finished grade as  
19 being the exact same. Same --

20 CHAIRPERSON HILL: I understand, just give me a  
21 second. Okay. I mean, since there's no change in grading,  
22 I mean, I understand that we are supposed to be getting a  
23 grading plan, I mean, I suppose if the board's comfortable,  
24 I'm comfortable waiving the grading plan requirements due to  
25 the fact that there's not any grading taking place.

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1           However, I will ask my other fellow board members  
2 if they have any issues with that? And if so, raise your  
3 hand. Mr. Turnbull?

4           MEMBER TURNBULL: Ms. Moldenhauer, basically, based  
5 upon your comments, you're saying since there's no change in  
6 grade, there is no impact on the adjoining properties by what  
7 you're doing, as far as drainage, water, or any other issues,  
8 environmental issues, that could impact adjoining properties?

9           MS. ACEVEDO: Correct. These are all rowhomes and  
10 there's no change in grade that would impact any stormwater  
11 issues.

12           MEMBER TURNBULL: Okay. Thank you.

13           CHAIRPERSON HILL: Anyone else from the board?

14           VICE CHAIRPERSON JOHN: So, I am fine with the  
15 representation that there's no change in the grading and so,  
16 the plans might not be required. But I'm not okay with the  
17 attempt to get a waiver under Y 101.9, which I find a bit  
18 stretched. So, I am fine with justifying this based on the  
19 lack of any grading change.

20           CHAIRPERSON HILL: Okay. So, if that's the case,  
21 then, and I'm turning to OAG, am I granting anything, then?

22           MS. CAIN: I think, Commissioner John or Board  
23 Member John's approach is probably a better way for the board  
24 to proceed, to determine based on the evidence that the  
25 applicant has presented that the grading plan isn't needed.

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1 I don't think waiving it, per se, would be the  
2 best way to proceed, but I think the board can determine  
3 that, for the purposes of this application, based on the fact  
4 that there is not going to be a change in the grading, that  
5 it's not required for the board to reach a decision.

6 CHAIRPERSON HILL: Okay. Then, we'll see what we  
7 get. We'll go ahead and go through the application and talk  
8 about the grading plan, if we need it or not, during the  
9 process of the application. So, Ms. Moldenhauer, if you can  
10 go ahead and walk us through your application as to how  
11 you're meeting the standard, and you can begin whenever you'd  
12 like.

13 MS. MOLDENHAUER: Absolutely. If Mr. Young can  
14 bring up the PowerPoint slide that was uploaded into the  
15 record on Monday? Okay. Can we go to the third slide, I  
16 believe? The second one was preliminary matters, which  
17 you've already addressed.

18 The property is located at 210 Varnum Street,  
19 which is located in the RA-1 Zone. Next slide.

20 The project overview is that the project proposed  
21 is to convert an existing structure into a new four-unit  
22 apartment building. This project filed a building permit  
23 application on October 10, 2019. On June 30, 2020, all of  
24 the various DCRA disciplines, including zoning review, had  
25 been conducted and approved on the proposed building permit

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1 plans. That's the permit set that you see on Exhibit 6 in  
2 the record.

3           On July 1, the board is aware, they made, you, the  
4 board, made a decision in BZA Appeal 20266, entitled Michael  
5 Yates, and overruled the Zoning Administrator's guidance that  
6 had been in existence regarding the RA-1 new apartment  
7 regulations.

8           Not until then -- then, following after that  
9 decision, on July 7, the applicant was informed to pay and  
10 file for a building permit under the -- to file a building  
11 permit application. They did so. Not until July 31 did DCRA  
12 inform the applicant that due to the July 1 decision, that  
13 the application would need to be filed for the BZA. Next  
14 slide.

15           This is an image of the proposed project. Next  
16 slide.

17           The applicant has worked extensively and has  
18 obtained a no-objection report from DDOT, in your exhibits  
19 as 43. They've worked and obtained support from the Office  
20 of Planning for all three areas of relief, as Exhibit 47.  
21 And they've also worked with the ANC. They had an unsigned  
22 version of their resolution at 49, but now have a signed  
23 version at Exhibit 52. Next slide.

24           This is an image of the site plan. You can see  
25 this is a row structure. The back half of the property has

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1 two compliant parking spaces, as well as there's a box behind  
2 or kind of to the north to the parking spaces, which is an  
3 image for enclosed trash, as discussed with both the ANC and  
4 Office of Planning. The walkway between the parking spaces  
5 and the stairs will be pervious. And next slide.

6 You can see from the plans that the proposal is  
7 to construct four units, with two bedrooms and two baths  
8 each. Next slide.

9 The request here is for three areas of relief.  
10 Special exception relief to construct a new residential  
11 apartment building. Number two, special exception relief  
12 under Subtitle F 5201.1 for side yard requirements set forth  
13 in Subtitle F 306.2. And the third is special exception  
14 relief pursuant to Subtitle C 1504.1 for the penthouse  
15 setback requirement at Subtitle C 1502.1(b). Next slide.

16 We believe that we have satisfied the requirements  
17 under the special exception requirement for the RA-1 new  
18 apartment building regulations, based on the fact that the  
19 D.C. public school utilization rates for the existing and  
20 planned areas can accommodate the number of expected students  
21 who may reside in the new project.

22 Also, given the proximity of two bus routes and  
23 the Georgia Avenue Metro Station, as well as onsite parking,  
24 the Fort Totten Park, and the Petworth Playground, we submit  
25 that the public street, recreations, and other services can

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1 also accommodate residents of the new project and that the  
2 project is compatible with the surrounding neighborhoods.  
3 Next slide.

4           We now talk about the side yard relief. The side  
5 yard relief identifies that for a single-family home, no side  
6 yard is required. The existing building was a single-family  
7 home and, thus, compliant. If and when this board grants  
8 approval for the new apartment use, it would then, under  
9 Subtitle F 306.2(a) two side yards. To demolish the existing  
10 structure and comply with two side yards is infeasible, given  
11 that the property is only 17.8 feet wide.

12           The fact that the existing property has no side  
13 yard and as you can see from the images below, this is a  
14 rowhome block, the property is located in the middle of the  
15 block, and to create two on the property would also not be  
16 consistent with the zone or the neighborhood. Next slide.

17           Looking at the penthouse setback relief.  
18 Penthouse setback relief provides the following criteria for  
19 evaluating penthouse setback relief. Whether strict  
20 application of the requirements of this chapter would result  
21 in construction that is unduly restrictive and unreasonable.

22           And we believe that based on the earlier  
23 statements provided and what was in the record, along with  
24 the project documentation, that modifying the plans at this  
25 current stage would be unreasonable and would be unduly

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1 restrictive for the application. Two, that relief requested  
2 would result in a better design for the roof structure  
3 without appearing to be extended from the building below.

4           Given the long nature of the property and the fact  
5 that the design does set back from the front of Varnum  
6 Street, which is the street-facing portion, we believe we  
7 comply with this section. Relief requested would result in  
8 a roof structure that is less visible and intrusive.

9           Same there, in regards to the fact that this is  
10 set back from Varnum Street, which is your street-facing  
11 portion, and the setback from the rear is quite extensive  
12 from the alley. Additionally, that the intent and the  
13 purpose of this chapter should not be materially impact and  
14 we believe that, given the above, that it is not. Next  
15 slide.

16           So, looking at this, this is an image of the  
17 penthouse. So, you can see, I know it's kind of hard to see,  
18 and I don't know if I can provide an arrow, but there's a  
19 yellow section, which is close to the rear, next to the  
20 bathroom on the penthouse, that small portion that is  
21 highlighted in yellow on the right-hand side of the image  
22 that we're all looking at is the small area of relief that  
23 we are requesting.

24           The front setback is compliant. The majority of  
25 the rear penthouse setback is compliant, off of the deck,

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1 which you can see to the left-hand side of this image. The  
2 area that we are asking for relief here is off of a court,  
3 which has an existing stair that goes all the way up to the  
4 floor below. And so, that stair does create an image in  
5 which we believe will have an appearance that will be less  
6 intrusive in regards to the setback relief requested.

7           And as indicated, the setback relief would only  
8 be visible from the rear alley, which is more than 83 feet  
9 away from the project. And given the permitting history and  
10 the extensive delay that has already incurred, compliance  
11 would be unreasonable and extremely challenging. Next slide.

12           We believe that, under the overall special  
13 exception standard, that we comply and that the new apartment  
14 relief, the side yard relief, and the penthouse relief is in  
15 harmony with the general purpose and intent of the zoning  
16 regulations.

17           The RA-1 Zone is intended for predominately  
18 developments of low and moderate density, including low-rise  
19 apartments. The footprint here is staying primarily the  
20 exact same, it's only adding a hundred square feet and it  
21 will be in line with abutting properties.

22           And if you think back to the first image that we  
23 showed of the property, there's currently a projection on the  
24 front of the property that makes it not in keeping with the  
25 street face and design of the current rowhomes. That will

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1 be removed and we believe that the design will be more  
2 consistent with the nearby community and rowhomes. Granting  
3 the request for relief would not tend to adversely affect the  
4 neighboring properties.

5           We've had extensive community involvement. We had  
6 a community meeting in which individuals from the community  
7 engaged and discussed the project, and the abutting neighbor  
8 indicated that she was supportive during that meeting. There  
9 are no letters of opposition in the record. And I believe  
10 the next slide is the end of our presentation. And we would  
11 be available for any questions.

12           CHAIRPERSON HILL: Okay. The -- let's see. The --  
13 does the board have any questions for the applicant?

14           VICE CHAIRPERSON JOHN: Ms. Moldenhauer, do we need  
15 relief from two side yards or one side yard? I believe  
16 there's a requirement that if there are a certain number of  
17 units per floor, that would affect the number of side yards  
18 required.

19           MS. MOLDENHAUER: Yes. So, again, if it's a  
20 single-family home, you have zero side yards required.  
21 However, if it is an apartment building, so three or more  
22 units, you're required to have two side yards. The project  
23 has zero side yards. So, yes, you'd be asking for relief  
24 from both side yards, but from the overall requirement of  
25 having two side yards.

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1 VICE CHAIRPERSON JOHN: So, maybe I'll ask OAG to  
2 chime in, because I understand it would be three units per  
3 floor which would kick in for the second side yard for the  
4 apartment building. But, I mean, that would help the  
5 project, not increase the requirement. It would decrease the  
6 requirement to one side yard.

7 MS. CAIN: Yes, our understanding of F 306.2(a),  
8 one side yard is required, unless the building is providing  
9 multiple dwelling units that are -- it's three or more  
10 dwelling units per floor, which is what triggers the  
11 requirement for two yards.

12 I think, in this case, the applicant has sort of  
13 gone through thoroughly enough that I don't think it's a  
14 major issue, but just pointing out that that was our read of  
15 the regs. And OP may be able to weigh in on that as well.

16 VICE CHAIRPERSON JOHN: Okay. Thank you.

17 MS. MOLDENHAUER: And this was an interpretation  
18 from OP, we were happy to add the relief.

19 CHAIRPERSON HILL: Okay. Sure, Commissioner?

20 MEMBER TURNBULL: Thanks, Mr. Chair. Ms.  
21 Moldenhauer, I don't have problems with most of the relief.  
22 I'm a little bit troubled by the penthouse setback, maybe  
23 it's your explanation of it, which says that changing the  
24 penthouse at this stage of the project.

25 It sounds like it was a design problem and you

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1 want the board to fix it, and I'm troubled, I don't like  
2 hearing that. It sounds like you went through a design, have  
3 some problems and it's like, oh my gosh, we don't meet the  
4 zoning regs, we'll ask for relief from the board. Please  
5 show me the section and go through this carefully and explain  
6 to me what the problem really is.

7 MS. MOLDENHAUER: So, the problem is that, there  
8 are three factors here. One, the project was designed and  
9 deemed to be compliant by DCRA Zoning staff as compliant.  
10 We provided at the Exhibit 45, project docs -- and I'm sorry,  
11 Commissioner Turnbull, I -- if we were at the board, I could  
12 pull up an exhibit that wasn't part of my presentation, so  
13 I have to just simply reference exhibits unless possibly Mr.  
14 Young could pull something up, and maybe Mr. Young can help  
15 me with that, but I apologize, Commissioner Turnbull.

16 So, I'm going to reference exhibits and if you  
17 guys want to pull up the record --

18 CHAIRPERSON HILL: Hold on, Ms. Moldenhauer, give  
19 me a second. So, I'm just going to kind of cut a little bit  
20 to the chase, because it ties into a question, Commissioner,  
21 that I had. So, again, you guys had permits before that  
22 appeal and then, the appeal happened and then, due to the  
23 appeal, this is now before us, is that correct?

24 MS. MOLDENHAUER: Correct. Not just permits in,  
25 permits had been in, 100 percent approved.

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1 CHAIRPERSON HILL: That's okay, that's okay --

2 MS. MOLDENHAUER: Yeah.

3 CHAIRPERSON HILL: -- I'm just trying to  
4 understand. So, I don't think you need to necessarily argue  
5 that point right now. What Commissioner Turnbull's asking  
6 for is a little bit more detail as to that penthouse relief.

7 And if there is something in the record, in terms  
8 of an exhibit you can point us to to explain a little bit  
9 more of that relief, I know you have that little yellow  
10 highlighted bar, but maybe there's something in the record  
11 that shows to sight lines or anything like that with that  
12 penthouse relief. Is there anything?

13 MEMBER TURNBULL: You're right, Mr. Chair. The  
14 little plan that you were showing in your PowerPoint doesn't  
15 really explain a lot. It's hard to see that on our little  
16 tiny screens. So, if you have something bigger or something  
17 that's more telling that could maybe explain it a little bit  
18 better.

19 MS. MOLDENHAUER: Okay, let me see here. What I  
20 would -- sorry, let me --

21 CHAIRPERSON HILL: Ms. Moldenhauer? I'm going to  
22 --

23 MS. MOLDENHAUER: Yes?

24 CHAIRPERSON HILL: -- interrupt you for a second,  
25 because I know this is something that Commissioner Turnbull

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1 is curious about. And so, let me let you kind of like look  
2 around a little bit while I kind of go through this a little  
3 bit more, so that you can find some of the exhibits in terms  
4 of that penthouse relief. If that's all right with you,  
5 Commissioner?

6 MEMBER TURNBULL: Absolutely.

7 CHAIRPERSON HILL: And so, before I -- and I'll  
8 come back to the other board members to ask their questions  
9 of the applicant. Let me go ahead and first turn to the  
10 Office of Planning to hear from them, while Ms. Moldenhauer  
11 is looking for something to show Commissioner Turnbull.  
12 Office of Planning?

13 MR. COCHRAN: Thanks, Mr. Chair. Can you hear,  
14 because I can't see the video or anything? There we go.

15 CHAIRPERSON HILL: Oh, there you go.

16 MR. COCHRAN: Okay, great. I'm Steve Cochran, I'm  
17 representing the Office of Planning in Case 20376. And we  
18 do support the requested relief. It's a new four-unit  
19 apartment building in a zone that is intended for apartment  
20 buildings, even though it appears in rowhouse zones, an RA-1  
21 is apartment buildings and four units is an apartment  
22 building. We support the side yard relief.

23 To clarify, I agree with the OAG interpretation.  
24 Our first page indicates that one eight-foot, relief is  
25 needed from one eight-foot side yard. If the text indicates

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1 otherwise, I think it's simply because I didn't catch up in  
2 the text with what I caught up in on the first page.

3           So, it is just one eight-foot side yard relief.  
4 And we can go through how the relief is appropriate. It  
5 would certainly limit the house if it were -- if the side  
6 yard relief were not granted, the house could be only 9.8  
7 feet wide. This would certainly seem to be an unreasonable  
8 width for an apartment building.

9           The house does not have a side yard right now,  
10 this is just an extension of the existing form of the house,  
11 and it would be the same form if this house were continued  
12 as a single-family house with just an extension on the back.  
13 So, it's keeping with that traditional rowhouse form,  
14 especially given that it's on an alley.

15           When it comes to the penthouse relief, it is  
16 unusual. This is not typically something that we would be  
17 supporting.

18           But we think that the confluence of the rather  
19 unusual situation in which the applicant found itself after  
20 the appeal of BZA 20226, the, what would be a year and a  
21 half, almost a year and three-quarters between the time that  
22 the applicant filed for their building permit, the fact that  
23 they'd gotten all of the DCRA approvals, and then, it was  
24 just a matter of days, not even weeks, between the time that  
25 DCRA approved everything and the building permit would have

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1 been issued, in-between which the appeal occurred that  
2 changed everything for the applicant. We think that that is  
3 an exceptional situation.

4           And I think that the OP has to take some  
5 responsibility for having made this into something that  
6 needed relief in the first place, because it was only as we  
7 went through the case in writing the report, I think we were  
8 the first ones to notice that there was a need for relief  
9 from the penthouse, and this was very late in the game.

