

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 17, 2021

+ + + + +

Video Teleconference

The Public Hearing by the District of Columbia Zoning Adjustment convened at 9:50 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA JOHN, Vice-Chair
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

ELISA VITALE
ANNE FOTHERGILL
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRIA CAIN, Esquire
JACK RICE, ESQUIRE

The transcript constitutes the minutes from the
Regular Public Hearing held on March 17, 2021

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:50 a.m.)

CHAIRPERSON HILL: The hearing will please come to order.

Good morning, ladies and gentlemen. We are convening and broadcasting this public hearing by videoconference. This is the March 17th, 2021, public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair; Chrishaun Smith, Board Member; and representing the Zoning Commission is Chairman Anthony Hood for one case and the rest of the day will be Commissioner Michael Turnbull.

Today's hearing agenda is available to you on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live.

The webcast video will be available on the Office of Zoning website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing, and only persons who have signed up to participate or

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testify will be unmuted at the appropriate time.

Please state your name and home address before providing oral testimony or your presentation. Oral presentations should be limited to a summary of your most important points. When you are finished speaking, please mute your audio so that your microphone is no longer picking up sound or background noise.

If you are experiencing difficulty accessing Webex or with your telephone call-in or if you have forgotten to sign up 24 hours prior to this hearing, then please call our OZ hotline number, at 202-727-5471, it's also on your screen, to sign up to testify and to receive Webex login or call-in instructions.

All persons planning to testify either in favor or in opposition should have signed up in advance. They will be called by name to testify. If this is an appeal, only parties are allowed to testify. By signing up to testify, all participants completed the oath or affirmation, as required by Subtitle Y 408.7.

Requests to enter evidence at the time of an online virtual hearing, such as written testimony or additional supporting documents other than live video, which may not be presented as part of the testimony, may be allowed pursuant to Subtitle Y 103.13, provided that the person making the request to enter an exhibit explains how the proposed exhibit is relevant, the good cause that justifies allowing the exhibit into the

record, including an explanation of why the requester did not file the exhibit prior to the hearing pursuant to Y 206, and how the proposed exhibit would not unreasonably prejudice any parties.

The order of procedures for special exceptions and variances are pursuant to Y 409. The order of appeals is pursuant to Subtitle Y 507. At the conclusion of each case, an individual who is unable to testify because of technical issues may file a request for leave to file a written version of the planned testimony to the record within 24 hours following the conclusion of public testimony in the hearing.

If additional written testimony is accepted, then parties will be allowed a reasonable time to respond, as determined by the Board. The Board will then make its decision at the next meeting, but no earlier than 48 hours after the hearing.

Moreover, the Board may request additional specific information to complete the record. The Board and the staff will specify at the end of the hearing exactly what is expected and the date when persons must submit the evidence to the Office of Zoning. No other information shall be accepted by the Board.

The Board's agenda may include previous cases set for decision after the Board adjourns the hearing. The Office of Zoning, in consultation with myself, will determine whether a full or summary order may be issued. A full order is required

when the decision it contains is adverse to a party including an affected ANC. A full order may also be needed if the Board's decision differs from the Office of Zoning's recommendation.

Although the Board favors the use of summary orders whenever possible, an applicant may not request the Board to issue such an order.

The District of Columbia Administrative Procedures Act requires that public hearing on each case be held in the open before the public. However, pursuant to 405(b) and 406 of the Act, the Board may, consistent with its Rules and procedures of the Act, enter into a closed meeting on a case for purposes of seeking legal counsel on a case, pursuant to D.C. Official Code Section 2-575(B)(4) and/or deliberate on a case pursuant to D.C. Official Code Section 2-575(B)(13), but only after applying the necessary public notice in the case of an emergency closed meeting after taking a roll call vote.

Preliminary matters are those which relates to whether a case will or should be heard today, such as a request for a postponement, continuance or withdrawal or whether proper and adequate notice of the hearing has been given.

Mr. Moy, do we have any preliminary matters?

MR. MOY: Thank you, Mr. Chairman. We do. Very quickly for the record, for the transcript, I'd like to announce that Application No. 20416, 1443 Girard Associates, LLC originally scheduled on today's docket has been withdrawn by the

applicant.

And finally, any preliminary matters, I think, it's my suggestion the Board address those when I call the case. Thank you, sir.

CHAIRPERSON HILL: Okay. All right. Chairman Hood, you said you're on 20361?

CHAIRMAN HOOD: 20351, I believe. Yeah, 20361, you're correct.

CHAIRPERSON HILL: Okay, great. All right. Mr. Moy, you can go ahead and call that case then.

MR. MOY: That case is Application No. 20361 of G3, LLC. Captioned and advertised for area variances from the lot subdivision requirements of Subtitle C, Section 302.1, the minimum side yard requirements under Subtitle D, Section 206.3, minimum lot dimension requirements of Subtitle D, Section 302.1, which would subdivide a vacant lot and construct two semi-detached, principal dwelling units in the R-2 zone at premises 5135 Lee Street N.E., Square 5200, Lot 113.