10           It doesn't seem as though granting the relief  
11 would have any appreciable negative impact on either the  
12 zoning regulations or on the nearby properties. The sights  
13 on the south side of the street, the proposed penthouse is  
14 on the north side of an open court. There is a setback  
15 already from the rear yard, it's just for this one relatively  
16 narrow open court from which there would be no setback.  
17 There are no window openings on the east adjacent structure.

18           There wouldn't be any likely undue impact on the  
19 light and air of adjacent buildings, because, well, the only  
20 thing that they would be casting shadow on might be on three  
21 weeks in the summer, when they cast a shadow on their own  
22 open court, which is already filled with, would already be  
23 filled with a staircase.

24           That very staircase actually would hide the  
25 appearance of this penthouse from the back. The only view

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1 you could get of this penthouse would be from the rear alley,  
2 not even from the side alley, because the building would be  
3 -- that open court is blocked off. And that rear alley is  
4 83 feet away. So, the impact does not seem like it would be  
5 very substantial.

6           Therefore, it wouldn't, for the most part, appear  
7 to be an extension of the existing wall. There's already  
8 precedent for this in the neighborhood. The building at 212  
9 Varnum Street is a virtual twin of this one. It was --  
10 although the applicants, the developers are different, they  
11 hired the same architect. So, that building at 212 Varnum  
12 already went up as matter-of-right, before the appeal on  
13 20226. So, again, it is just not unprecedented.

14           That sort of summarizes while we're willing to  
15 support the relief on this particular penthouse structure,  
16 and we would certainly think that it should not set a  
17 precedent for any other relief from the board, not that any  
18 board decision does set a precedent for any other one, but  
19 I just wanted to emphasize that, because I know that this one  
20 would be subject of some concern for some of the board  
21 members.

22           That -- well, there are, the ANC supports it,  
23 there are no letters of either opposition or support from any  
24 nearby neighbors. So, OP is happy to answer any questions,  
25 but that otherwise concludes our testimony.

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1           CHAIRPERSON HILL: Okay, Mr. Cochran. I guess  
2 we're kind of lucky, like, everybody who's here was on the  
3 appeal. And so, it's, at least -- yeah, Commissioner, you  
4 were on the appeal, I think.

5           MEMBER TURNBULL: Was I?

6           CHAIRPERSON HILL: Yeah, wasn't Commissioner  
7 Turnbull on the appeal?

8           MEMBER TURNBULL: Was I?

9           CHAIRPERSON HILL: I think you were.

10          MR. MOY: When the case was heard, he was --

11          CHAIRPERSON HILL: Yeah.

12          MR. MOY: -- on the appeal.

13          CHAIRPERSON HILL: Yeah, you were on the appeal.  
14 It was that case with the apartment building --

15          MEMBER TURNBULL: Oh, yes.

16          CHAIRPERSON HILL: Right. Next door to Mr. Yates'  
17 home. And so, that's -- and so, this is my question to the  
18 Office of Planning, had it not been for the appeal, this  
19 wouldn't be before us, because that would have already been  
20 approved by the Zoning Administrator, so this now changed  
21 everything and we're going to see all these again moving  
22 forward, correct, Mr. Cochran?

23          MR. COCHRAN: That's correct. And I think that --  
24 yes, it's clear from this case that an applicant in the  
25 future would know better what they have to conform to. This

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1 one just sort of slipped between the cracks, because when  
2 they started the process, there was one set of expectations,  
3 but when they finished the process, there was another set of  
4 expectations.

5 CHAIRPERSON HILL: Right, because of the appeal?

6 MR. COCHRAN: Correct.

7 CHAIRPERSON HILL: Yes. All right. So, I mean,  
8 I don't -- just kind of fleshing this out a little bit. What  
9 questions does the -- Mr. Turnbull, Commissioner Turnbull,  
10 your --

11 (Simultaneous speaking.)

12 MEMBER TURNBULL: Mr. Cochran, I don't want to beat  
13 you up on this, but two wrongs do not make a right. Just  
14 because the building next door has the same thing and now  
15 we're doing it again with this one, maybe not be precedented,  
16 but two of them don't make it right with the zoning regs.

17 I mean, the zoning regs are written for a certain  
18 way. What I don't want to see is Ms. Moldenhauer coming back  
19 in a month or so with another building just next door that  
20 does the same thing and based upon, oh, it's a precedent  
21 because it's like that in the neighborhood.

22 I just, I'm always concerned about penthouse  
23 setbacks and the relief from the look and the fact that the  
24 applicant has not come prepared to show exactly what the  
25 problem is with great representation is a bit of a pain in

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1 the neck to me. I like to see complete representation, I  
2 hope Ms. Moldenhauer understands that if she's going to do  
3 this again, we need better drawings, better graphic  
4 representation to explain what the situation was.

5 I know the appeal and everything else has been,  
6 and this whole process has gone on for so long, but it just  
7 makes me a little bit aggravated to see a process going  
8 forward on something like this with the penthouse setbacks  
9 that's not fully explained, fully vetted, and graphic  
10 representation, so that the board can easily see and look at  
11 this very carefully.

12 That's my only concern, Mr. Cochran, and I  
13 appreciate your -- I admire your work all the time, you're  
14 a great representative of the Office of Planning, but it's  
15 just a little irritating to me at times. But --

16 MR. COCHRAN: Thank you, Commissioner.

17 MEMBER TURNBULL: -- based upon what you said, I  
18 could go along with this, but I'm just a little bit  
19 frustrated.

20 MR. COCHRAN: Commissioner, I share your  
21 frustration on the graphical representations. We -- it was  
22 certainly not the best representation of what we have seen,  
23 it took a few conversations with Ms. Moldenhauer to  
24 understand what was going on. The architect should certainly  
25 be able to better illustrate a staircase, as opposed to a

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1 black rectangle in an open court.

2 MEMBER TURNBULL: Right. Okay. All right, enough  
3 said. Thank you.

4 CHAIRPERSON HILL: Ms. John? Vice Chair John?

5 VICE CHAIRPERSON JOHN: So, Mr. Cochran, I'm not  
6 trying to put you on the spot. So, my question is how did  
7 DCRA approve the penthouse setback when it was a matter-of-  
8 right permit? I mean, isn't that something that should have  
9 come to the board anyway?

10 MR. COCHRAN: I wasn't on that case. Actually,  
11 there was no case. So, I'm not privy to DCRA's thought  
12 process on approving the 212 Varnum Street building.

13 VICE CHAIRPERSON JOHN: Okay.

14 MR. COCHRAN: I don't want to speculate.

15 VICE CHAIRPERSON JOHN: Fair enough, fair enough.  
16 Thank you.

17 CHAIRPERSON HILL: Okay. Mr. Smith?

18 MEMBER SMITH: Thank you, Ms. John, for asking that  
19 question, it was actually my question as well, because it  
20 doesn't seem like the question about the penthouse relief had  
21 anything to do, it seemed like to me, with the situation that  
22 we're finding ourselves in that relates to the appeal.

23 I share the same concerns as Mr. Turnbull,  
24 especially when we're going to see a fair amount of these  
25 going forward. And this is not to beat up on you, Mr.

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1 Cochran, I think you've provided an excellent testimony of  
2 the position of OP and the reason why OP supports it.

3 But if we're going to see a fair amount of these  
4 going forward, I would also like to see better graphical  
5 representation of what we're requesting, and also, maybe some  
6 elevations that would speak to the request for this relief  
7 going forward for any particular case that may be affected  
8 by our ruling on the appeal. Other than that, I don't have  
9 any other questions.

10 CHAIRPERSON HILL: Okay. I'm going to jump around  
11 just a little bit here, and we can also always ask questions.  
12 I'm going to come back to the applicant in a minute.  
13 Commissioner, I haven't given you the opportunity to speak  
14 and give testimony, would you like to go ahead and give your  
15 testimony?

16 MR. GOODMAN: I believe you mean ANC Commissioner?

17 CHAIRPERSON HILL: Yes, sir, sorry.

18 MR. GOODMAN: Sorry, when you say commissioner a  
19 lot and --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: I know, Commissioner.  
22 Everybody's a commissioner here, but --

23 MR. GOODMAN: Yeah. How are you doing? So,  
24 Commissioner Goodman. So, this is the SMD I represent, don't  
25 want to spend too much time. We are in support of this

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1 project, due to some conditional agreements with the  
2 developer that the ANC set forward, so they have met them.

3 I say the ANC, I am here mostly, in interest to  
4 this conversation that we're having, about how this prior  
5 appeal is challenging us. We have numerous cases on your  
6 docket coming up that are relating to a lot of relief  
7 questions you're answering today, so I'm sitting in on it,  
8 particularly the side relief on rowhomes. This will not be  
9 first that's coming from my SMD, let alone 4C, so I'm very  
10 interested in hearing how that is kind of heard and decided  
11 so I can take it back to the ANC.

12 Overall, the ANC is in support of this case, but  
13 I do want to just share and echo everything else that the  
14 appeal of the Zoning Administrator's case earlier in the  
15 summer, Mr. Yates' case, has thrown a lot of our cases into  
16 an unknown area and we are challenged with how to proceed on  
17 what is required, what is not required, and a lot of these  
18 zoning nuances that we are now seeing going forward.

19 So, I'm kind of listening in and soaking in some  
20 of this, but overall, in support of their project.

21 CHAIRPERSON HILL: Commissioner Goodman, did you  
22 get your questions answered?

23 MR. GOODMAN: Yeah, I mean, I'm curious to -- I  
24 just want to hear more about -- I'm waiting for the decision,  
25 essentially, on side yard relief, because this will not be

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1 the first one coming up. So, we understand that, I think you  
2 have another one coming up next week and another in two  
3 weeks.

4 CHAIRPERSON HILL: Okay. I think they only need  
5 relief from one side yard, is what currently is being  
6 discussed, right?

7 MR. GOODMAN: Correct, yeah. And given that  
8 rowhomes and this would require razing and rebuilding an  
9 eight-foot wide plot seemingly is challenging, so I'm just  
10 mostly interested in how that is and highly encourage any  
11 kind of actual zoning language change to address this going  
12 forward, potentially. The fact that these are rowhomes, even  
13 in an RA Zone, just makes this not something that they can  
14 conform to at any point.

15 CHAIRPERSON HILL: Okay. All right. Well, that  
16 was more directed to Commissioner Turnbull. So, let's see.  
17 Commissioner Goodman, do you have any questions for the  
18 Office of Planning or anybody?

19 MR. GOODMAN: I do not, thank you.

20 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, do you  
21 have any questions for the Office of Planning?

22 MS. MOLDENHAUER: No questions for the Office of  
23 Planning. I did work in detail with Mr. Cochran when the  
24 relief for the penthouse was identified and I thank him for  
25 the time that we went back and forth on that.

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1 CHAIRPERSON HILL: Okay. And since I will put this  
2 up, I mean, it seems as though there were some things that  
3 you all seemed to agree with with the ANC. I don't  
4 necessarily think that -- I don't know what the board does  
5 in terms of like conditions. I mean, to me, they seem like  
6 almost even more -- I mean, at times we've adopted some of  
7 these, at times we haven't, in terms of the, to use Chairman  
8 Hood's good neighbor policy comment.

9 But you're in agreement with all of the items that  
10 are being requested by the ANC, correct?

11 MS. MOLDENHAUER: Correct. We have agreed and  
12 consented to all the requests that the ANC requested, and I  
13 believe that those are also in one of our submissions in  
14 writing.

15 CHAIRPERSON HILL: Okay. Commissioner Goodman,  
16 that's correct?

17 MR. GOODMAN: That is correct.

18 CHAIRPERSON HILL: Okay. All right. Okay. So,  
19 before I come back to Mr. Turnbull and Ms. Moldenhauer with  
20 the exhibit in terms of any sight lines or anything like that  
21 with the penthouse relief, Ms. John or Mr. Smith, do you have  
22 anything else before I turn back to Mr. Turnbull? Ms. John?

23 VICE CHAIRPERSON JOHN: Just one question from the  
24 applicant and the ANC. What is the exact amount that will  
25 be contributed to the Housing Trust Fund? Is it 35,000 or

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1 20,000?

2 MR. GOODMAN: Twenty, it's 5,000 per unit.

3 VICE CHAIRPERSON JOHN: Okay.

4 MR. GOODMAN: And I believe it's not necessarily  
5 Housing Production Trust Fund, we do allow it to go to a  
6 community nonprofit that's focused on building and  
7 maintaining affordable housing as well.

8 VICE CHAIRPERSON JOHN: Okay, thank you.

9 MS. MOLDENHAUER: Commissioner John, to make sure  
10 that I put a fine point on your question, it is 20,000, as  
11 requested and agreed to for the ANC, there's also a 35,000  
12 payment that is part of the penthouse addendum form that is  
13 required by the zoning regulations. That is an additional  
14 35, in addition to what the ANC -- is being agreed to for the  
15 ANC. And those funds are, obviously, in accordance with the  
16 zoning regulations and the habitable penthouse.

17 VICE CHAIRPERSON JOHN: Okay. Thank you. It was  
18 a bit confusing, so in all, we're look at \$55,000?

19 MS. MOLDENHAUER: Correct.

20 VICE CHAIRPERSON JOHN: Okay. Thanks a lot.

21 CHAIRPERSON HILL: Well, now I'm going to dig a  
22 little bit deeper, because I'm curious. So, Ms. Moldenhauer,  
23 how are you getting the 55k again?

24 MS. MOLDENHAUER: So, I'm using approximate  
25 numbers, but it's approximately 35,000 is being paid into the

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1 Housing Trust Fund, because we are building a habitable  
2 penthouse, that is required by the zoning regulations under  
3 our IZ requirements.

4 And so, as this went through DCRA for permitting  
5 review, when DCRA approved the penthouse as currently  
6 proposed, we then, the client, the applicant signed a IZ  
7 penthouse affidavit and covenant and paid already a portion  
8 of that into the Housing Trust Fund.

9 And so, then the other half will paid at the time  
10 of, I believe it's the final C of O. And so, that goes to  
11 the Housing Trust Fund. And then, in addition to that, the  
12 ANC requested 5,000 per unit. So, that is where you get the  
13 5,000 times four of the additional 20,000 that is going to  
14 an affordable community group.

15 CHAIRPERSON HILL: Right. Like, the 35k is  
16 required under zoning, right? That's how --

17 MS. MOLDENHAUER: Right.

18 CHAIRPERSON HILL: -- and the 20 is the discussions  
19 that you've had with the ANC?

20 MS. MOLDENHAUER: Yes, that is correct --

21 CHAIRPERSON HILL: Okay.

22 MS. MOLDENHAUER: -- Chairman Hill.

23 CHAIRPERSON HILL: Okay. All right. Commissioner  
24 Turnbull, I'm going to go back to you and say you had some  
25 questions for Ms. Moldenhauer. Ms. Moldenhauer, do you know

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1 what exhibits you might want to pull up?

2 MS. MOLDENHAUER: So, if we want to pull up Exhibit  
3 Number 6, which is the architectural plans, page three of the  
4 PDF, A002.

5 CHAIRPERSON HILL: Can you tell me which exhibit  
6 you're in, just so I can pull it up again? Can you repeat  
7 that, I'm sorry?

8 MS. MOLDENHAUER: Exhibit 6.

9 CHAIRPERSON HILL: Yeah?

10 MS. MOLDENHAUER: Page three of that PDF. And you  
11 have to go to the bottom right-hand corner, under -- and you  
12 have to blow it up, I would say probably blow it up to like  
13 maybe 150 or 200 percent. In the bottom right-hand corner,  
14 there is a Section 6, egress section. It's best to maybe  
15 look at it on your computer, because then you can blow up and  
16 kind of see a little bit better.

17 CHAIRPERSON HILL: Are you at A003?

18 MS. MOLDENHAUER: A002.

19 CHAIRPERSON HILL: Okay.

20 MS. MOLDENHAUER: At the bottom right-hand corner  
21 of A002, there are two section diagrams. And I think this  
22 is what Office of Planning and I kind of walked through, this  
23 probably best represents and kind of shows what's happening.  
24 Thank you --

25 CHAIRPERSON HILL: Commissioner Turnbull, are you

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1 following along here?

2 MEMBER TURNBULL: Yeah. Unfortunately, it's hard  
3 to get a -- when you're working on a Microsoft tablet and  
4 trying to blow it up, with your -- you don't get -- I mean,  
5 it's a blurred image. I mean, I understand what she's  
6 getting at, but it's --

7 MS. MOLDENHAUER: I think Mr. Young is going to  
8 pull it up on the screen here maybe and he might have better  
9 visibility. So, maybe you can click it to 200 percent, Mr.  
10 Young, if that's possible? Okay.

11 So, again, Commissioner Turnbull, I very  
12 respectfully agree and we will -- this is a unique case, but  
13 I will not -- obviously, I try to work with architects and  
14 have a high quality of images and evidence before you. I do  
15 think, though, that this does represent what is happening  
16 here and I hope that it can satisfy the members of the Board  
17 to at least see what is occurring.

18 So, as you can see on the right-hand image here,  
19 you can see that the rear design has both a projection on the  
20 back half of this, which is the deck, which is where the  
21 penthouse is compliant.

22 The area where you see that black scissor-stair  
23 almost, and I'm using a non-architectural term, so I do  
24 apologize, I'm not using -- but where you see the stair, that  
25 stair, and this may be a question of kind of what was

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1 interpreted or not, but is not deemed to be a roof below.  
2 But it is a structure below. And so, that is the area where  
3 we are not setting back from.

4 But here is this stair, which is then in and then  
5 creates an open court above the fourth floor and there is a  
6 stacked bathroom, or the bathroom that you can see there in  
7 the top image of the penthouse, off of that small portion  
8 that we're asking for penthouse setback relief. But it  
9 obviously is set back from the overall project and set back  
10 then beyond this structural stair that is located in the  
11 court for where we're asking for the relief.

12 And I hope that at least shows, one, what Office  
13 of Planning was referencing in regards to some of the  
14 conditions that they reviewed and understood, as well as kind  
15 of better provides an image of what is occurring in that  
16 black box that was part of our PowerPoint presentation.

17 CHAIRPERSON HILL: Commissioner Turnbull, can you  
18 see it?

19 MEMBER TURNBULL: Yeah, I can see it. I would  
20 suggest that, and I'll go along, I will accommodate the  
21 relief in this particular case, because of -- not because of  
22 what the applicant is showing, but because of the value of  
23 OP's report and especially the expertise of Mr. Cochran and  
24 his analysis, which I thought was very well done, but not so  
25 much because of the -- I would recommend that the applicant,

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1 in the future, on their -- when they have a special exception  
2 (audio interference) penthouse, that they show us specific  
3 drawings regarding what the relief is and indicate somehow  
4 on the drawing, either by circles or what, in section or in  
5 elevation, as Mr. Smith has said, that -- just better explain  
6 so that we would have an easier way of looking at this,  
7 rather than pulling up a little drawing like this.

8           But again, my acceptance of the relief or the  
9 accommodating their relief is mainly based upon, is going to  
10 be based upon OP's analysis and Mr. Cochran's report.

11           CHAIRPERSON HILL: Okay. All right. Thank you,  
12 Mr. Young. All right. Let's see. Mr. Young, is there  
13 anyone here wishing to testify?

14           MR. YOUNG: We did have one person signed up as  
15 undeclared, but they are not on the call. And we've had  
16 someone from staff reached out to them, but I still don't see  
17 them on here.

18           CHAIRPERSON HILL: Okay. All right. Let's see.  
19 So, I had one question, but before I get my last --

20           MR. COCHRAN: Mr. Chair?

21           CHAIRPERSON HILL: Hello?

22           MR. COCHRAN: Mr. Chair, correct --

23           CHAIRPERSON HILL: Yes?

24           MR. COCHRAN: -- the record on one thing? Thank  
25 you. I believe that I had referred to the side yard being

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1 off of an alley, it is not. This is an interior lot. I just  
2 want to correct the record to be sure of that. The report  
3 was correct, I think in my testimony I mentioned an alley and  
4 that's irrelevant, it's not there.

5 CHAIRPERSON HILL: Okay.

6 MR. COCHRAN: It's an alley in back. I had  
7 referred to the side yard as fronting on an alley, which it  
8 does not, or would not.

9 CHAIRPERSON HILL: Okay.

10 MR. COCHRAN: Thank you.

11 CHAIRPERSON HILL: All right. Thanks, Mr. Cochran.  
12 Okay. Does the Board have any final questions of anyone?  
13 Ms. John?

14 VICE CHAIRPERSON JOHN: So Ms. Moldenhauer, I was  
15 looking for the slide that shows the two off-street parking  
16 spaces and the permeable pavers, and those conditions are  
17 part of what the ANC asked for. And I just need confirmation  
18 that that's been done.

19 MS. MOLDENHAUER: It has been agreed to and done.  
20 The two parking spaces are shown on A001. And the pavers,  
21 in regards to the area between the street, the parking  
22 spaces, and the structure.

23 VICE CHAIRPERSON JOHN: Okay. Thank you.

24 CHAIRPERSON HILL: Okay. Let's see. Commissioner  
25 Goodman?

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1 MR. GOODMAN: Yes, yes.

2 CHAIRPERSON HILL: How long have you been a  
3 commissioner there?

4 MR. GOODMAN: Five years.

5 CHAIRPERSON HILL: Okay. So I guess, Commissioner,  
6 I mean, we see a lot of stuff -- well, I shouldn't say that.  
7 There are often times you guys are before us, right?

8 And I guess I'm just kind of having a little bit  
9 of a discussion with you since, I mean, if you can share this  
10 with your ANC, I mean, you all kind of have been -- what's  
11 the word? It's been -- how you've been working with people,  
12 running through projects with our Board, right, I think has  
13 been very good, in a lot of ways, that you're very active  
14 with the applicants and the application.

15 I guess what I'm trying to say is it's a unique  
16 situation, in terms of this contribution that they've been  
17 given for doing some work in your ANC. And I'm not -- I  
18 guess I'm just trying to say, it's unique to me. Like, I've  
19 been here for five years, well you've been here for five  
20 years also.

21 So, I've been here for five years, this is  
22 something new that is starting to happen with us, and I'm  
23 here every time, as well as some of these other Board  
24 members. So, I'm just kind of letting you know, I'm not  
25 necessarily -- the jury's still out on me, in terms of like

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1 how this is kind of progressing with the discussions that  
2 you're having with people there, just concerning some of the  
3 conditions that you all are having, in terms of moving  
4 forward.

5           And I'm just kind of throwing it out there, it's  
6 not necessarily (audio interference) I mean, at this point,  
7 I'm just letting you know that I don't know exactly where I  
8 am with it, okay? So, just kind of sharing that for whatever  
9 it's worth.

10           MR. GOODMAN: Yeah, appreciate it. And I'll say  
11 that the ANC recognizes that this isn't necessarily germane  
12 to the BZA, the applicant is asking something of us and  
13 they're asking our support to not go to full orders and not  
14 have this dragged out, and with that, the ANC looks to have  
15 conditions.

16           And we have a massive issue with affordable  
17 housing that's not being met. The Mayor has a goal and we're  
18 trying to work towards meeting the Mayor's objectives and  
19 bringing affordable housing into our neighborhood. So,  
20 understand you may not necessarily know whether this is  
21 something you support or not.

22           We are the first ANC commission, that we are aware  
23 of, across the District to be doing this. We do know that  
24 the Housing Committee under the DC Council is reviewing this  
25 and is interested in looking into this model. So, we are

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1 going to continue to be doing this.

2           Developers have told us that they appreciate the  
3 support of going into affordable housing and we are now on  
4 something like our twelfth case where we've had agreement  
5 with this, in addition to voluntary IZ units being added.  
6 So, we are finding it being highly successful to address the  
7 lack of affordable housing in our community.

8           CHAIRPERSON HILL: Okay. And I guess my, and I'll  
9 just -- we are having a little bit of a discussion, I  
10 suppose. I'm confined by whatever is within the regulations  
11 that I have to deal with, right? It's not what I want to see  
12 happen, it's that that's where I'm confined with, right?

13           MR. GOODMAN: Yeah, understood.

14           CHAIRPERSON HILL: So, that's all I was trying to  
15 say there. Okay.

16           MR. GOODMAN: Yeah, and we have --

17           CHAIRPERSON HILL: All right.

18           MR. GOODMAN: -- that paragraph at the bottom of  
19 our letter outlining we understand this is not within what  
20 you can consider and we just kind of outlined --

21           CHAIRPERSON HILL: Right.

22           MR. GOODMAN: -- recognizing that we are aware of  
23 this.

24           CHAIRPERSON HILL: Got it. Okay. All right.  
25 Yeah, Ms. John?

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1           VICE CHAIRPERSON JOHN: So, Mr. Commissioner, I  
2 have an issue with this as well, even though I support  
3 affordable housing, because basically the ANC is asking us  
4 to put conditions in orders that we have no authority to do.  
5 And the only reason that there's this issue is because OAG,  
6 for now, does not have the kind of support to provide full  
7 orders within a very short period of time.

8           And so, I appreciate that there is more discussion  
9 going on, but as I see it, the Board is being asked to do  
10 something repeatedly that we have no jurisdiction over. So,  
11 just wanted to throw that out there and give you my thoughts.

12           MR. GOODMAN: Yeah, I appreciate that. The  
13 historic context here is that we've come before the BZA on  
14 numerous cases and when we have opposed cases trying to look  
15 for more affordability or more interaction, inevitably, we  
16 have lost almost all of those cases in this. And we've just  
17 gotten to a point where we are tired of arguing against cases  
18 and losing, so we're looking at a way to have a negotiation  
19 and compromise at some point.

20           Prior to this, developers usually came to us very  
21 late, with the minimum 45-days' notice, we had almost no time  
22 to actually work with the developer to change the plans,  
23 because architectural drawings had already been done. And  
24 the window for a community or for the ANC to actually weigh  
25 in in these cases is so tiny, I mean, it's just not a good

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1 use of our time or your time for us to come and just fight  
2 and say, we don't want this, we don't want this, we don't  
3 want this.

4           So, we're looking to a place where we can come to  
5 an agreement and say, okay, we know we're going to lose this  
6 case, but we might as well have something that benefits our  
7 community in the long-run here and we're doing this. If you  
8 don't want to put these in your orders and agreement, that's  
9 fine. Our letter just tells you and outlines how the ANC has  
10 come to an agreement to support this case before you.

11           VICE CHAIRPERSON JOHN: Okay. Thank you for  
12 clarifying the ANC's perspective.

13           CHAIRPERSON HILL: Okay.

14           VICE CHAIRPERSON JOHN: And we appreciate your  
15 interest in affordable housing. There is a dire need right  
16 now for affordable housing, so I appreciate that.

17           CHAIRPERSON HILL: Yeah, Commissioner Goodman, and  
18 it is, I guess, we're not on different sides of the issue,  
19 per se, this is just an interesting experiment that we're  
20 starting to now see, right? Okay. All right. Let's see.  
21 All right. Anyone else?

22           It's really snowing, it's like the roads are  
23 getting covered. I'm downtown, it is not looking good. So,  
24 good thing the pandemic's going on and we don't have to go  
25 anywhere. All right. Anybody got anything else they'd like

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1 to add? No? No? Ms. Moldenhauer, you have anything you'd  
2 like to add in conclusion?

3 MS. MOLDENHAUER: No, I would just thank Office of  
4 Planning for their in-depth analysis and the ANC for their  
5 support. I would add that, obviously, we had requested that  
6 this case, given its unique timing, be expedited and,  
7 obviously, ask that the Board consider that challenging  
8 timing issue and hear the case for decision today. And,  
9 obviously, are happy to answer any other questions.

10 CHAIRPERSON HILL: Okay. Anybody else have any  
11 final thing they want? All right. All right. Well, thank  
12 you so much. Commissioner, again, thanks for showing up and  
13 helping us out to kind of talk through some of these things.  
14 Ms. Moldenhauer, you have a happy holiday. Everybody have  
15 a happy holiday and --

16 MS. MOLDENHAUER: I'll see you next week, actually,  
17 so I'll see you before the holidays.

18 CHAIRPERSON HILL: Oh, well then never mind, don't  
19 have a happy holiday. So, all right. Okay. Bye-bye. I'm  
20 closing the record, I'm closing the hearing. Okay. If you  
21 can, Mr. Young, excuse everyone? Thank you.

22 I can kind of start and you all can kind of let  
23 me know. I mean, I think this is interesting, again, for a  
24 variety of reasons that we've already kind of started to talk  
25 about. One of them is that this appeal that happened, that

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1 Commissioner Turnbull, you were on, that now all these things  
2 are going to kind of come --

3 MEMBER TURNBULL: I was having a senior moment.  
4 I --

5 CHAIRPERSON HILL: Right.

6 MEMBER TURNBULL: -- remember now.

7 CHAIRPERSON HILL: Right. So, these things are now  
8 going to come before us and I find it a little bit unique  
9 that, again, this one got caught in that little bit of a  
10 window where it wasn't going to come before us, the appeal  
11 happened, now it came before us, right?

12 And so, actually, I could have even asked the  
13 commissioner, I would have been interested in whether it came  
14 before them or not then, except for -- if it were not for the  
15 appeal. I would -- the issue, Commissioner, that you're  
16 bringing up in terms of the penthouse relief, I also know  
17 that that would have been possibly presented differently to  
18 us, probably, had it not been for the timing of this.

19 And so, I would be comfortable with the analysis  
20 that the Office of Planning has provided, in terms of the  
21 penthouse relief. I think that normally we would see like  
22 some kind of sight line diagram or something like that that  
23 shows exactly what that relief looks like from wherever it  
24 is.

25 The fact that it's on the back of the property

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1 makes me less concerned than if it were in the front. And  
2 so, I would, I guess, be in agreement with the analysis that  
3 the Office of Planning has provided, not only to the  
4 penthouse relief, but the other relief that has also been  
5 requested.

6           And so, I do, as I mentioned with the ANC, I mean,  
7 I think that I would be in agreement with their analysis and  
8 I'm glad that they were able to come to a agreement with the  
9 applicant, in terms of their concerns. I've kind of  
10 expressed some of my thoughts on how the negotiations kind  
11 of are working.

12           I guess it is actually good that people are going  
13 to the ANCs earlier, rather than later, I suppose, that's a  
14 good thing. But anyway, I've kind of expressed my thoughts.  
15 I would agree with the argument that the applicant has made  
16 in terms of how they're meeting the relief being requested  
17 and I'm going to vote to approve.

18           Commissioner Turnbull?

19           MEMBER TURNBULL: I would agree with you, Mr.  
20 Chair, and I would concur with your comments. I guess,  
21 you're right, the relief on the back is really minimal in one  
22 sense. I guess my concern or what sort of is frustrating is  
23 the process that an applicant goes through to come before us  
24 and present whatever special exception or variances they've  
25 got.

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1           But especially on something like this or in a  
2 penthouse or in any kind of a special exception where it's  
3 visual and you have to see it, you're right, seeing a sight  
4 line diagram or something more representative that would tell  
5 the story better, that would make it easier for everyone to  
6 look at, rather than going back to a set of drawings and to  
7 a minimal view of the thing.

8           I think that that's my issue, is that it's mainly  
9 a presentation issue and an explanation issue as how an  
10 applicant comes before us and actually shows us exactly what  
11 they mean, rather than us having to pull up multiple drawings  
12 to try to figure it out. I hate to have to do their work.  
13 I mean, they hire architects, they've got either an attorney  
14 or not on their -- working for them, you'd think they would  
15 come before us a little bit more prepared.

16           But Mr. Cochran gave an excellent analysis and  
17 explanation and I'm quite satisfied with that. And I think  
18 the other relief makes sense. I mean, you can't have an 11-  
19 foot building or a nine-foot building by allowing for the  
20 side yard.

21           So, some of it becomes like a no-brainer, that you  
22 would automatically give relief to the side yard requirement,  
23 that just makes sense from a practical standpoint to build  
24 something. It's just some of these other areas, the  
25 penthouse relief, it's just an annoying little glitch in the

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1 system that the applicants need to do a better job on. But  
2 I would concur with everything you said and I would be ready  
3 to move forward on this.

4 CHAIRPERSON HILL: Thank you, Commissioner. Mr.  
5 Smith?

6 MEMBER SMITH: I agree with everything Mr. Turnbull  
7 said. And I hope Mr. Cochran is listening, I would like to  
8 thank him again for the very thorough testimony that he  
9 provided, explaining the full context of the request or the  
10 reason why OP is comfortable with granting this relief.

11 In regards to the setback provisions, and I guess  
12 I'll get on my soapbox a little bit, I understand that this  
13 isn't our purview and I hope that Chairman Hood is listening,  
14 somebody probably needs to look at that provision about  
15 setbacks as it relates to the number of units per floor.

16 I think that's probably the wrong approach, it  
17 probably needs to be based on square footage of each  
18 individual unit, not so much a question about how many units  
19 are per floor.

20 I don't think it's -- I think we can get at the  
21 issue or that -- we can get at that setback in a different  
22 way, because as presented, as shown here, we're going to see  
23 a lot of these cases come before us for special exceptions  
24 simply because of the number of units that are on each floor.