This application, Mr. Chairman, was last heard at its hearing on January the 27th and the Board continued the hearing to today's hearing, March 17th. Thank you.

CHAIRPERSON HILL: Okay. Thank you.

VICE CHAIR JOHN: Mr. -- Mr. Chairman.

CHAIRPERSON HILL: Yes, Ms. John.

VICE CHAIR JOHN: Before we proceed, I would like to

note that, Ms. Gregory, the owner of this property is a former colleague; however, I do not believe that that information would prevent me from deciding this case in a fair and (audio interference).

CHAIRPERSON HILL: Okay. Thanks. All right. Thank you, Ms. John. I don't have any issues with that unless one of the Board members do and if so, please, raise your hand. Okay. All right. Thank you, Ms. John.

Mr. Bello, could you please introduce yourself for the record.

MR. BELLO: Good morning, Mr. Chairman, Board Members. Olutoye Bello, representing the applicant.

CHAIRPERSON HILL: All right. Mr. Bello, you're new here, I believe, oh actually I see -- Commissioner Holmes is that you there?

COMMISSIONER HOLMES: Yes. Commissioner Holmes, Chair of ANC 7C.

CHAIRPERSON HILL: Hi, Commissioner, how you doing?

COMMISSIONER HOLMES: Good. How are you doing?

CHAIRPERSON HILL: You're wearing your green today?

COMMISSIONER HOLMES: Absolutely.

CHAIRPERSON HILL: Everybody's a little Irish today. Let's see, Mr. Bello, you're asking for a postponement; is that correct?

MR. BELLO: Actually, no, we're asking for a motion to

accept late filing.

CHAIRPERSON HILL: Okay. Then I'm confused. Which filings are you speaking of? Can you tell me why they're late?

MR. BELLO: We filed a motion to accept late filings, that would be Exhibit 42, and the reason is because I was just brought onto the application to assist with augmenting the submission, so it took me quite a bit to properly restructure the application.

CHAIRPERSON HILL: Okay. Ms. Vitale, are you there?

MS. VITALE: Yes, Mr. Chair, I am here.

CHAIRPERSON HILL: Could you introduce yourself for the record, please?

MS. VITALE: Yes. Elisa Vitale with the Office of Planning.

CHAIRPERSON HILL: Okay. Did you submit a supplement or a report or something? You haven't submitted a supplemental, have you?

MS. VITALE: We did submit a supplemental report. At the end of the previous hearing when the case was continued, at the applicant's request, Office of Zoning -- the secretary laid out dates by which filings were due to be submitted. The applicant was supposed to file, I believe, by March 1st and Office of Planning was supposed to file by March 5th. As of the March 1st date, no additional information had been provided into the record.

So at that point on March 5th, the Office of Planning submitted a report indicating that our recommendation was unchanged, because there was no new information in the record. The applicant subsequently filed additional information, I believe, it may have been March 11th, that that additional information was filed. We have not submitted a subsequent report to the applicant's latest late filing.

CHAIRPERSON HILL: Okay. All right. Okay. Mr. Bello, you know, I'm going to go ahead and accept your filings, because I think we want a full record to be able to take a look at your application. And then also, we're going to postpone this because I don't have anything from the Office of Planning yet for us to kind of take a look at.

Commissioner Holmes, well actually I won't -- so, I'm going to -- can I just do that on consensus, Ms. Cain?

MS. CAIN: I think it would be better if you took a vote.

CHAIRPERSON HILL: Okay. All right. I (audio interference) video. All right. I'm going to make a motion to admit the late filings so that we have a full and complete record and ask for a second, Ms. John.

VICE CHAIR JOHN: Second.

CHAIRPERSON HILL: Mr. Moy, could you take a roll call, please?

MR. MOY: When I call your name, if you would please

respond with a yes, no, or abstain to the motion made by the Chairman, I believe, to admit the late filings into the record. This motion made by the Chairman, second by Vice Chair John, I believe. Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Zoning Commissioner Chair, Anthony Hood?

CHAIRMAN HOOD: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a board seat vacant. Staff will record the vote as 4 to 0 to 1. This is on the motion of the Chairman to admit, seconded by Vice Chair John and the motion is supported by Zoning Commissioner Chair Anthony Hood, Mr. Smith. Motion carries, sir.

CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. So, when, Mr. Moy, can we postpone this to? When are we not slammed?

MR. MOY: I like that qualification there. Okay.

So, I would suggest -- I would suggest, Mr. Chair, and I would have to ask Mr. Bello is -- whether he could attend for the -- to allow Office of Planning time to do what they do, I think the earliest would be April the 14th. We have about nine cases, but this is a continued hearing.