25 Other than that, I support, based on what Chairman

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1 Hood -- not Chairman Hood, word vomit, maybe because it's  
2 snowing, I don't know -- Chairman Hill had said and Mr.  
3 Turnbull had said, I would be in support of the request.

4 CHAIRPERSON HILL: Vice Chair John?

5 VICE CHAIRPERSON JOHN: I just love coming in at  
6 the end, Mr. Chairman, because you have all made it so easy  
7 for me. I really don't have a lot to add.

8 I appreciate Mr. Cochran's report, it was really  
9 very helpful. It was like a lesson in penthouse setbacks and  
10 how to look at them and evaluate the impact they have on the  
11 character of the neighborhood and privacy and matters that  
12 are covered in the regulation.

13 As to the ANC's conditions, I believe the only  
14 thing that we -- well, I should say I give great weight to  
15 the ANC's issues and concerns concerning the matters that are  
16 legally relevant. And I think we could include the permeable  
17 pavers issue, but that's already included in the plans.

18 And I believe the other thing, and I can't find  
19 my notes, but -- just give me a second. I believe that was  
20 also covered in the plans, as Ms. Moldenhauer stated. And  
21 so, I can support the application based on all of those  
22 factors. Oh, it's the parking, I remember, the parking's  
23 already included. So, I'm in support.

24 CHAIRPERSON HILL: Commissioner Turnbull, you had  
25 a thought?

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1 MEMBER TURNBULL: Yeah, just one, Mr. Chair. Vice  
2 Chair, are you finished?

3 VICE CHAIRPERSON JOHN: Yes.

4 MEMBER TURNBULL: Oh, okay. I didn't mean to  
5 interrupt if you were still talking. The only thing is, the  
6 Office of Planning asked for a drawing indicating trash and  
7 recycling, where they would be. The PowerPoint does have a  
8 page that shows where the trash and recycling are. Do we  
9 have to represent -- maybe that's a question for OAG. Since  
10 it's been in the record, it's not a part of the architectural  
11 set, is that fine? Is that okay?

12 MS. CAIN: I think as long as it's in the record  
13 and shows the information that OP was requesting, that should  
14 be fine --

15 MEMBER TURNBULL: That should be --

16 MS. CAIN: -- I don't think it needs to be --

17 MEMBER TURNBULL: Okay. Thank you.

18 CHAIRPERSON HILL: Okay. All right. Sounds like  
19 we're all okay. So, I'm going to go ahead and make a motion  
20 to approve Application Number 20282, as captioned and read  
21 by the secretary, and ask for a second, Ms. John?

22 VICE CHAIRPERSON JOHN: Second.

23 CHAIRPERSON HILL: Motion made and seconded. Mr.  
24 Moy, if you could please take a roll call vote?

25 MR. MOY: Thank you, Mr. Chairman. So, when I call

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1 your name, if you would please respond with a yes, no, or  
2 abstain to the motion made by Chairman Hill to --

3 CHAIRPERSON HILL: Hey, wait a minute. Did I read  
4 the wrong one?

5 MR. YOUNG: Yeah, I was just going to say, I think  
6 you said 20282.

7 CHAIRPERSON HILL: I'm getting ahead of myself,  
8 sorry. All right. So, I'm going to start again. I'm going  
9 to make a motion to approve Application Number 20376, as  
10 captioned and read by the secretary and ask for a second, Ms.  
11 John?

12 VICE CHAIRPERSON JOHN: Second.

13 CHAIRPERSON HILL: The motion is made and seconded.  
14 Mr. Moy, if you could please take a roll call vote.

15 MR. MOY: When I call your name, if you would  
16 please respond with a yes, no, or abstain to the motion made  
17 by Chairman Hill to approve the requested relief under Case  
18 Application 20376. Motion was seconded by Vice Chair John.  
19 Zoning Commissioner Michael Turnbull?

20 MEMBER TURNBULL: Yes.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIRPERSON JOHN: Yes.

25 MR. MOY: Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MR. MOY: We have a board seat vacant. Staff would  
3 record the vote as 4-0-1, and this is on the motion made by  
4 Chairman Hill to approve the application for the relief  
5 requested, seconded by Vice Chair John, also in support of  
6 the motion Mr. Smith and Zoning Commissioner Michael  
7 Turnbull. Motion carries, 4-0-1.

8 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
9 Moy. Okay. I'm looking at my fellow Board members, this is  
10 the choice, we either power through and we finish at 2:00 or  
11 we take a break and we're going to be done at 3:00. I don't  
12 care. Or I guess I'm leaning towards powering through, if  
13 you all think you can make it.

14 MEMBER SMITH: Let's power through.

15 VICE CHAIRPERSON JOHN: I would say --

16 MEMBER TURNBULL: I could power through, I just  
17 need five minutes.

18 CHAIRPERSON HILL: Okay. All right. Then, let's  
19 take a five-minute break.

20 MEMBER TURNBULL: Okay.

21 CHAIRPERSON HILL: Thank you.

22 (Whereupon, the above-entitled matter went off the  
23 record at 12:47 p.m. and resumed at 12:59 p.m.)

24 CHAIRPERSON HILL: All right. Mr. Moy, you can  
25 call us in and call the next one.

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1 MR. MOY: Thank you. Mr. Chairman. After a very  
2 brief break, the Board is back in session and the time is at  
3 or about 12:59 p.m.

4 So, the next and final case before the Board is  
5 Application Number 20282 of Spectrum Builders Group LLC, as  
6 amended, for special exceptions under the residential  
7 conversion requirements, Subtitle U Section 320.2, under  
8 Subtitle E Section 206.4 from the architectural rooftop  
9 elements requirements of Subtitle E Section 206.1, and under  
10 Subtitle E Section 5201 from the side yard requirements of  
11 Subtitle E Section 207.3.

12 This would convert an existing semi-detached  
13 principal dwelling unit into a three-unit apartment house,  
14 RF-1 Zone at premises 1638 Trinidad Avenue Northeast, Square  
15 4055, Lot 53.

16 And as a reminder, Mr. Chairman, the applicant  
17 filed revised burden of proof, revised plans, and revised  
18 plats, which was outside of the 21-day filing.

19 CHAIRPERSON HILL: Okay, great. Thank you. Mr.  
20 Cross, are you there?

21 MS. BACHER: Hi, Mr. Cross is listening in, but  
22 can't actually join at the moment. My name is Emily Bacher,  
23 I work for Michael Cross Design Group and I'm representing  
24 the applicant, Spectrum Builders.

25 CHAIRPERSON HILL: Okay. OAG, is that all right?

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1 MR. RICE: Yes, sir, that's fine. As a point of  
2 information, I think we have a outstanding notice issue  
3 still, due to publication, as well as an outstanding  
4 affidavit of maintenance.

5 CHAIRPERSON HILL: Okay. Did you guys get in your  
6 affidavit of maintenance?

7 MS. BACHER: I don't know that we did.

8 CHAIRPERSON HILL: All right. Well, the OAG is  
9 saying you didn't. So, first of all, while you think of --  
10 well, did you post properly?

11 MS. BACHER: We did. We did post and we submitted  
12 the photos of the posting. The other one, I don't believe  
13 that we did.

14 CHAIRPERSON HILL: Right. But I'm going to deal  
15 with one -- first thing first. So, in terms of something  
16 that happened on our end, this was in the DC Register 19 days  
17 prior to the hearing instead of the 40 days. This has  
18 happened now a few times because of different issues that  
19 we're going through.

20 However, I believe that everyone has been notified  
21 in terms of this application, so I don't necessarily think  
22 there's an issue with that notice. So, I'm going to go ahead  
23 and waive that requirement, unless the Board has any issues,  
24 and if so, please raise your hand. All right.

25 Then, the other is the affidavit of maintenance.

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1 So, this is the case that -- well, there's a couple things,  
2 I guess. The affidavit of maintenance, so you, again, Ms.  
3 Bacher, are testifying that you have maintained the posting,  
4 correct?

5 MS. BACHER: I would -- I believe that our client,  
6 the property owner, has maintained it. I would -- he is on  
7 the line as well, and I would defer to him.

8 CHAIRPERSON HILL: Okay. Could you identify  
9 yourself, please?

10 MR. CRADDOCK: Yes, this is Brian Craddock.

11 CHAIRPERSON HILL: Okay. And so, have you been  
12 maintaining the posting?

13 MR. CRADDOCK: The posting is on the door and  
14 maintained, yes.

15 CHAIRPERSON HILL: Okay. Well, I guess, I don't  
16 know, there's one more issue with -- so, there's a revised  
17 burden of proof, revised plans, and revised plat that all  
18 were submitted less than one week before the hearing. So,  
19 that's another issue that I want to talk about with the  
20 Board.

21 In terms of the affidavit of maintenance, since  
22 the ANC is here and I believe everyone has been notified, I'm  
23 okay with the affidavit of maintenance waiver and I believe  
24 that the applicant is now testifying that it has been  
25 maintained. So, I'm comfortable with that waiver, unless

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1 someone on the Board raises their hands. Okay. So, that's  
2 that.

3 And the last one is, the revised burden of proof,  
4 revised plans, and revised plat. Ms. Bacher, did you, in  
5 terms of the revised plans and the plat, did you present  
6 these plans and the plat to the ANC?

7 MS. BACHER: Yes, we did.

8 CHAIRPERSON HILL: Okay. So, why are they getting  
9 revised and submitted one week prior to the hearing?

10 MS. BACHER: They were submitted -- so, the last  
11 ANC meeting that we presented at was last week. And we had  
12 submitted drawings for that meeting based on feedback that  
13 we had gotten from the adjacent neighbor, which we did not  
14 receive until the day before the ANC meeting.

15 CHAIRPERSON HILL: Okay. All right.

16 MS. BACHER: Our client, Brian Craddock, had been  
17 working with the adjacent neighbor to come to an agreement  
18 and I believe that they had -- we had gotten direct feedback  
19 from him on Monday the 7th, and then the ANC meeting -- so  
20 we revised drawings that day, and then submitted them to the  
21 ANC and presented them at the ANC meeting on the 8th of  
22 December.

23 CHAIRPERSON HILL: Okay. Does the Board have any  
24 issues with waiving the requirement and letting the burden  
25 of proof and the revised plans and the revised plat into the

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1 record? I don't see anyone raising their hand. Okay. So,  
2 we'll go ahead and allow that into the record and waive that  
3 requirement. Let's see. Okay. All right.

4 Ms. Bacher, if you want to go ahead and walk us  
5 through your application and why --

6 MS. BACHER: Sure.

7 CHAIRPERSON HILL: -- you believe that you're  
8 meeting the requirements for us to grant the relief  
9 requested, and you can begin whenever you'd like.

10 MS. BACHER: Sure.

11 CHAIRPERSON HILL: And also, Ms. Bacher, this has  
12 been postponed before, can you tell me what happened, like,  
13 what's been going on since the postponement?

14 MS. BACHER: Yeah. So, this has been postponed,  
15 again, working with the -- we've been working with the ANC  
16 and the adjacent neighbors to try to come to an agreement on  
17 a design. And we --

18 CHAIRPERSON HILL: Okay.

19 MS. BACHER: -- almost got there.

20 CHAIRPERSON HILL: I understand. So, go ahead and  
21 begin your presentation, then.

22 MS. BACHER: Okay, great. Thank you. Thank you  
23 for the time. If Mr. Young could bring up our revised  
24 drawings that are on the record, that would be great. We can  
25 just leave it on this page for the moment.

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1 CHAIRPERSON HILL: Which exhibit are you in there,  
2 do you know?

3 MS. BACHER: I apologize, what?

4 CHAIRPERSON HILL: Which exhibit are you in?

5 MR. YOUNG: This is Exhibit 40, I believe.

6 CHAIRPERSON HILL: Thank you, Mr. Young.

7 MS. BACHER: Thank you. As I mentioned before, I'm  
8 Emily Bacher. I am presenting on behalf of the applicant,  
9 Spectrum Builders. We are seeking a relief for a three-unit  
10 conversion in the RF-1 Zone, pursuant to Subtitle U 320.2.  
11 We're also seeking a special exception to remove an existing  
12 architectural rooftop element, E 206.1. And to reduce an  
13 existing conforming side yard, E 207.3.

14 This project is located at 1638 Trinidad Avenue  
15 Northeast, which is on the west side of the block, northwest-  
16 ish side of the block, between Meigs Place and Childress.  
17 It's currently a two-story over cellar single-family semi-  
18 attached building, semi-attached on the south side.

19 And we are proposing to add two units, so it would  
20 be a three-unit building total, three family-sized units, a  
21 third-floor addition and a rear addition that is ten feet  
22 past the adjacent neighbor, in compliance with the  
23 regulations of the zone. We're also providing required two  
24 off-street parking spaces in the rear.

25 As we discussed a little bit already, we and our

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1 client have been working with the ANC and the adjacent  
2 neighbor to the north on a variety of issues. Our original  
3 design that we presented to a couple of the ANC subcommittees  
4 actually proposed a full-width building, so a full-width row  
5 building from property line to property line.

6           And after working with the neighbors and receiving  
7 some community feedback, we received some specific feedback,  
8 particularly from the adjacent neighbor. Specifically, he  
9 asked for relocation of some of the existing -- of the  
10 windows that we were proposing, increasing the height of the  
11 parapet wall at the roof deck, relocating the mechanical  
12 units, and he was asking for a two-foot setback from the  
13 property line, so instead of going from property line to  
14 property line, set it back two feet.

15           We accommodated all of those requests, including  
16 a -- we actually pushed it to a three-foot setback from the  
17 property line, because we felt that would be easier for  
18 maintenance and was closer to what's typical for that zone.

19           Our original proposal had OP support, as does our  
20 revised proposal for the three-foot side yard setback. And  
21 we were able to get support from the ANC for the three-unit  
22 conversion. Unfortunately, we have been unable to come to  
23 an agreement regarding the setback relief. We appreciate  
24 your time today to take a look at this application and would  
25 be happy to answer any questions that you have.

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1 CHAIRPERSON HILL: Okay. Does the Board have some  
2 questions of the applicant?

3 VICE CHAIRPERSON JOHN: Just one question. Thank  
4 you. Can you talk about the at-risk windows and why those  
5 were added and will not be removed?

6 MS. BACHER: Sure. Well, so, our original proposal  
7 had at-risk windows on the property line. Our current  
8 proposal has been moved three feet off the property line, so  
9 those are no longer at-risk windows.

10 VICE CHAIRPERSON JOHN: And in terms of the privacy  
11 on the adjacent neighbor, if the neighbor should put up a  
12 building on that side, what would be the impact on the  
13 neighbor's property?

14 MS. BACHER: There's no impact -- so, the impact  
15 of this development on the neighbor's property?

16 VICE CHAIRPERSON JOHN: Yes. If the neighbor were  
17 to put up a building three feet from the property line, what  
18 would be the impact on privacy and use and enjoyment on that  
19 property?

20 MS. BACHER: If they were to put a building three-  
21 foot from the property line, then the buildings would be six  
22 feet from each other. I don't -- I think that that's very  
23 typical in D.C., people have much, much narrower separations  
24 in D.C. So, I don't know that it would have a substantial  
25 impact on the neighboring building.

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1 VICE CHAIRPERSON JOHN: And how many windows are  
2 there, again?

3 MS. BACHER: We are currently showing, on the side  
4 -- let me count them real quick. I see seven single windows  
5 and five double windows.

6 VICE CHAIRPERSON JOHN: Okay. Thank you.

7 CHAIRPERSON HILL: Sure, Mr. Smith?

8 MEMBER SMITH: Ms. Bacher, you had stated in your  
9 testimony that in changing the setback from zero to three  
10 that it was in keeping with the character of the  
11 neighborhood, could you elaborate on that a little bit more?  
12 Did you do a residential pattern analysis of some form of  
13 adjacent properties to arrive at that conclusion?

14 MS. BACHER: No. The reason I said that is because  
15 this neighborhood is actually fairly dense, a lot of the  
16 houses are rowhouses and attached on both sides. But the  
17 regulation for side yards in this neighborhood is going to  
18 be, the minimum is five feet. So, we felt three feet was  
19 closer to five feet than two feet. And it also just is a lot  
20 more comfortable in terms of maintenance on the property.

21 MEMBER SMITH: Thank you.

22 MEMBER TURNBULL: If you had a five-foot yard, how  
23 wide would the house be?

24 MS. BACHER: That is a good question, I can pull  
25 that number up right now. It would be about 17 and a half

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1 feet.

2 MEMBER TURNBULL: Thank you.

3 MEMBER SMITH: I think I do have one final  
4 question, in relation to the reduced side yard. Being that  
5 you are producing a side yard and it would be a one-foot  
6 side yard setback, are there any additional building code  
7 considerations that you may have to meet because the building  
8 is closer to an adjacent property?

9 MS. BACHER: Yeah. So the -- I can't remember the  
10 exact number off the top of my head, but the building code  
11 does limit the percentage of wall that can be open. So, it  
12 essentially limits the amount of windows that you could have  
13 on a wall that's three-foot from the property line. So,  
14 we're currently in compliance with that and would remain in  
15 compliance with that.

16 MEMBER SMITH: Thank you. I have no further  
17 questions.

18 CHAIRPERSON HILL: Okay. Ms. Bacher, you're aware  
19 of the -- there was a party in opposition, or not party in  
20 opposition, there was a letter in opposition, did you have  
21 a chance to look at that?

22 MS. BACHER: Actually, I don't know that I have  
23 read that letter in particular, but I believe it's from the  
24 adjacent neighbor.

25 CHAIRPERSON HILL: Right. So, you haven't? And,

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1 Mr. Craddock, have you had a chance to read that letter?

2 MR. CRADDOCK: No, I haven't seen the letter.

3 CHAIRPERSON HILL: Okay. Why don't you both take  
4 a look at that letter, then, okay? It's in the exhibit, it's  
5 in the record, that is. And you can -- well, I'll circle  
6 back around to you and you guys can give me your comment.

7 MEMBER TURNBULL: Exhibit 48.

8 CHAIRPERSON HILL: Exhibit 48, thank you. All  
9 right. Anybody have any further questions of the applicant?  
10 All right. Commissioner Shropshire, could you introduce  
11 yourself for the record, please?

12 MS. SHROPSHIRE: Hi, Keisha Shropshire, ANC  
13 Commissioner, Single Member District 5D02. I'm at 1239 16th  
14 Street Northeast, Washington, D.C.

15 CHAIRPERSON HILL: All right.

16 MS. SHROPSHIRE: You can mail me some of those  
17 Oreos.

18 CHAIRPERSON HILL: Yeah, I was going to say. Well,  
19 welcome. Well, first of all, welcome back.

20 MS. SHROPSHIRE: Thank you.

21 CHAIRPERSON HILL: I mean, they've been selling  
22 out, like, that shop makes you -- they're all good. They're  
23 delicious.

24 MS. SHROPSHIRE: I wrote it down, so I'll go check  
25 it out.

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1 CHAIRPERSON HILL: They're really good. Capital  
2 Candy Jar.

3 MS. SHROPSHIRE: I got it down.

4 CHAIRPERSON HILL: There you go, there you go.  
5 Let's see. So, Commissioner, would you like to give your  
6 testimony?

7 MS. SHROPSHIRE: Sure. So thank you, Chairperson  
8 Hill, and to the members of the Board. We actually  
9 considered, ANC 5D considered this application at our most  
10 recent ANC meeting on December 8. And at the meeting, ANC  
11 resolved to support two of the three exemptions that are  
12 requested.

13 One was the conversion to an existing semi-  
14 detached principal dwelling unit into a three-unit apartment  
15 house, that vote was 4-0-0. And we had a special exception  
16 that we supported for the removal of an existing rooftop  
17 architectural element, that vote was 3-1-0.

18 And it should be noted that the ANC supported the  
19 removal of the existing rooftop element solely because the  
20 proposed design, as shown in Exhibit 5 and 40, replicated a  
21 rooftop design element that repeats on nearby adjacent  
22 rowhomes and much of the third story angles back to minimize  
23 the massing when you view it from the sidewalk. So, if the  
24 applicant had proposed a flat-front facade, ANC 5D would not  
25 have supported this request, but we did based on their

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1 design.

2           ANC 5D resolves to oppose the side yard exemption  
3 that is requiring the five feet. The adjacent neighbor  
4 expressed serious concerns regarding the special exemption  
5 from the side yard setback and believes that by granting this  
6 exemption, it will unduly compromise their privacy of use and  
7 enjoyment of their property, and also contribute to  
8 devaluation of their property, should they decide to develop  
9 it in the future.

10           So, we highlighted a lot of the concerns, specific  
11 concerns in our report. But I'm just going to scroll down  
12 and say that ANC 5D expressed similar concerns about the  
13 proposed design in Exhibit 5. We saw Exhibit 40 at our last  
14 meeting. It was submitted, I think it was sent to us the day  
15 before, so we didn't have an opportunity to actually review  
16 that in detail in advance of the meeting. So, we got those  
17 -- it was presented during the actual meeting.

18           And so, the reasons why we expressed these similar  
19 concerns is that it would unduly impact the light, air,  
20 privacy, enjoyment, and use of the neighboring property. And  
21 if built as proposed onto the property line, we're not  
22 considering, like, the three-foot redesign that was  
23 submitted, it will devalue the adjacent neighbor's property.

24           For example, the placement of the numerous windows  
25 and the HVAC units along the property line, a rooftop deck,

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1 and the desire of applicant to build up to the property line  
2 all may create issues that will adversely impact the adjacent  
3 neighbor.

4           During the December 8 meeting, the applicant  
5 presented the original design, which is Exhibit 5, a matter-  
6 of-right design, and an alternate design, which was the  
7 three-foot, which is Exhibit 40.

8           So, while the three-foot setback design was much  
9 improved from the original design, we felt it was difficult  
10 to support the side yard exception without having that design  
11 being presented into the BZA case record beforehand. So, we  
12 voted on the design that we had before.

13           Subsequent to the ANC public meeting, the  
14 applicant revised the plans to the case and submitted under  
15 Exhibit 40. So, we have some -- while Exhibit 40 plans are  
16 much more improved than Exhibit 5, we request the following  
17 improvements.

18           That the BZA record reflect that the adjoining  
19 neighbor homeowner, Mr. Antonio Jones, his heirs, designees,  
20 or any future owners of the Square Lot 4055050052 retain the  
21 right to fully develop up to the shared property line at 1638  
22 Trinidad Avenue.

23           That we would request that the applicant agree to  
24 remove the HVAC mechanicals to the roof and to mitigate any  
25 sound or noise concerns for both the adjoining homeowners and

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1 to improve the rear yard for the future neighbors that will  
2 be residing at the property.

3           ANC 5D would like the applicant to eliminate the  
4 windows nearest the area where the adjacent neighbor  
5 currently works on vehicles and does handiwork, which is in  
6 the rear of the property.

7           In our ANC report, I put an aerial view of the  
8 property laid out, which is -- it highlights the applicant's  
9 property and then it highlights the unimproved property,  
10 which is adjacent to that property, and the lot where the  
11 homeowner actually has their home.

12           The final request is that the ANC would like the  
13 applicant to install a six-foot privacy fence along the  
14 property line to enhance privacy for the adjoining neighbor  
15 and the future neighbors who will reside at this location.  
16 Thank you for an opportunity to present that. I am open to  
17 address or answer any questions.

18           CHAIRPERSON HILL: All right. Commissioner, thank  
19 you so much. And you've been with us now a few times and you  
20 guys are just doing a great job there, if I might give you  
21 my comments, thoughts.

22           MS. SHROPSHIRE: Thank you.

23           CHAIRPERSON HILL: You guys are doing a good job.  
24 Did -- Ms. Bacher?

25           MS. BACHER: Bacher.

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1 CHAIRPERSON HILL: Bacher. Ms. Bacher, do you know  
2 about these conditions and where -- well, I'm going to jump  
3 around a little bit here. Commissioner, like, you guys are  
4 opposed to the side yard, right? So, these conditions that  
5 --

6 MS. SHROPSHIRE: Right.

7 CHAIRPERSON HILL: -- you're putting forward are --  
8 if they are doing the things you are in support of, you want  
9 these conditions put forward, correct?

10 MS. SHROPSHIRE: Correct. I just want to note that  
11 there are two that I would say we would consider mandatory,  
12 that's number one and number four. Which is making sure that  
13 the adjacent neighbor preserves or reserves the right to  
14 develop his property fully, which is right adjacent to the  
15 applicant's property.

16 And number four, which is the six-foot fence, to  
17 make sure that there is added -- a structure to add to the  
18 privacy for the adjacent neighbor and also for those who are  
19 residing on the property.

20 CHAIRPERSON HILL: Got it. And if -- well, first,  
21 I'll jump around now. Mr. Rice, since one part of the order  
22 is opposed, that means the whole order is opposed, correct?  
23 Or, I mean, I would be getting a full order, correct?

24 MR. RICE: Essentially, yes.

25 CHAIRPERSON HILL: Okay. So, then, that's number

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1 one. Then, number two, Commissioner, if you don't get these,  
2 all of these conditions, are you guys in opposition to even  
3 the things that you were in support of?

4 MS. SHROPSHIRE: I would say that, no, because  
5 that's why I wanted to highlight the two mandatory things,  
6 to make sure that there are -- that we preserve Mr. Jones'  
7 or his family's rights to develop that property. Although  
8 it's currently unimproved, that doesn't -- you don't want to  
9 devalue the property.

10 CHAIRPERSON HILL: Right. Let me interrupt you one  
11 second. As far as that property goes, I mean, that's his  
12 property and so we wouldn't have anything to do with that  
13 anyway. Like, he can develop his property. And so, that's  
14 already -- I mean, I'll just clarify with OAG, I mean,  
15 nothing we're doing is stopping this person from developing  
16 their property, correct, Mr. Rice?

17 MR. RICE: That's correct, sir.

18 CHAIRPERSON HILL: Right. So, that --

19 (Simultaneous speaking.)

20 MS. SHROPSHIRE: Sorry.

21 CHAIRPERSON HILL: That's all right. I'm just  
22 saying, that's already, that's automatic.

23 MS. SHROPSHIRE: I guess the largest concerns were  
24 the -- I have a question, and I don't know if this is posed  
25 to you all or to the Office of Planning, is that I wanted to

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1 know what qualifies as an at-risk window? Because given that  
2 there is a proposal now with Exhibit 40 to move the structure  
3 three feet back, is that considered still an at-risk window?  
4 I don't know what the requirements are or what that zoning  
5 regulation is.

6 CHAIRPERSON HILL: All right. I can ask for some  
7 clarification from the Office of Planning. I mean, I have  
8 my own ideas, but, anyway. So, we'll get to there in one  
9 second.

10 MS. SHROPSHIRE: Okay.

11 CHAIRPERSON HILL: The -- okay. So, that's the  
12 commissioner. And then, right, I see the other four items  
13 that you guys are talking about.

14 MS. SHROPSHIRE: So, number --

15 CHAIRPERSON HILL: All right.

16 MS. SHROPSHIRE: -- two and number -- so, the HVAC,  
17 the removals of the HVAC, when we were conferring with the  
18 applicant and also with the adjacent neighbor, that was  
19 something that I think as Ms. Bacher alluded to, that was  
20 already discussed. Like, that was something that I think  
21 that he was willing to do, given that it could mitigate any  
22 noise or sound that would be in the rear of the property.

23 CHAIRPERSON HILL: Okay. So, well, let me jump  
24 back, then, to Ms. Bacher. Ms. Bacher, in terms of these  
25 conditions, were you guys in agreement to them?

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1 MS. BACHER: So, we are in -- so, the conditions,  
2 I think I may be missing one. We are, of course, in  
3 agreement that whatever is built on our property is not going  
4 to have any impact on the neighbor's ability to develop his  
5 property. A six-foot privacy fence does not pose any  
6 problem, we'd be happy to install a six-foot privacy fence.

7 Regarding the mechanical units, we did relocate  
8 them from off the property line, they're now located kind of  
9 in the center of the property to keep them as far away from  
10 both property lines as possible. Unfortunately, due to  
11 current DCRA regulations, we aren't able to put them on the  
12 roof for the two lower units.

13 And then, I apologize, the third item was, or the  
14 fourth item that I'm missing?

15 CHAIRPERSON HILL: Eliminate the windows nearest  
16 the area where the adjacent neighbor currently works on  
17 vehicles and does handiwork.

18 MS. BACHER: Yes. So we -- it was our  
19 understanding that we had done that. It seems like maybe  
20 that wasn't fully -- we don't have a full agreement on  
21 exactly where that area is, but we would be definitely open  
22 to working with the neighbor to figure out exactly what area  
23 he's trying to avoid.

24 I think that there might be a little bit of  
25 confusion about which -- because, initially, I think he had

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1 said the front of the property is where he didn't want the  
2 windows, so now I'm hearing it's the rear. But we're  
3 definitely open to moving windows and/or eliminating some of  
4 them.

5 MR. CRADDOCK: Yeah, we --

6 CHAIRPERSON HILL: Okay. We'll see what -- Mr.  
7 Craddock?

8 MR. CRADDOCK: It's about 27 feet back is where he  
9 works on his cars, and we're happy to move that, to relocate  
10 that window out of the way.

11 CHAIRPERSON HILL: Okay. We, I mean, I don't know  
12 if we're talking about all that stuff, I'm just trying to  
13 understand where we are. And, Ms. Bacher, you could go ahead  
14 and, if you want to, maybe pull up where these windows are  
15 or tell me where they are, I can find it in the exhibit.

16 MS. BACHER: Yeah. So, it's in that Exhibit 40 --

17 CHAIRPERSON HILL: No, I don't need to know -- I  
18 don't want to know right now, I'm sorry. It's okay, I'm just  
19 kind of jumping around, I'm saying I might come back and ask  
20 it.

21 MS. BACHER: Okay.

22 CHAIRPERSON HILL: Okay. All right. Let's see.  
23 Commissioner, okay, Commissioner, do you have anything else  
24 right now?

25 MS. SHROPSHIRE: No.

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1 CHAIRPERSON HILL: Okay. Let's see. All right.  
2 My fellow board members, does anyone have any questions for  
3 the commissioner? Mr. Turnbull?

4 MEMBER TURNBULL: Yeah. Commissioner Shropshire,  
5 I guess I'm confused, trying to figure out -- there's so many  
6 conditions and things floating in the air right now. Are you  
7 still looking for the five-foot side yard?

8 MS. SHROPSHIRE: So, oh, so, I would say that we  
9 heavily considered what the adjacent neighbor's concerns  
10 were. So, when we were voting, we were opposed to giving the  
11 relief for the side yard relief, yes, I would say that.

12 MEMBER TURNBULL: So, if they don't do the five  
13 yards, are you totally against going ahead, then, with this  
14 project?

15 MS. SHROPSHIRE: I cannot say that, only because  
16 I would like to know, I had one question about what is  
17 considered an at-risk window, and if it wasn't the -- like,  
18 why is the five-foot side yard rule put in place in the first  
19 place? Like, is that to prevent -- is it because of the  
20 number of the square footage of, or numbers of the units that  
21 are there? And also, does it pose a fire safety risk?

22 So, those are some of the things that I wasn't  
23 really clear about and wanted to hear from the Office of  
24 Planning before saying one way or the other. But I would say  
25 that our vote was to not support the five-foot side yard

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1 relief when we voted.

2 MEMBER TURNBULL: Okay. Thank you.

3 CHAIRPERSON HILL: Okay. Anyone else? All right.  
4 I'm going to turn to the Office of Planning.

5 MS. VITALE: Good afternoon, Mr. Chair and members  
6 of the Board. Elisa Vitale with the Office of Planning.  
7 This is for BZA Case 20282. And I believe there is one  
8 procedural item first.

9 The Office of Planning would request that the  
10 board waive its rules to accept our supplemental report into  
11 the record. This was filed less than 24 hours, or attempted  
12 to be filed less than 24 hours prior to the hearing. The  
13 applicant, as was noted previously, submitted a revised self-  
14 certification, revised architectural plans, and burden of  
15 proof into the record late last week.

16 I think the full revised application was available  
17 as of Friday, so the Office of Planning required time to  
18 review that revised application, draft its report, and submit  
19 it to the record. So, that's the reason for the request to  
20 accept the OP report less than 24 hours before the hearing.

21 CHAIRPERSON HILL: Okay. Yeah, I don't have any  
22 issues, because we've already kind of gone through and  
23 accepted the other items late to the record, so I'd like to  
24 see OP's supplemental. If we can go ahead and add that into  
25 the record, unless the board has any issues with it? And I

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1 don't see anybody raising their hand. What -- does your  
2 supplemental change anything, in terms of from your original?

3 MS. VITALE: Mr. Chair, yes, I'm happy to provide  
4 a brief summary of OP's recommendation. Based on the revised  
5 application, the Office of Planning continues to recommend  
6 approval of the requested relief, including -- the  
7 application was revised to reflect the new criteria for the  
8 conversion.

9 So, OP supports both the special exception request  
10 for the conversion, we're also supporting the request to  
11 remove a rooftop architectural element, as well as the newly  
12 submitted request for relief from the side yard requirements  
13 that would allow the applicant to provide a three-foot side  
14 yard along the northeastern property line.