CHAIRPERSON HILL: Mr. Bello, I think you're away,

right?

MR. BELLO: Yes, sir. I'm going to be away until the 21st of April.

CHAIRPERSON HILL: Okay. And then didn't we have you back on for something on the 28th?

MR. BELLO: That's correct. I have two cases on the 28th.

CHAIRPERSON HILL: Okay. Why don't we put you back on for the 28th?

MR. BELLO: That will work.

CHAIRPERSON HILL: Okay.

MR. BELLO: Thank you.

CHAIRPERSON HILL: Okay.

MR. MOY: That's good, Mr. Chair.

CHAIRPERSON HILL: How many do we have on the 28th, Mr. Moy?

MR. MOY: I was hoping you weren't going to ask me that. We have 11 cases, this will make 12.

CHAIRPERSON HILL: Oh, no, no, no, no. So what about the 7th?

MR. MOY: Of May?

CHAIRPERSON HILL: I'm looking at my calendar. Yeah, the 7th of May. Yeah, the 7th of -- yeah, the 5th -- the 5th of May.

MR. MOY: We have four cases and one appeal. But this

is a continued hearing, so I don't think you have much to (audio interference).

CHAIRPERSON HILL: Mr. Moy, we haven't even heard this thing yet. It doesn't matter whether it's continued or not, Office of Planning is currently in denial. So this is not a little thing that's going to happen, right. And -- I mean, Chairman Hood, you haven't even -- we haven't heard this yet, right? So you don't have to be on it necessarily, correct?

CHAIRMAN HOOD: No, I'm -- for some reason I stuck with it, I think -- because I think it was -- I think -- if I remember correctly, they were changing over and -- I don't remember honestly --

CHAIRPERSON HILL: Do you want to come back on the 5th, Chairman Hood?

CHAIRMAN HOOD: I'll work that out. I probably won't since you're going to have it on the 5th and we haven't really got into the merits, whoever the Commissioner is could take that over.

CHAIRPERSON HILL: Okay. So, Chair -- Mr. Moy, so we have five cases and an appeal on the 5th, if we added it to the 5th, correct?

MR. MOY: Yeah. The other suggestion, Mr. Chair, would be to move it to May 19th where we have eight cases.

CHAIRPERSON HILL: All right, Mr. Bello, what does that do for you?

MR. BELLO: If that's the availability, that's the availability.

CHAIRPERSON HILL: All right. Let's move to May 19th then, Mr. Moy. Commissioner Holmes, can you hear me?

COMMISSIONER HOLMES: Yes.

CHAIRPERSON HILL: Commissioner, when does your ANC meet?

COMMISSIONER HOLMES: Every second Thursday, 7:00. So our next meeting is going to be on April the 8th.

CHAIRPERSON HILL: Commissioner Holmes, I find you very entertaining. I'm going to come to one of your ANC meetings --

COMMISSIONER HOLMES: Come by.

CHAIRPERSON HILL: -- and see how yours goes.

COMMISSIONER HOLMES: Have some stamina, sometimes we go into extra innings.

CHAIRPERSON HILL: Oh yeah, so do we.

COMMISSIONER HOLMES: Yeah.

CHAIRPERSON HILL: Yeah. Yeah, that's true. The ANCs do that. All right. Okay. Then we will see everybody on 05/19. Thank you. Have a nice day.

CHAIRMAN HOOD: You have a good day. Have a good day.

CHAIRPERSON HILL: You too, Chairman Hood. I feel like we've already worked today, are we done?

All right, Mr. Moy, you can call our next case when you get an opportunity.

MR. MOY: Thank you, sir. This would be Case Application No. 20412 of 1515 Wisconsin Avenue, LLC. This application is captioned and advertised for a special exception from the lot occupancy requirements of Subtitle G, Section 404.1. And this would construct a two-story addition on top of a first floor at the rear portion of the existing building and to construct a three-story rear addition to construct six residential units in the existing three-story building in the MU-4 Zone. This is located at 1515 Wisconsin Avenue N.W., Square 1271, Lot 44. And that's all I have for the Board.

Oh, reminder, Chair -- Chairman Hood, you do know there are four requests for party status.

CHAIRPERSON HILL: Okay. Great. All right. Let me see -- all right, first of all, let's go -- Mr. Sullivan, could you introduce yourself for the record?

MR. SULLIVAN: Yes, thank you. Good morning, Mr. Chairman and members of the Board. My name is Marty Sullivan with Sullivan and Barros on behalf of the applicant.

CHAIRPERSON HILL: Okay. Great. Thank you. Mr. Rice, I love your tie. Happy Thanks -- Happy Thanksgiving -- Happy Thanks -- Happy Thanksgiving again, Happy St. Patrick's Day. Thank you. Happy Thanksgiving.

All right. Let's see, is there a Watkins and Dimond here? Watkins? Is it Mr. -- Ms. Watkins?