15 This concludes my report and I'm happy to answer  
16 any questions. I believe there were some, potentially some  
17 questions with respect to at-risk windows and side yard  
18 requirements, so I'm available to answer those. This  
19 concludes --

20 CHAIRPERSON HILL: Right. So, Ms. --

21 MS. VITALE: -- my report.

22 CHAIRPERSON HILL: Thank you.

23 MS. VITALE: Thank you.

24 CHAIRPERSON HILL: So, Ms. Vitale, I guess --  
25 right. You all were in support of no side yard, right?

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1 MS. VITALE: That's correct. This property is  
2 zoned RF-1 and the RF-1 Zone permits and contemplates row  
3 buildings. So, those would be buildings that are developed  
4 lot line to lot line.

5 Obviously, in the RF-1 Zone, you also find semi-  
6 detached or detached buildings. So, in this instance, as  
7 you've heard, the minimum requirement in the RF-1 Zone for  
8 a semi-detached building -- you need another Oreo, I think,  
9 a little more sugar to wake up.

10 Should you have a semi-detached building in the  
11 RF-1 Zone, the minimum depth of side yard that's required is  
12 five feet. I believe the ANC Commissioner was asking about  
13 the five-foot side yard requirement. That provides for  
14 separation. In the RF-1 Zone, if there is a non --

15 CHAIRPERSON HILL: You froze, Ms. Vitale. And  
16 you're gone.

17 MS. VITALE: (Audio interference) less than that.  
18 When you start to get down to two feet or one foot, that does  
19 often create, that just creates kind of an unsafe space, a  
20 space that's difficult to maintain, it's hard to remove  
21 debris, keep trash out of that area. But I do believe the  
22 three-foot, which we kind of contemplate as the absolute  
23 minimum, is sufficient and would provide separation here.

24 Certainly, the applicant could provide no side  
25 yard, as I said, the RF-1 Zone does contemplate a lot line

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1 to lot line development. But in this instance, the  
2 applicant's requesting relief to go down to the three feet  
3 and we are able to support that request.

4 CHAIRPERSON HILL: Ms. Vitale, you kind of cut out  
5 a little bit. You started talking about non-conformity?

6 MS. VITALE: Sure. The RF-1 Zone, if you have a  
7 non-conforming side yard, an existing side yard that's less  
8 than that five-foot minimum, and you want to add onto your  
9 building, you can add on and continue that non-conforming  
10 side yard. But the regulations do stipulate that it cannot  
11 be any less than three feet.

12 CHAIRPERSON HILL: Got it. And as you were saying,  
13 the three feet --

14 MS. VITALE: And that --

15 CHAIRPERSON HILL: So, the three feet, it's enough  
16 space to actually maintain that side yard?

17 MS. VITALE: That's correct. And you'll find that  
18 in Subtitle E Section 207.4, you'll see that three-foot  
19 minimum --

20 CHAIRPERSON HILL: Okay.

21 MS. VITALE: -- if you're extending.

22 CHAIRPERSON HILL: So, just so I'm clear, the  
23 question about the at-risk window, I mean, they're not at-  
24 risk windows now, because they're pushed off three feet?  
25 Meaning --

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1 MS. VITALE: That's correct.

2 CHAIRPERSON HILL: -- if they were at-risk windows  
3 and they were on the property line, then the next-door  
4 neighbor could develop to their property line and cover up  
5 those windows. That's what the whole at-risk window issue  
6 or question was, I think, that the commissioner was asking,  
7 correct?

8 MS. VITALE: Well, I won't try to state what the  
9 commissioner is saying, but you are correct in your summary.  
10 An at-risk window would be located on a property line. In  
11 this instance, the original application showed windows when  
12 they were proposing to go lot line to lot line.

13 So, those windows would have been at-risk and it  
14 is correct, the adjoining property owner could develop  
15 property and go lot line to lot line, so they would have  
16 blocked those proposed windows.

17 CHAIRPERSON HILL: Okay. Commissioner, before I  
18 go to my board members, did you get your questions answered  
19 or do you have any questions for the Office of Planning? No  
20 problem.

21 MS. SHROPSHIRE: Too many things opening up. I  
22 believe that she answered my question, I wanted to know what  
23 is considered at-risk and that is if it's exactly on the  
24 property line.

25 And I wanted to know what was the requirement, I

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1 guess, if the reason why they're seeking the side yard  
2 request is because it is larger than five feet, it's not less  
3 than five and they had to get special exception. So, that  
4 clarified things for me.

5 CHAIRPERSON HILL: Okay. Let's see. So, does the  
6 board have any questions for the Office of Planning?  
7 Commissioner Turnbull?

8 MEMBER TURNBULL: Thank you, Mr. Chair. Ms.  
9 Vitale, I got a question regarding the adjacent property.  
10 If this property that we're talking about has a three-foot  
11 side yard, does the property next door, the adjacent property  
12 which only has a garage on it right now, is that considered  
13 a semi-detached property? I mean, they can't built to the  
14 lot line, then? I'm --

15 (Simultaneous speaking.)

16 MEMBER TURNBULL: I guess what I'm trying to figure  
17 out is, to what extent can the property, the adjacent  
18 property, build in regards to this new project that we're  
19 looking at?

20 MS. VITALE: They would be able to build lot line  
21 to lot line. That property only has an accessory structure  
22 on it. I can't speak to the developability of that lot, I  
23 mean, that's not before us now and I haven't fully analyzed  
24 the adjacent property. But it is zoned RF-1 and the RF-1  
25 Zone would permit lot line to lot line development there.

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1 MEMBER TURNBULL: That's what I thought, but I just  
2 wanted to make sure because of the fact that we're creating  
3 this three-foot side yard, if that had any impact on what you  
4 could build, if it still negates anything in the RF-1 for the  
5 adjacent property.

6 MS. VITALE: No, it does not. You may be thinking,  
7 previously in the zoning regulations, we were defining  
8 properties sort of based on their relationship to adjoining  
9 --

10 MEMBER TURNBULL: Yeah.

11 MS. VITALE: -- properties and it --

12 MEMBER TURNBULL: And maybe I'm getting mixed up  
13 with what we used to have, okay.

14 MS. VITALE: And we did try to correct for that,  
15 because that does start to -- if you start to kind of define  
16 a property based on what may or may not be there on the  
17 neighboring property, it does cause some complications. So,  
18 no, the subject property would now be, it is now and would  
19 continue to be a semi-detached building in the RF-1 Zone.

20 And then, the adjoining property to the other  
21 side, they could develop depending on what they are able to  
22 do as a --

23 MEMBER TURNBULL: Right.

24 MS. VITALE: -- matter-of-right based on the RF  
25 zoning, but they could go lot line to lot line.

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1 MEMBER TURNBULL: All right. Thank you.

2 CHAIRPERSON HILL: Anyone else for the Office of  
3 Planning?

4 MEMBER SMITH: So, just a --

5 CHAIRPERSON HILL: Mr. Smith?

6 MEMBER SMITH: -- clarification. Just a --

7 CHAIRPERSON HILL: Sure, go ahead.

8 MEMBER SMITH: -- clarification. They could go to  
9 lot line to lot line if they meet the building code  
10 definition of a rowhome? So, would there be a difference in  
11 how you may develop that building if you're going property  
12 line to property line, if you want to attach it?

13 MS. VITALE: Well, I think you're -- you've  
14 referred to building code, I'm speaking from a zoning  
15 perspective. The RF-1 Zone permits row buildings. Row  
16 buildings are considered buildings that span lot line to lot  
17 line. I'm not speaking to, nor can I speak to building code  
18 requirements.

19 MEMBER SMITH: Okay, got you. Okay, thank you.

20 CHAIRPERSON HILL: Okay. I guess, Ms. Vitale, I'm  
21 just trying to clarify again this lot line to lot line issue  
22 again. I mean, originally, the Office of Planning had done  
23 their analysis and was in support of this relief, if they had  
24 developed all the way to the lot line.

25 And now, they're proposing a three-foot side yard,

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1 right? And so, what were they allowed to do matter-of-right?  
2 They could have done -- I'm a little confused with the lot  
3 line to lot line thing.

4 MS. VITALE: What I was saying is, the RF-1 Zone  
5 permits row buildings. Row buildings span lot line to lot  
6 line. The RF-1 Zone also permits a semi-detached building,  
7 which sits on a lot line on one side, as this property does,  
8 and then provides a side yard on the opposite side.

9 Currently, this is a semi-detached building that  
10 provides, I think a 5.92 foot side yard. So, the applicant  
11 is proposing, through additions and extensions, to maintain  
12 that semi-detached building form and then, to reduce that  
13 side yard from 5.92 feet to three feet.

14 So, the zoning regulations in Subtitle E, in the  
15 Section 207, which regulates side yards, says any side yard  
16 provided shall be a minimum of five feet. So, the applicant  
17 right now is providing a conforming, slightly larger than  
18 five-foot side yard. 207.3, the next section, says existing  
19 side yards may not be reduced to a non-conforming width or  
20 eliminated.

21 So, the applicant is proposing to reduce that  
22 conforming side yard to a non-conforming width, at three  
23 feet, and they're requesting relief from Section 207.3.  
24 Previously, they would have required side yard relief because  
25 they were requesting to eliminate a conforming side yard.

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1           So, I think the side yard relief question was  
2 there in either instance, but either a semi-detached building  
3 form or a row building form are both permitted in this zone.

4           CHAIRPERSON HILL: Right. But with special  
5 exemption?

6           MS. VITALE: Exception, that's correct. Via  
7 special exception relief, which is what they have requested.

8           CHAIRPERSON HILL: But what I'm saying is, if they  
9 were just building one home, one rowhome, they would still  
10 have to come to us to get rid of the side yard?

11           MS. VITALE: I believe that's correct, I would  
12 certainly defer to the Zoning Administrator's interpretations  
13 of the regulations. But to add on to this existing building  
14 and change it from a semi-detached building to a row  
15 building, that would require the elimination of the  
16 conforming side yard and I would read it as requiring special  
17 exception relief.

18           CHAIRPERSON HILL: Okay. Okay, great. Ms. Bacher  
19 is nodding, so she's auditioning for the Office of Planning's  
20 job here in a minute, right? So, all right. Let's see.  
21 Okay. Anybody else? Okay. Commissioner, I'm sorry, did you  
22 have any final questions for the Office of Planning?

23           MS. SHROPSHIRE: So, I just would like for the  
24 Office of Planning to speak to the number of windows that are  
25 proposed. Like, I understand that the number of windows, if

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1 it were along the property line, that would be considered at-  
2 risk, but is there some limit or number of windows that could  
3 be proposed for what is being suggested now, three feet from  
4 the property line?

5 MS. VITALE: I believe that is controlled by the  
6 building code, that is not governed by zoning regulations.  
7 So, I can't speak -- that's not part of the relief request  
8 that's before the board today.

9 Certainly, when the developer goes to pull  
10 building permits from the Department of Consumer and  
11 Regulatory Affairs, that building permit application will be  
12 reviewed for compliance with the building code. But I am not  
13 familiar with the building code requirements, in terms of  
14 window openings that would be permitted. But that would be  
15 reviewed at the time of building permit.

16 MS. SHROPSHIRE: Okay. Thank you.

17 CHAIRPERSON HILL: Okay. Does the applicant have  
18 any questions for the Office of Planning?

19 MS. BACHER: No, we do not. Thank you.

20 CHAIRPERSON HILL: Okay. Is there anyone here, Mr.  
21 Young, wishing to testify?

22 MR. YOUNG: Yeah, we have one person.

23 CHAIRPERSON HILL: Okay. Could you bring that  
24 person in, please? Hello, can you hear me? Is it Mr. Jones?  
25 Hello?

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1 MR. JONES: Hello?

2 CHAIRPERSON HILL: Hi, Mr. Jones, can you hear me?

3 MR. JONES: Yeah, I can hear you now.

4 CHAIRPERSON HILL: Okay, great. You can go ahead,  
5 you'll have three minutes to -- could you introduce yourself,  
6 please, for the record?

7 MR. JONES: Antonio Jones, 1644 --

8 CHAIRPERSON HILL: And where do you live?

9 MR. JONES: 1644 Trinidad Avenue Northeast,  
10 Washington, D.C.

11 CHAIRPERSON HILL: Okay. And you're the next-door  
12 neighbor, right, Mr. Jones?

13 MR. JONES: Correct.

14 CHAIRPERSON HILL: Okay. Mr. Jones, you can go  
15 ahead and have three minutes to give your testimony, you can  
16 begin whenever you like.

17 MR. JONES: Okay. I do not agree with the three-  
18 foot, I'd like it to stay five feet for privacy, safety,  
19 lighting. We tried to make some agreement where to go, but  
20 I didn't comply with it. As far as the at-risk windows, I  
21 don't know how far they'd be or where they could be. That  
22 was the issue.

23 And the property line and the air conditioning  
24 units, I don't want my property to devalue because of  
25 somebody else trying to make money. I would like to have the

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1 same rights as everybody else as far as updating my property  
2 or even if I decide to sell that lot or build on it. I don't  
3 want no issues from existing neighbors, which I think will  
4 be an issue. So, that's how I feel.

5 CHAIRPERSON HILL: Okay. All right, Mr. Jones.  
6 Just so you know, I guess, in terms of the development of  
7 your property, there's nothing that we're talking about right  
8 now that would have any effect on your ability to develop  
9 that property.

10 I guess it seems as though, and I know that it  
11 sounds as though the property owner has been at least in  
12 correspondence with you and was talking about how to move the  
13 air conditioning units, and I guess they tried to do that.

14 I guess the thing that currently, just so you  
15 know, that is in front of us that seems to be a sticking  
16 point is the two-foot side yard. So, if we were to deny them  
17 getting the three-foot side yard, they would then have a  
18 five-foot side yard and still have all of the same windows.  
19 It's just that it would be two feet farther away from your  
20 property line.

21 MR. JONES: Okay. Well, it would be a three feet  
22 difference between both property lines, so that equals six?

23 CHAIRPERSON HILL: Yeah, it'll be -- well, it will  
24 be five feet, and this is what I'm getting, it depends on  
25 what you or someone else might try to do with their property.

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1 Currently, five feet and five feet give you ten feet --

2 MR. JONES: Right.

3 CHAIRPERSON HILL: -- if that were the --

4 MR. JONES: Right.

5 CHAIRPERSON HILL: -- case. And then, right, three  
6 feet and three feet will give you, right, the six. But you  
7 would still, somebody would still have to come before us to  
8 get the three feet rather than the five feet. But in any  
9 case, I was just kind of clarifying what currently is before  
10 us, which is this difference between the three feet and the  
11 five feet of the side yard.

12 MR. JONES: Oh, the five feet of the side yard is  
13 -- they should be private. I mean, I be working on my cars,  
14 I be doing little side jobs, and if you come five feet to  
15 exactly to that property line, it would be an issue. Not  
16 with me, but with the new tenants, like I was telling Mr.  
17 Brian. So, that's why I didn't agree to it. Even if you  
18 bring it three feet, it will be an issue sooner or later.

19 CHAIRPERSON HILL: Got it. Hey, Mr. Craddock, can  
20 you hear me?

21 MR. CRADDOCK: Yes, I can hear you.

22 CHAIRPERSON HILL: You've been in touch with Mr.  
23 Jones, is that correct?

24 MR. CRADDOCK: Yes.

25 CHAIRPERSON HILL: And you guys are going to talk

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1 about this window or these windows that maybe he's concerned  
2 about?

3 MR. CRADDOCK: Yes. Actually, so, we, yeah, we  
4 talked about the exact location of the window and I'm happy  
5 to relocate that window.

6 CHAIRPERSON HILL: Okay. So, you all are going to  
7 continue conversations?

8 MR. CRADDOCK: Yeah. Yes.

9 CHAIRPERSON HILL: Okay. Does anybody have any  
10 questions for Mr. Jones from the board?

11 VICE CHAIRPERSON JOHN: Just one question.

12 CHAIRPERSON HILL: Sure, Ms. John.

13 VICE CHAIRPERSON JOHN: So, Mr. Jones, you  
14 understand that there's only one window that they're thinking  
15 of moving?

16 MR. JONES: Ma'am, I have no idea how many windows  
17 they planned on moving. I didn't even see the, as the  
18 building would be built at first, until the last meeting.  
19 So, I really didn't know what I was agreeing to, because one  
20 minute you say it's here, then when I tell you this is where  
21 I work, then you says there. So, I really couldn't agree  
22 with anything.

23 VICE CHAIRPERSON JOHN: Thank you, Mr. Jones.

24 MR. CRADDOCK: May I address that? So, we did send  
25 the original plans that we proposed. And when Mr. Jones

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1 asked us to bring it two feet back from the property line,  
2 we agreed to that. But then, talking with the Office of  
3 Planning, we needed to bring it back three feet.