MR. WATKINS: Mr. Watkins. Yes, I'm here.

CHAIRPERSON HILL: Oh, hi, Mr. Watkins. Mr. Watkins, so could you, please, clarify for the Board why you believe you meet the criteria for us to award you party size?

MR. WATKINS: Sure. So, my partner is Iain Dimond, I believe he's on separately, we live at 1524 32nd Street N.W., also in the 1271 block, Square 0024, I believe. And we are in an adjacent property with direct lines of sight about 100 feet from the applicant's property in question.

CHAIRPERSON HILL: And what is it, Mr. Watkins, that are your issues and concerns?

MR. WATKINS: The issues and concerns that I have are the mass and scale of the property and the expansion of the applicant's desire for a special exemption. It's a very densely settled city block with commercial neighbors on one side and residential neighbors on the other side with shared property lines. And --

CHAIRPERSON HILL: So, you're -- I'm sorry to interrupt you. So you're concerned -- you're concerned about light and air or the density?

MR. WATKINS: Yes, I'm concerned about light, air, density. I'm concerned about density of the proposed expansion of residential units, apartment style units going from two to originally, I think, nine and now, I believe, six residential units on the property.

CHAIRPERSON HILL: Okay. All right. Let's see, the

next person is -- is it Mr. Lechliter? Mr. Lechliter, can you hear me?

MR. LECHLITER: Sorry, I was on mute. Let me -- can you hear me now?

CHAIRPERSON HILL: I can hear you, yes.

MR. LECHLITER: Great. Yes, my name is Michael Lechliter. I live at 1520 32nd Street. My property is immediately to the rear of the applicant's property just to the east on the residential road. My concerns are much the same in terms of noise, air, adverse impacts on privacy. I would also note that there's no parking for this increased number of residents that will be there, and that parking would likely come on our street, which ends at T Street, there's a dead-end there.

My concern also goes to precedent. I've seen in the Office of Planning analysis that one of the reasons for the recommendation was looking to the building immediately to the north and immediately to the south. Those are out of context and consistency with everything else to the north there. It's just one more building that will continue to be used as another example for exposure.

CHAIRPERSON HILL: Okay. Okay, Mr. Lech -- how do you say your last name again?

MR. LECHLITER: It's Lechliter, it's a tough one.

CHAIRPERSON HILL: Lechliter. Okay. Great. All right. So they're a little similar to Mr. Watkins and Dimond

then. Let's see, is it Ms. Vikan?

MS. VIKAN: Sorry, sir. It's Vikan, it rhymes with pecan, like the pie, but you can call me Nicole.

CHAIRPERSON HILL: Okay. Ms. Vikan, I'll call you Ms. Vikan.

MS. VIKAN: Thank you.

CHAIRPERSON HILL: Thanks. Could you tell us why you believe you meet the criteria and also what your concerns are?

MS. VIKAN: Yep. I live right next door to Michael Lechliter or -- Michael, I've never called you by your last name. But we live next to each other. I'm at 1518 32nd Street, so it's a close property, it's right behind me and the (audio interference), it's cater-corner, but behind me and then to the right of --

CHAIRPERSON HILL: Okay. What are some of your issues and concerns?

MS. VIKAN: Well, I think it really disrupts the historic nature of the neighborhood and really having more people, as everyone has indicated, more noise, less parking and less privacy. I will note that the applicant for 1515 has already developed 1513 Wisconsin Avenue in a style similar to what he's proposing for 1515. So that 1513 is directly behind my house and it's basically a brick box with like square windows. It has no historic character, so it really doesn't feel in line with the look of Georgetown and I think that this would be similar, we'd

be looking out on like a row with just bricks.

CHAIRPERSON HILL: Okay. Okay. All right. I understand. I'm just trying to get through the party status issues.

MS. VIKAN: Oh sure.

CHAIRPERSON HILL: Okay. Thank you.

MS. VIKAN: Thank you.

CHAIRPERSON HILL: Is it -- let's see, Mr. Bottelson?

MR. BOTTELSON: Hi Chairman. Yes, Matthew Bottelson.

CHAIRPERSON HILL: Okay. Could you introduce yourself for the record, please, sir?

MR. BOTTELSON: Certainly. My name is Matthew Bottelson, and I am the property owner of 1516 32nd Street, which, like Nicole, Iain and Michael is on the street rear of the subject property.

CHAIRPERSON HILL: Are your issues similar to what you've heard?

MR. BOTTELSON: Yes, they're very consistent.

CHAIRPERSON HILL: Okay.

MR. BOTTELSON: My property line is somewhere between 20 to 50 feet away from --

CHAIRPERSON HILL: Okay. Let me interrupt you, Mr. Bottelson, I'm sorry. So do you all know each other?

MR. BOTTELSON: We have a familiarity.

CHAIRPERSON HILL: Okay. So this is -- and I'm looking

to my Board members now. What I'm going to propose is that you all join together and present together as one party, in terms of -- I mean, you'll each be listed as individual party status people, but you'll speak as one voice, right. So, basically, what's going to happen is that -- the way the hearing usually happens is that the applicant speaks and gives their testimony, then the party status group speak and give their testimony. And what you need to do is pick one of your -- one of the group to be the voice, right.

And what I'm going to propose, actually, is that -- and Mr. Sullivan, you know, you can object to this or we'll see what's going to happen, but depending upon how my Board feels, I think we're going to go ahead and grant party status and then get filings from the applicant as to why they believe that, you know, their issues and concerns are and then we'll go ahead and put this back on for a hearing.

And then, you know, set dates so that we can get -- so that you guys can get together, put together your opposition statement and then have the applicant respond to those issues and concerns and then we'd have the hearing. And so -- wait one second, wait one second, so -- and I'll let you talk. So my Board can think about what I'm saying, and then the other option again, is to have the hearing now, but I want to hear what everybody has to say and then we'll see what happens.

Let's see, Ms. Vikan?

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MS. Vikan: Like Pecan -- like Pecan Pie.

CHAIRPERSON HILL: I'm sorry.

MS. VIKAN: Yeah, personally, I think we should delay. I mean, Mr. Sullivan is well known in his field as a zoning expert, so I don't know if we should hire a lawyer, but I think we should get a chance to work together to figure out our common sort of message, rather than doing it on the fly when we're up against counsel like Mr. Sullivan.

CHAIRPERSON HILL: Okay. All right. So that was your comment, all right. Mr. Sullivan, you have something to say?

MR. SULLIVAN: Trying to butter me up. So I don't see any reason to postpone, and we would object. We were scheduled for today, everybody's had extensive filings. There's been a lot of back and forth and community interaction. The ANC is in unanimous support and we've already made substantial changes. The initial proposal was a full FAR and we were going to the required rear yard limit and then there's been a significant reduction in that, down to 1.9 FAR. The rear yard requirement is 15 feet, we have 24. The height is only 25 feet at this point.

So at this point they're looking at a building that's 25 feet away and only 25 feet high, which --

CHAIRPERSON HILL: Okay, I got it.

MR. SULLIVAN: -- so it's a simple --

CHAIRPERSON HILL: I got it.

MR. SULLIVAN: -- case is what I'm saying --

CHAIRPERSON HILL: I got it.

MR. SULLIVAN: -- and I think --

CHAIRPERSON HILL: I got it.

MR. SULLIVAN: Thank you.

CHAIRPERSON HILL: Let's see, so I'll let Vice Chair John go last. Mr. Smith, what do you think?

BOARD MEMBER SMITH: I am inclined to agree with Ms. Vikan; I believe I did say that right. I do want to give some time to the -- for the parties in opposition to get together, because they are now -- it sounds like you'll lean towards granting them all party size and they will all be fine for them to coordinate with each other and to have some additional conversations about (audio interference). I am inclined to not hear it today and to schedule this at a later date.

CHAIRPERSON HILL: Mr. Turnbull?

COMMISSIONER TURNBULL: Mr. Chair, I think Mr. Sullivan made some good points, but I also feel that the party in opposition should have a chance to present a unified front, so I would be willing to postpone also.

CHAIRPERSON HILL: All right. Ms. John?

VICE CHAIR JOHN: So I agree with Commissioner Turnbull, that there are good reasons for moving forward today, but I can also understand why the parties would like to get together and to consolidate their presentation. So I am fine

with postponing to a future date.

CHAIRPERSON HILL: Okay. So -- just so my Board is also aware of what I'm thinking of, like I kind of go back and forth on whether we hear things -- I shouldn't say go back -- whether we hear things the day of and I don't -- it's not -- we're not setting a standard here. I mean, the reason why I'm also leaning towards is there's multiple party status and now we're going to ask them to join together and I think that it will be more efficient for us to go ahead and hear it, you know, as one unit, one voice. And so we'll allow them time to go ahead and do that.

So, Mr. Sullivan, I'll get back to you in a second, you were leaning in there. Ms. -- Nicole, so Nicole, let's see, since you spoke up first, can you go ahead and -- do you have the phone number -- does everybody have everybody's phone number?

MS. VIKAN: Uh-huh.

CHAIRPERSON HILL: Okay. So why don't you go ahead and get together with your people there, okay.

MS. VIKAN: Okay.

CHAIRPERSON HILL: And figure out what you want to do, right. I guess there were some dates that were suggested to me in terms of -- that the opposition submit their statements in brief, outlining how the applicant is not meeting the requirements for relief, right. So you guys have to do a little bit of homework and understand what we're here for, which is the

zoning, right.

MS. VIKAN: Okay.