4 So, we did -- that was a late adjustment, because  
5 that's what we -- well, obviously, that's why we submitted  
6 that last week. But that was submitted at the ANC meeting,  
7 which I believe Mr. Jones was on as well. But the windows,  
8 the only window that changed was the one that we were trying  
9 to appease him for where he was working on the cars.

10 MS. SHROPSHIRE: So, can --

11 CHAIRPERSON HILL: Okay. So --

12 MS. SHROPSHIRE: -- add something to that? This  
13 is Keisha, Commissioner Shropshire. So, I would have to say  
14 that during our last ANC meeting, it was really unclear where  
15 the windows would be moved to. And, actually, there was an  
16 addition of another window from the original plan.

17 So, I think it would be helpful to pull up and  
18 see, so we could see what we're talking about, because I  
19 don't think that it was clarified during the ANC meeting and  
20 I think there's a little bit of uncertainty now.

21 CHAIRPERSON HILL: All right, Commissioner, just  
22 give me a second, we're going to try to figure this out. So,  
23 let's see. All right. So, Mr. Jones -- does anybody have  
24 any more questions for Mr. Jones? All right. So, Mr. Jones,  
25 please stay in touch with Mr. Craddock. Mr. Craddock, please

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1 stay in touch with Mr. Jones.

2           And, Mr. Jones, why don't you stick around, okay?  
3 Like, stay on the phone, we're going to take you out of the  
4 hearing room for a minute, but we might bring you back in,  
5 okay?

6           MR. JONES: Okay.

7           CHAIRPERSON HILL: Can you see this online? Are  
8 you watching us?

9           MR. JONES: Yeah, I'm watching you.

10          CHAIRPERSON HILL: Okay, great. Then, you'll be  
11 able to see what we pull up, because I have a question about  
12 these windows also. All right. Thank you, Mr. Jones. Mr.  
13 Young, if you could please excuse Mr. Jones? We should have  
14 had lunch first. Okay. All right. Let's see. Okay. So,  
15 the -- where did our architect go? Right. So, can you show  
16 me where these windows are, Ms. Bacher?

17          MS. BACHER: Yes. So, if you look at Exhibit --

18          CHAIRPERSON HILL: What exhibit?

19          MS. BACHER: -- 40. And then, it's page ten of  
20 that PDF. It's the east elevation.

21          VICE CHAIRPERSON JOHN: What's the slide number?

22          CHAIRPERSON HILL: Exhibit 40, page ten. Okay.  
23 Which windows are we talking about?

24                 (Simultaneous speaking.)

25          MR. CRADDOCK: -- if you'd like me to, Emily?

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1 MS. BACHER: Sorry?

2 MR. CRADDOCK: So, the middle window on the bottom  
3 floor.

4 CHAIRPERSON HILL: Yes?

5 MR. CRADDOCK: That's the window right there that  
6 needs to be, that we'll remove. There was some  
7 miscommunication as we were trying to get the plans done for  
8 the ANC meeting, after we talked through the different  
9 requirements that Mr. Jones had. And that window, we can  
10 eliminate that window entirely. And I think that, I believe  
11 that's the location that Mr. Jones was worried about.

12 CHAIRPERSON HILL: Why? Is Mr. Jones working on  
13 stuff right in front of that window and not the window to the  
14 right or the left? I don't understand why it's that one  
15 window?

16 MS. SHROPSHIRE: I would say --

17 MR. CRADDOCK: Yeah --

18 MS. SHROPSHIRE: -- it's both of them. It's both  
19 of those windows there.

20 MR. CRADDOCK: Okay. I mean, I'm okay with  
21 relocating the one to the back as well. I believe, I want  
22 to make sure that it's -- how far over I can relocate it, if  
23 it's a bedroom right there. But his garage essentially stops  
24 right in front of that and he works on his cars in front of  
25 that.

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1           So, when we measured back, it was 27 feet from the  
2 front of the building is the front of his garage. So, that's  
3 why that middle window, I say that we'll eliminate and we  
4 relocate that to the front of the building, so it leaves that  
5 space open where he's working on his car, is what he had  
6 requested.

7           CHAIRPERSON HILL: Right. And I'm not necessarily  
8 -- I'm just kind of talking this through, I don't know -- I  
9 mean, whether or not this is, like, within our -- I mean, it  
10 is within our purview. But the -- I'm not clear -- right.

11           You're saying that that middle window is in front  
12 of where Mr. Jones' garage is and the window to the right of  
13 that middle window, you're saying you could possibly push  
14 that back farther or something, because Mr. Jones is  
15 concerned about the work that he does and someone  
16 complaining, is that what the whole discussion was?

17           MR. CRADDOCK: Yes.

18           CHAIRPERSON HILL: Someone possibly complaining?  
19 Right. So, possibly somebody wouldn't complain?

20           MR. CRADDOCK: Right, yeah. I mean, it was easy  
21 for me to move, so I mean, there was no -- I had no issue  
22 with it.

23           CHAIRPERSON HILL: But when you say move, and I'm  
24 just trying to understand, are you talking about both those  
25 windows or just one of those windows?

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1 MR. CRADDOCK: Ideally, removing the middle one and  
2 then, the one in the back -- Emily, do you know if that's  
3 right where a bedroom is? Because that would obviously  
4 change things, if it's in the middle of a bedroom, then it's  
5 a little bit harder for me. But I think that's behind the  
6 location of where he was requesting anyways.

7 MS. BACHER: Yeah, that rear double window is in  
8 a bedroom. The middle one that we're talking about is not  
9 required for any reason other than light into the unit.

10 CHAIRPERSON HILL: Right, okay. So, you can --  
11 does anybody need this anymore? And if so, please speak up.  
12 Okay. Mr. Young, you can get rid of that. Okay. I'm going  
13 to look at my fellow board members again.

14 We're kind of -- again, what we're looking at in  
15 terms of the relief requested and the adverse impact and the  
16 standards that we're to look at, I'm a little confused even  
17 about the window thing, right? Like, again, the three-foot  
18 side yard, the five-foot side yard, the windows are the  
19 windows. And if somebody complains about somebody working  
20 next door, it's just as easy as nobody's going to complain  
21 about working next door.

22 So, I'm talking to my fellow board members right  
23 now, I don't know what to do about this window conversation,  
24 right? I mean, the ANC is opposed because of the five-foot  
25 side yard, right? So, that's a completely different

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1 discussion altogether.

2           And although the commissioner is here, I'd like  
3 to hear her input on the window thing, before we let her go.  
4 But -- yes. I guess what I'm trying to figure out is whether  
5 the board has any -- let me hear from the commissioner.

6           Commissioner, do you understand what I'm saying  
7 about, like, and I know you've been down this road now back  
8 and forth with everybody a lot, and so, it's a -- we're  
9 talking about the five-foot side yard versus the three-foot  
10 side yard, we're not talking about the windows in general,  
11 right?

12           If Mr. Jones is more comfortable with one of the  
13 windows being removed, I suppose that's something that the  
14 builder and Mr. Jones could possibly work out. I personally,  
15 I'd like a window if I was the person who was living there,  
16 right? And I wouldn't complain about somebody working next  
17 door, because that person was there before I moved in.

18           So, I don't know, I mean, do you understand this  
19 window issue and where we're tied up with this? And then,  
20 I'm going to move on.

21           MS. SHROPSHIRE: Well, I mean, my understanding is  
22 that the window is where Brian was indicated, is right next  
23 to -- like, we were speaking of this as if they were going  
24 to be right up closer to the property line. And he does do  
25 mechanical work and I think the biggest concern was that,

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1 would he still be able to do what he was going to do on his  
2 property? And he doesn't want to impose on someone else  
3 who's in the adjacent property.

4 So, that's where the conversation came up with  
5 Brian and Antonio about repositioning the window. So, that  
6 whole conversation came up, but it was in the context that  
7 there was going to be a closer development to the property  
8 line.

9 CHAIRPERSON HILL: Okay.

10 MS. SHROPSHIRE: Does that make sense?

11 CHAIRPERSON HILL: Yeah, yeah, yeah, yeah. Yeah,  
12 yeah. All right. Does anybody have any questions for  
13 anybody? Mr. Turnbull, Mr. Smith, Ms. John? Because I don't  
14 know what to do about the window.

15 MEMBER TURNBULL: I mean, if approving this is  
16 dependent upon moving a window, someone's got to do a new  
17 drawing of that elevation to show where it's going, if it's  
18 that critical. If it's that critical to get an approval,  
19 then we can't approve without knowing where it's going. But  
20 that's a separate issue from the side yard.

21 CHAIRPERSON HILL: Right.

22 MEMBER TURNBULL: I don't know if that's tied, if  
23 the ANC is tying window location, if that's just a -- if that  
24 doesn't matter, then it's just between the two property  
25 owners, it's not a BZA issue, then. I mean, it's -- that's

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1 one way to look at it, that if it's not contingent on us  
2 approving anything --

3 CHAIRPERSON HILL: No, we could have a -- I don't  
4 have -- we're kind of getting into deliberations here as  
5 well, again.

6 MEMBER TURNBULL: Right.

7 CHAIRPERSON HILL: Like, we could have flexibility,  
8 right?, for that one window, if we wanted to. Or we could  
9 have flexibility on these windows, and I don't know how that  
10 works, we can talk to OAG again about them working with the  
11 property owner. That's what I'm trying to figure out,  
12 because we approve what we approve --

13 MEMBER TURNBULL: Right.

14 CHAIRPERSON HILL: -- and then, they have to build  
15 what we approve, unless there's flexibility, right? And so,  
16 that's what I'm also trying to figure out a little bit.

17 MEMBER TURNBULL: Yeah, I think --

18 CHAIRPERSON HILL: But in terms --

19 MEMBER TURNBULL: -- you're right, that's right,  
20 we have no -- what is flexibility and what isn't?

21 CHAIRPERSON HILL: And, Commissioner Turnbull, in  
22 terms of what the ANC is opposed to, those windows have  
23 nothing to do with what they're opposed to. They're opposed  
24 to it because of the side yard, so they're going to remain  
25 opposed to it.

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1 MEMBER TURNBULL: That's right.

2 CHAIRPERSON HILL: So, I'm just kind of talking --  
3 I'm taking opportunity to have this discussion with everybody  
4 here now, before I close the hearing, where I don't get an  
5 opportunity to talk to anybody. So, I just want to know  
6 where you all kind of was with everything before I close the  
7 hearing. And nobody seems to be wanting to talk to anybody.

8 (Simultaneous speaking.)

9 MS. SHROPSHIRE: Can I say something?

10 CHAIRPERSON HILL: Sure, one second, Commissioner.  
11 Ms. John?

12 VICE CHAIRPERSON JOHN: I think the windows are  
13 relevant to the waiver of the side yard issue, because it  
14 affects privacy and use and enjoyment of the property next  
15 door.

16 So, I'm leaning towards flexibility to move the  
17 window, the one window, and possibly the second window, if  
18 it would not impact the bedroom. And maybe the ANC might be  
19 able to approve and not oppose the application with those  
20 adjustments made, in which case we would have to continue the  
21 case.

22 (Laughter.)

23 CHAIRPERSON HILL: Okay.

24 VICE CHAIRPERSON JOHN: Or we could just do what  
25 we do and then, the ANC --

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1 CHAIRPERSON HILL: No, this is great.

2 VICE CHAIRPERSON JOHN: Yeah.

3 CHAIRPERSON HILL: This is why I have colleagues,  
4 right? This is why I have colleagues. Okay. So, all right.  
5 Okay. So, now -- yes. Mr. Smith, did you have anything to  
6 add before I go back to the commissioner?

7 MEMBER SMITH: No, nothing to add.

8 CHAIRPERSON HILL: Okay. So, it sounds like, I  
9 mean, and Ms. Bacher and then, Mr. Craddock, it looks like,  
10 I guess, we might do a continued hearing, right? And then,  
11 you guys can go -- well, now, it just, it makes -- I mean,  
12 and I'll talk to the commissioner, what -- well, first, I'll  
13 talk to the commissioner, I suppose.

14 What Ms. John was saying, Commissioner, is that  
15 you guys are opposed to the side yard, right? You're opposed  
16 to the five feet versus the four feet, but you're okay with  
17 everything else, and it seems like, in terms of your  
18 conditions, you kind of understand what we can and can't do  
19 with your conditions, right? There's the six-foot privacy  
20 fence. I guess they've already moved the HVAC, I don't know  
21 if you'd still be opposed or not.

22 But it seems as though, because your opposition  
23 seems to be because of Mr. Jones, right? And that if they  
24 come back and they, Mr. Jones and they figure out how to deal  
25 with this window thing, right?, then they can present back

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1 in front of you all again, you all can take another vote, and  
2 then, you can come back before us and maybe we can get a  
3 summary order rather than a full order and we can kind of get  
4 this thing moving along. If you think, Commissioner, that  
5 might be helpful for you guys.

6 MS. SHROPSHIRE: I think it's always helpful for  
7 us to know that there is agreement. Like, right now, we  
8 heard that there's opposition still to the five-foot. I  
9 think that we would be amenable to knowing that there was a  
10 resolution between them about the window and that Mr. Jones  
11 felt that his privacy or use would not be majorly affected  
12 and we could vote on a three-foot versus the five-foot. So,  
13 yes.

14 CHAIRPERSON HILL: Mr. Craddock, do you understand  
15 everything that's going on?

16 MR. CRADDOCK: I do. The only thing I'd say is,  
17 I think that ANC will not support the project unless Mr.  
18 Jones does. And so, the five-foot -- when we went into the  
19 last ANC meeting, Mr. Jones said he would support the project  
20 if we went back two feet and then, we had to go back three  
21 feet. And then, in the ANC meeting, he said he would support  
22 the by-right building.

23 And so, I mean, I don't see that we'll actually  
24 come to a full agreement that he would be okay with the  
25 three-foot side yard, is my understanding at this point, and

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1 I think that the ANC won't support us either. Because the  
2 window issue is, I mean, in my mind, it's so easy, because  
3 I'm willing to eliminate that window that's the one that he  
4 had objected to.

5 And I think that, yeah, that we won't come to an  
6 agreement, is really what I think. Because the three-foot  
7 side yard, that's just my concern, only because of the three-  
8 foot side yard and --

9 CHAIRPERSON HILL: I understand.

10 MR. CRADDOCK: Yes.

11 CHAIRPERSON HILL: I understand. I don't know --  
12 Ms. John?

13 VICE CHAIRPERSON JOHN: So, did anyone, Mr.  
14 Craddock, did anyone sit with Mr. Jones with the plans and  
15 walk him through those plans by himself? Or was this in a  
16 meeting?

17 MR. CRADDOCK: So, the only time that I personally  
18 walked through the plans with him was when we were looking  
19 at the windows for the side. I think that my, I believe, and  
20 maybe Mr. Jones can speak to this, but I believe that  
21 originally my agent was over by there and had the plans and  
22 showed him, but I don't know to what depth he went through  
23 the plans with him.

24 But I think, really, the only issue that Mr. Jones  
25 had expressed previously was that he could build on his

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1 property, that it wouldn't affect how he built on his  
2 property. And then, he said, I want to come back two feet,  
3 to make sure that his fence could then be maintained. So,  
4 I -- yeah.

5 MS. SHROPSHIRE: So, can I --

6 (Simultaneous speaking.)

7 CHAIRPERSON HILL: Hold on, hold on, hold on.

8 (Simultaneous speaking.)

9 CHAIRPERSON HILL: Before -- hold on. Hold on.  
10 Before everybody says everything, I just want to point out,  
11 Ms. John, because I'm just looking at this, we're talking  
12 there's also going to be a six-foot tall privacy fence there,  
13 okay?

14 So, that's another thing that I'm just trying to  
15 point out. Those windows are going to have a six-foot tall  
16 privacy fence next to them, okay? Right. So, I'm now back  
17 to, I don't know, right? Okay. Like, I think they can kind  
18 of work this out amongst themselves.

19 The only reason why I would be kicking this back  
20 to the ANC, Mr. Craddock and Ms. Bacher, is that if you think  
21 that you, and I hate to do this, I hate bringing this up all  
22 the time, but if you somehow think you can get ANC's approval  
23 and get Mr. Jones to understand that you'll move a window,  
24 right?, and you still think that somehow that might work,  
25 then you're going to get yourself to a summary order rather

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1 than a full order, okay?

2           And a full order, and I keep saying this and  
3 whatever, I just got re-nominated, so a full order is that  
4 it's going to take you a longer time to get your permits as  
5 opposed to a summary order, right? Summary order might take  
6 you 30 days, full order might take you eight months, right?

7           So, if you think that it might be worth kind of  
8 messing around for a little bit, then maybe we'll kick you  
9 back to the ANCs. Otherwise, I mean, I know, I can tell you  
10 where I am, there's a six-foot tall privacy fence there and  
11 if you all want to kind of have some flexibility to play with  
12 the windows, we can put some flexibility in there, but you're  
13 still going to get the ANC's rejection and, therefore, you're  
14 going to get a full order.