CHAIRPERSON HILL: And the Office of Planning's report is where you can go ahead and make sure you understand what the criteria is, right. Let's see, then if you put those filings by 03/24 --

MS. VIKAN: Uh-huh.

CHAIRPERSON HILL: -- okay. Then the applicant can file their responses by 03/31, and if the ANC has anything they'd like to add, they can add it by 04/7 and then Mr. Moy that would put us back here at 04/14. What day -- what's the case load on 04/14, Mr. Moy

MR. MOY: All things being equal, I think that would be a good day for the Board.

CHAIRPERSON HILL: What does that mean, Mr. Moy?

MR. MOY: It's -- I think the week before, the 7th would be better, but that's only the difference of one case, so.

CHAIRPERSON HILL: How many cases on the 14th, Mr. Moy?

MR. MOY: We have -- we have eight cases, one expedited and one time extension.

CHAIRPERSON HILL: And then you're saying how many on the 7th?

MR. MOY: We have nine cases.

CHAIRPERSON HILL: All right. Let's put it on the 14th, it will work better for the dates anyway.

MR. MOY: Okay. Yeah, very good.

CHAIRPERSON HILL: Okay. Yes, Nicole.

MS. VIKAN: I just have two questions. So we submit one document from all of us for the 24th?

CHAIRPERSON HILL: Yes. You can submit whatever you want to. It doesn't have to be one document. You have to submit your opposition.

MS. VIKAN: Okay.

CHAIRPERSON HILL: Okay.

MS. VIKAN: And what did you say -- where did you say is the best place to make sure we understand the difference between zoning and the other things? Because we've been to lots of meetings and I'm very confused about --

CHAIRPERSON HILL: Sure. In the record -- in the record --

MS. VIKAN: Uh-huh.

CHAIRPERSON HILL: -- right. There's the Office of Planning report, which I think you already referred to, right.

MS. VIKAN: Uh-huh.

CHAIRPERSON HILL: That outlines all of the regulations and the standards with which the Board is supposed to judge the regulations -- you know, the standards that we look at, right.

MS. VIKAN: Okay.

CHAIRPERSON HILL: Okay. So that's good. Yes. All right. Okay. So, Mr. Sullivan, I don't know whether you want

to try to reach out to these guys or not, or we'll just see what happens, but you had a comment?

MR. SULLIVAN: No.

CHAIRPERSON HILL: Okay. All right. Okay. Then we'll see you guys on -- so everybody understands the dates? Okay. So we'll see you guys on 04/14.

MS. VIKAN: Stay well.

CHAIRPERSON HILL: Thank you.

MR. BOTTELSON: Thank you.

MR. LECHLITER: Thank you.

CHAIRPERSON HILL: Thank you very much. Okay.

MR. MOY: Actually, Mr. Chair, I just realized, that I'm back that day anyway.

CHAIRPERSON HILL: So then, it's appropriate. All right. Okay. So there goes that. Give me one second, please.

All right. Okay. Mr. Moy, you can call our next case.

MR. MOY: Thank you, Mr. Chairman. So if we can get parties to the table to Case Application No. 20419 of Brian Mulhern M-U-L-H-E-R-N and Marisa Garcia Lozano. This is an application for special exceptions from the lot occupancy restrictions -- just a second. Yeah, special exception from the lot occupancy restrictions to Subtitle D, Section 304.1 and this would construct a rear deck and stairs to an existing two-story with basement, attached principal dwelling unit, R-3 Zone. The subject site is located at 5406 Kansas Avenue N.W., Square 3330,

Lot 8.

CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
Is it Mr. Mulhern?

MR. MULHERN: Yep, that's correct.

CHAIRPERSON HILL: Could you introduce yourself for
the record, please, sir?

MR. MULHERN: Yep. Hello, everyone. My name is Brian
Mulhern and I live at 5406 Kansas Avenue N.W., which is the
property in question here, and this is my wife, Marisa.

MS. LOZANO: Good morning, my name is Marisa Garcia
Lozano.

CHAIRPERSON HILL: Good morning. Nice to meet you
both.

MR. MULHERN: Likewise.

CHAIRPERSON HILL: Mr. Mulhern, so you're going to be
presenting (audio interference) no, that's okay. Maybe it was -
- all right, I'll tell you what, mute yourself for one second
while I say what I need to say and then I'll mute myself, okay.

So, go ahead, you're going to be presenting to us.
And, again, what you need to do is, you know, speak to your
project and also how you're meeting the standard for us to grant
the application, right.

And so one of the things that you can kind of speak
about again also, is the general criteria and what that,
basically, pertains to is how it's not going to adversely affect

the use of the neighboring property, okay, so you can kind of speak to that. And then also the general purpose of, you know, the zoning regulations. But we'll coach you through this, okay.

So go ahead and tell us about the property owner -- Mr. Rice is about to say something. So I don't even need -- people don't even need to raise their hand, I can just see -- exactly, wave their tie.

So, let's see -- and then -- yeah, so that's kind of what I'd like you to kind of talk to us as you're talking about your project Mr. Mulhern. Mr. Rice, you have something you'd like to add?

MR. RICE: I believe Mr. Mulhern filed a waiver for a supplemental burden of proof, and we have achieved that through the general special exception requirement, if the Board wants to consider it. I believe it was filed as Exhibit 31 in the record.

CHAIRPERSON HILL: Let me look. Is that a late filing?

MR. RICE: Yes, it is.

CHAIRPERSON HILL: Got it. Okay, I see that now. Oh, their request to reopen the record, all right, for the supplemental burden of proof. Oh yeah, I don't have any issues with reopening the record so we can see the supplemental burden of proof, as well as the other items that were put in there.

And I guess now Mr. Mulhern -- just give me one second. Okay. You did speak to the general criteria. Okay. All right.

So Mr. Mulhern, you can go ahead and, you know, present

your case. And so unless the Board has any issues with me admitting that stuff into the record, if so, please raise your hand. No? All right.

All right, Mr. Mulhern, I got 15 minutes on the clock there and you can begin whenever you like.

MR. MULHERN: Sounds great. Thanks. And I did submit a, you know, a PowerPoint or a PDF presentation to run through, it kind of looks like that's pulling up right now, perfect.

So, just to give a quick overview of the case here on our proposed deck addition, it is a -- I'm sorry, it looks like this is still pulling up, so I'll give that a second to load. Whenever that pulls up, if you could just advance to slide 2, please.

What we're proposing is a small deck roughly, you know, 10 feet by 13 feet -- 13 to 14 feet in width with an attached staircase on the back of our property and that's what's being shown here is the proposed architectural plans for the deck.

The reason that we're coming to the Board with a request for special exception is because we'll exceed the lot occupancy limit of 60 percent. With this new proposed deck, the lot occupancy would go up to 67 percent, and that's shown in the next slide, which shows the plot with the proposed deck included.

So, you know, with regards to the, you know, our proposal and why we feel it should be accepted, again, it's something that really appears to be within the, you know, the

scope of decks that we see on neighboring properties in our -- on our block and in the neighborhood. It seems very consistent with the design and character of all those things, and I think that, you know, part of the reason we're having to come is really due to the size of our lot.

Although, I do have to declare, of course, that I'm not a zoning expert here, so when it comes to speaking to the general purpose and intent of the zoning regulations and zoning maps, these are the items that I spoke to in the supplemental burden of proof that I submitted. Again, it's not going to change the use of the property and really the reason we're seeking relief here is because of the size of the lot, and it's not an overly large deck in my opinion.

We don't think it would affect adversely the neighboring properties in any way. You know, the light and air would not be impacted to the neighborhood properties. This is an open-air deck, there's no covering or enclosed portion of it. And, you know, we have been very upfront and, you know, met with and spoke with our neighbors and shared our potential plans as we've gone through and prepared for this process and have letters of support from the neighbors as well, so -- additionally, I see that we have support from the ANC and Office of Planning.

Just to show, quickly, a couple quick pictures to kind of illustrate the point -- if you could go to the next slide, please. Ours is the yellow property there. As you can see, one

of the adjacent properties has a deck and addition structure that actually is larger in area than what we're proposing. And if you go to the next slide, you also see that other, you know, properties on the block have similar sized structures and this would be very consistent with what you're seeing here, so.

With that, I'll turn it over to the Board and let you guys ask any questions that you might have.

CHAIRPERSON HILL: All right. Thank you, Mr. Mulhern. If you want to mute your mic.

Does the Board have any questions for the applicant, and if so, raise your hand. Mr. Turnbull?

COMMISSIONER TURNBULL: Thank you, Mr. Chair. I had one -- there was the one picture, the second to last picture that was up on the screen. It shows you've got an existing fence coming down the middle of that -- is that -- it looks like there's a concrete -- you have a garage and then there's like a fairly large drop off between half your property. Am I correct in that?

MR. MULHERN: That is correct. So our backyard is half driveway and half yard, so there is a fence there that is separating the yard portion from the driveway.

COMMISSIONER TURNBULL: So I'm confused, I mean, your -- the property plan, the site plan doesn't really show that fence or anything, it looks like it's like level ground back there. So what -- I'm just curious what's going to happen? How does that work with your -- does the fence stay with the deck or

what's happening?

MR. MULHERN: The plan would be to include the -- oh, so maybe that piece might not be clear and that's a great question. So the deck is at the second level of the house and not on the first floor. So it would be an elevated deck that comes out. You know, with the way our house is on the hill, the first floor -- like the -- where the garage and everything is the basement, this would be elevated above that.

COMMISSIONER TURNBULL: So the fence would still stay; is that it?

MR. MULHERN: That is correct.