15           And so -- Commissioner, I'll get to you. So,  
16 Commissioner, I'm sorry, Board Member John, you had something  
17 you wanted to say?

18           VICE CHAIRPERSON JOHN: I was just going to say to  
19 Mr. Craddock, the thing with these hearings is that they  
20 crystalize the issue and everybody hears what the regulations  
21 allow. And I think that's happened here.

22           So, I wouldn't -- I'm not pessimistic about your  
23 ability to come to an agreement with the ANC and Mr. Jones.  
24 And I would recommend taking the time to walk the property  
25 with Mr. Jones and explain what's possible and show him where

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1 those windows will be. I think it's worth the time to do  
2 that.

3 MR. CRADDOCK: Yeah, and to that effect, I did have  
4 my surveyor come out, laid out the building, we walked  
5 through and looked at where the windows would be. So, I  
6 mean, when I say going through the building, I guess, the  
7 front facade and the interior is the only thing I didn't walk  
8 through with him.

9 So, I did -- I had, like I said, my surveyor came  
10 out, put the building corners down, we walked, look at the  
11 windows, and that's how came about the concern with the  
12 windows at the front of his garage.

13 And so, I mean, I would just say, I don't know  
14 whether we can do this here, but if Commissioner Shropshire  
15 thinks that she thinks the ANC would possibly be in support,  
16 I mean, I guess it would even have to be without Mr. Jones'  
17 approval, because I don't think he'll approve the side yard,  
18 because I feel like we'll be right back here, hopefully next  
19 month, if that's a possibility, to be on the BZA next month.

20 But, yeah, I mean, I guess that's the only thing  
21 I'd say is if we're just going to be right back here next  
22 month, then --

23 CHAIRPERSON HILL: May I interrupt you one sec?  
24 I'm going to go to the commissioner and then we can kind of  
25 find out where we all are. Commissioner, you were about to

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1 say something?

2 MS. SHROPSHIRE: So, I was going to say that I'm  
3 more optimistic than pessimistic about the ability of the ANC  
4 to approve a revised proposal, because a lot of the things  
5 that we actually put even in our conditions weren't  
6 solidified.

7 So, I think if we were to go back and say, hey,  
8 this is what happened at the BZA hearing, these are some  
9 things, these are some outstanding issues, I'm also  
10 optimistic in Mr. Jones maybe agreeing.

11 But in full disclosure, I have to say that this  
12 all started out on a rocky surface. So, there was some  
13 miscommunications up-front and that's why this has been  
14 pushed back, because the miscommunications, I think that it  
15 put Mr. Jones up on guard.

16 So, I've been working and communicating and  
17 mediating, like, conversations with Mr. Craddock, with Brian,  
18 and also with Antonio, just so that they could agree upon  
19 some things. And I think that we have a great plan.

20 And I appreciate everyone deliberating and talking  
21 about this today, because I think it clarifies the  
22 regulations, it clarifies some questions that I had, and I  
23 hope it clarifies things that Brian had as well.

24 (Laughter.)

25 CHAIRPERSON HILL: Okay. I was laughing, because,

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1 like, I don't know what to do, a little bit. So, Mr.  
2 Craddock, I'm going to let you kind of give us your opinion.  
3 I mean, I -- so, Commissioner, just to be clear, like, and  
4 I'm walking through this in my brain, it was up against the  
5 property line at one point, right? They pulled it back three  
6 feet because they were trying to accommodate the next-door  
7 neighbor, right? So, I don't think you're going to get the  
8 five feet, right

9           So, now, you guys are going to be talking about  
10 the window stuff, right? Okay. There's the six-foot tall  
11 privacy fence.

12           I'm ready to vote on this right now, Mr. Craddock  
13 and Ms. Bacher, and you all can -- I'll let -- I mean, if we  
14 were, and this is where it's a little bit weird, because if  
15 we were in the hearing room, I would take a break and you all  
16 could talk amongst yourselves and figure out what you want  
17 to do, right? So, you all can -- we can take a break and you  
18 can call each other if you want to.

19           But if I vote on this now, you're going to get a  
20 full order and that's going to give you eight months. If you  
21 want to try, and you might still fail, you still might get  
22 a full order, but you'd be back before us maybe end of  
23 January or something like that.

24           So, do you want to talk with your architect, Mr.  
25 Craddock? Or do you have an opinion, do you want to talk to

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1 your architect?

2 MR. CRADDOCK: I think so, but I think the real  
3 question is, I don't know if Mr. Jones is still there and if  
4 it's okay to ask him, I don't know what the appropriate thing  
5 is here, but if --

6 CHAIRPERSON HILL: Mr. Jones, are you there? Mr.  
7 Jones, are you there?

8 MR. CRADDOCK: Because I think, even on the, like  
9 with the HVAC, we had already addressed that in the last ANC  
10 meeting. The only thing that -- there was miscommunication  
11 on the window, and that was the only thing that I think we  
12 didn't address on the --

13 CHAIRPERSON HILL: Okay, Mr. Craddock, hold on,  
14 hold on. I'm not going to get -- I can't -- okay. I'm not  
15 going to do the negotiation stuff, I just --

16 MR. CRADDOCK: Okay.

17 CHAIRPERSON HILL: -- want to hear if Mr. Jones has  
18 been listening to everything.

19 MR. CRADDOCK: Okay.

20 CHAIRPERSON HILL: Mr. Jones?

21 MR. JONES: Yeah, can you --

22 CHAIRPERSON HILL: Yes. Have you been hearing  
23 everything?

24 MR. JONES: Can you hear me?

25 CHAIRPERSON HILL: Yes.

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1 MR. JONES: Yes, sir.

2 CHAIRPERSON HILL: Have you been hearing  
3 everything?

4 MR. JONES: Yes, sir.

5 CHAIRPERSON HILL: Do you have an opinion, Mr.  
6 Jones?

7 MR. JONES: I mean, sir, it's just been rough  
8 trying to work it out, because this started off on a rocky  
9 foot. You have a person come up and try to bribe me for  
10 \$5,000. Then, you come back and try to bribe me for \$2,500  
11 to put some windows in.

12 I mean, I have -- Ms. Keisha has been trying to  
13 work and I've been trying to tone down, but it seem like  
14 every time we get together, he say one thing but do another,  
15 but it still not in printing or writing. So, I can't agree  
16 where to go. That's all.

17 CHAIRPERSON HILL: Okay. That's fine. Mr.  
18 Craddock, it's okay, I'm just trying to understand where we  
19 are, right? And so, who knows, right? I don't know what you  
20 all want to do.

21 So, Mr. Craddock, I'm going to take -- I mean, I  
22 don't -- I'm sorry, you guys, meaning my board members, it's  
23 worth three minutes, okay? So, let's take a three-minute  
24 break, okay? We'll come back in five minutes. Mr. Craddock,  
25 you call Ms. Bacher, you all figure out what you want to do.

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1 MR. CRADDOCK: Okay, thank you.

2 (Whereupon, the above-entitled matter went off the  
3 record at 2:18 p.m. and resumed at 2:25 p.m.)

4 CHAIRPERSON HILL: All right. Mr. Craddock --

5 MR. CRADDOCK: Yes.

6 CHAIRPERSON HILL: -- did you have an opportunity  
7 to figure out where you are?

8 MR. CRADDOCK: Yes. I spoke with Commissioner  
9 Shropshire. And, yeah, I believe that we can come to an  
10 agreement with the ANC. So, would we come back with just,  
11 is it, I don't know how it works, is it just consent and  
12 something that we would be able to do next month, possibly?

13 CHAIRPERSON HILL: So, we would come back with a  
14 continued hearing, limited scope, which is just to talk about  
15 the adverse effect concerning these windows, right? And  
16 then, just see, I guess, where we are with the ANC.

17 I mean, to -- and welcome, Mr. Jones, I can see  
18 you there. If we were to move forward now, then there's  
19 really no point -- there's not a lot of leverage for you, Mr.  
20 Jones, to do anything, because now, if this order were  
21 approved, then we're done.

22 And so, the windows would end up staying exactly  
23 where the windows are and they'd move forward, right? This  
24 is the opportunity, Mr. Jones, to talk with Mr. Craddock to  
25 try to talk about these windows, just to let you know. And

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1 so, that's it.

2 So, unless my board members have any issues, then  
3 we can let the parties talk amongst themselves, see if you  
4 come back with a different design, Mr. Craddock, and then you  
5 can show us exactly where those windows are, right? Yes.  
6 And so -- yeah. Sorry, I got a little distracted. So, and  
7 see where we get to.

8 We'd need a new design showing what exactly we're  
9 approving, right? We just need that, we'd need new plans  
10 showing what we're approving. And then, that's it. So, if  
11 that were the case, when do you think, Ms. Commissioner, you  
12 could get them -- you could do all this and get them back  
13 before you?

14 MS. SHROPSHIRE: So, we meet every second Tuesday  
15 of the month. And so, that is -- hold on. Our next meeting  
16 would be January 12. We could meet to vote on the changes  
17 and give, hopefully, support of what the revised changes are.  
18 And I don't know when the next BZA hearing is, but that would  
19 be the earliest that we would be able to take another vote.

20 CHAIRPERSON HILL: Okay. Say that again, which  
21 date?

22 MS. SHROPSHIRE: January 12.

23 CHAIRPERSON HILL: Okay. So, then, you, Mr.  
24 Craddock, you have to get together with Mr. Jones, try to  
25 explain the windows and the privacy fence and what exactly

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1 is going on, right? And then, present to the ANC and see if  
2 you can get a different outcome. Okay? Mr. Jones, do you  
3 have any questions? Say it again, Mr. Jones?

4 MR. JONES: Did he say he's going to go three feet  
5 back off the property line?

6 CHAIRPERSON HILL: Yeah, the current discussion,  
7 Mr. Jones, and this is where you guys can kind of talk about  
8 it, the three feet would remain the same, it's the windows,  
9 the placement of the windows that are up for discussion right  
10 now.

11 MR. JONES: Okay. And he's going to put the AC  
12 units where?

13 CHAIRPERSON HILL: That, you can talk with him, Mr.  
14 Jones. It sounds as though they're trying to put the AC  
15 units where they can and are allowed to put it by DCRA,  
16 meaning the regulations will only allow them to put it  
17 somewhere.

18 I'm sorry, they can only put them where they're  
19 allowed to put them, but they're trying to put them in the  
20 middle of the property or something like that, so it doesn't  
21 -- it's the same for either side.

22 MR. JONES: Okay.

23 CHAIRPERSON HILL: Okay?

24 MR. JONES: Okay.

25 CHAIRPERSON HILL: Do you have any --

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1 (Simultaneous speaking.)

2 CHAIRPERSON HILL: Do you have any questions, Mr.  
3 Jones? Pardon?

4 MR. JONES: I said, I have a better understanding  
5 now.

6 CHAIRPERSON HILL: Okay, great. So do I, Mr.  
7 Jones.

8 MR. JONES: Okay.

9 CHAIRPERSON HILL: Okay. All right. Well, good  
10 luck to you guys. So, let's see. Mr. Moy, the 12th is the  
11 hearing that the ANC is going to vote again, perhaps, on  
12 January 12, which is a Tuesday. And then, I mean, what's  
13 January 20 looking like?

14 MR. MOY: I once had a January 20, I moved it  
15 because it was Inauguration Day.

16 CHAIRPERSON HILL: Oh, that's right. That's right.

17 MR. MOY: So, we're back on the 27th, after --

18 CHAIRPERSON HILL: That's right.

19 MR. MOY: -- the 13th. Yeah.

20 CHAIRPERSON HILL: Inauguration Day, that's right,  
21 I forgot. Okay. So, the 27th, right? So, what do we got  
22 on the 27th?

23 MR. MOY: Oh, we've got a lot. We have -- this  
24 would be the thirteenth case.

25 CHAIRPERSON HILL: Oh, dear god.

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1 MR. MOY: You've already heard the majority of this  
2 case already.

3 CHAIRPERSON HILL: I know, I know. Are you guys  
4 okay, Mr. Smith, Ms. John, with the 27th? Ms. John's nodding  
5 yes, so I assume, Mr. Smith, you're okay? All right. We'll  
6 come back on the 27th.

7 MEMBER TURNBULL: Can we do it first thing?

8 CHAIRPERSON HILL: Yeah, we'll do a limited scope.  
9 We'll do a limited scope, Mr. Turnbull, with you, after our  
10 decisions. Okay?

11 MEMBER TURNBULL: I'm for it.

12 CHAIRPERSON HILL: All right. So, we're going to  
13 do a limited scope on the 27th. So, I'm closing the record.  
14 I'm closing the record for everything except new drawings  
15 from the applicant and a updated report from the ANC. Okay?  
16 So, the ANC can give me whatever they want and then, the new  
17 drawings for -- and they might be the same, I don't know.  
18 But we're going to vote on, or we'll get whatever we get.  
19 And then -- yeah, that's fine. Okay.

20 Do you guys need anything else? No? Mr. Moy, do  
21 you need dates for anything?

22 MR. MOY: Yes, yes, for the -- I'm going to work  
23 backwards. So, continued limited scope hearing January 27.  
24 The ANC is meeting on January 12, so if it's possible if the  
25 ANC can submit their final report, I'm going to call it, by

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1 that Friday, January 15, okay?

2 And for the applicant, the applicant should  
3 actually submit their potential for new drawings, which I'm  
4 guessing will go before the ANC, by date specific. So, that  
5 should be before the ANC meeting of January 12. So, I don't  
6 know how early the ANC would need the ANC's filing, but I'm  
7 guessing at least a week, I could be wrong.

8 So, I'm guessing if the applicant can submit their  
9 updated filing per the request by the board by a week prior,  
10 which would be Tuesday, January 5?

11 CHAIRPERSON HILL: Mr. Craddock, did you hear that?

12 MR. CRADDOCK: Yes, I was waiting for Emily to  
13 respond as well. But, yeah, we'll make that happen, January  
14 5.

15 MS. BACHER: Yeah. My only question on that is,  
16 what happens if we go to the ANC and have further revisions  
17 from the ANC and need to submit more drawings?

18 MS. SHROPSHIRE: We're only really looking at the  
19 windows here.

20 MS. BACHER: Okay.

21 CHAIRPERSON HILL: But, I mean, you guys can submit  
22 -- I mean, Mr. Moy, when are we getting stuff for before the  
23 supplemental on the 27th? What date did you give them?

24 MR. MOY: January 15 for the ANC. If there are  
25 updates after the meeting with the ANC, I'm guessing it could

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1 be a quick turnaround by the applicant to submit it by the  
2 same date as the ANC, which would be January 15. Because I'm  
3 guessing they should be in sync, right? That's the hope.

4 CHAIRPERSON HILL: You guys can -- I mean, I don't  
5 know what's going to happen with you guys. You guys can give  
6 us whatever you need to give us by the 15th of January, okay?  
7 And then, we'll take a look at it. I mean, they can even  
8 have more time than that, right? We're not meeting until the  
9 27th.

10 MR. MOY: That's true, that's true. You could.

11 CHAIRPERSON HILL: I mean, you guys can have until  
12 the 22nd.

13 MR. MOY: Let's do that.

14 CHAIRPERSON HILL: Right? So, we'll get everything  
15 from you all by the 22nd. I mean, if you've got new  
16 drawings, new drawings, whatever it is, because we're having  
17 a continued limited scope hearing, so we will be able to hear  
18 from you guys.

19 MR. MOY: And that will be on the 27th.

20 CHAIRPERSON HILL: Okay. Do you have -- is  
21 everybody good with the dates? Okay. All right. So, then,  
22 the hearing's closed, except for the things that we  
23 requested. And you all have a nice happy holiday and a happy  
24 New Year. And, there you go.

25 (Simultaneous speaking.)

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1 CHAIRPERSON HILL: Bye. See you on the 27th. Have  
2 fun storming the castle. All right. The 27th Jan, the  
3 thirteenth case, oh my god. Maybe, Ms. John, that's a good  
4 day for you to chair. I think that's like a good --

5 VICE CHAIRPERSON JOHN: Maybe.

6 CHAIRPERSON HILL: All right. Let's see. We got  
7 one more thing, right, Mr. Moy.

8 MR. MOY: Yes, sir. Let me know when you're ready,  
9 I'll tee you up.

10 CHAIRPERSON HILL: Okay. Do I have to read  
11 something or is that what --

12 MR. MOY: No.

13 CHAIRPERSON HILL: -- you sent me?

14 MR. MOY: No, I'm going to tee it up for you and  
15 then you can take it from there.

16 CHAIRPERSON HILL: Okay, great, sure. I'm ready.

17 (Whereupon, the above-entitled matter went off the  
18 record at 2:37 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 12-16-20

Place: teleconference

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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