COMMISSIONER TURNBULL: Oh, okay. I was just curious; I didn't know how that was going to work out. It just looks a little awkward, but you're right. I mean, I guess it would have been nice to see the fence in relationship to the deck to see how that works but thank you.

MR. MULHERN: Sure.

CHAIRPERSON HILL: All right. I'm going to turn to the Office of Planning.

MS. FOTHERGILL: Good morning, Chairman Hill and members of the Board. I'm Anne Fothergill from the Office of Planning for BZA Case 20419. And the Office of Planning rests on the record in support of the application and finds that it meets the special exception relief criteria of Subtitle D 5201 and the general special exception relief criteria of Subtitle X,

and I'm happy to take any questions.

CHAIRPERSON HILL: All right. Thank you, Ms. Fothergill. Does the Board have any questions for the Office of Planning? Okay. Does the applicant have any questions for the Office of Planning?

MR. MULHERN: No.

CHAIRPERSON HILL: All right. Mr. Young, is there anyone here wishing to testify?

MR. YOUNG: We do not.

CHAIRPERSON HILL: All right. Okay. All right. Mr. Mulhern, unless you have anything to add I'll let everybody go. Thank you very much, you all have a nice day.

MR. MULHERN: Sorry, just to make sure I was understanding the procedure from here, does that mean that -- is there a vote or anything that happens now? I'm sorry if I'm confused about the next steps.

CHAIRPERSON: That's all right. We're going to see if the Board wants to deliberate and if they want to take a vote, so you can just go ahead and watch.

MR. MULHERN: Got it. Thank you for clarifying.

CHAIRPERSON HILL: Sure. Okay. All right. So I didn't have any issues with this application. I thought that their supplemental burden of proof -- I would agree with that. I would also agree with the analysis of the Office of Planning and the recommendation that they have and also, the support of

ANC 4D and the neighbors as well, in terms of how they're meeting the criteria. So I'm going to be voting to approve.

Mr. Turnbull, do you have anything to add?

COMMISSIONER TURNBULL: No, Mr. Chair. I would agree with you and I would also concur and I would approve the case as stated. Thank you.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: I agree with you and Mr. Turnbull. I would approve the case as submitted.

CHAIRPERSON HILL: Ms. John?

VICE CHAIR JOHN: I agree with all of the comments so far and I hence support the application.

CHAIRPERSON HILL: All right. I'm going to make a motion then to approve Application No. 20419 as captioned and read by the secretary and ask for a second, Ms. John.

VICE CHAIR JOHN: Second.

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

MR. MOY: Thank you, Mr. Chairman. When I call your name if you could please respond with a yes, no, or abstain to the motion made by Chairman Hill to approve the application for the relief requested. The motion was seconded by Vice Chair John.

Zoning Commissioner Michael Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a board seat vacant. Thank you. Sorry for that momentary lapse. The staff would record the vote as 4 to 0 to 1 and this is on the motion made by Chairman Hill to approve for the relief requested. Seconding the motion is Vice Chair John. Also in support of the motion is Zoning Commissioner Michael Turnbull, Mr. Smith and of course, Vice Chair John, Chairman Hill, motion carries 4 to 0 to 1.

CHAIRPERSON HILL: All right. Great. Thank you, Mr. Moy. If it's okay with the Board, can we just go ahead and do one more and then take a break? Okay. All right, Mr. Moy, you want to go ahead and call the next case when you get a chance?

MR. MOY: So this would be Case Application 20407 of Andrew McKinley. This application is captioned and advertised for a special exception from the lot occupancy requirements of Subtitle E, Section 504.1. This would construct a one-story rear addition to an existing attached three-story principal dwelling unit in the RF-3 Zone. This is at premises 307 A -- A as in Alpha -- Street N.E., Square 0786, Lot 814.

Mr. Chairman, there is a preliminary matter to request

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to waive the 24-hour filing period to allow a report letter from the Architect of the Capitol.

CHAIRPERSON HILL: All right. Okay. I think -- I think I'd like to waive the limit for Mr. Turnbull's late filing, Mr. Turnbull, unless the Board has any issues, we'll go ahead and allow that into the record.

Ms. Brittingham, can you hear me?

MS. BRITTINGHAM: Yes.

CHAIRPERSON HILL: Okay. Are you choosing not to use your camera today (audio interference).

MS. BRITTINGHAM: I can. Hi.

CHAIRPERSON HILL: Okay. Great. Thank you. All right. So, Ms. Brittingham, yeah, I don't have anything specific to ask you actually. If you want to go ahead and go through your presentation and tell us how you're meeting the criteria for us to grant the application. I see that the applicant is here with us, but I'll just wait and see if we -- if the Board has any questions for anyone. You can go ahead and begin whenever you would like.

MS. BRITTINGHAM: Okay, great. Mr. Young, can you pull up the presentation, please? Okay. So this project is to propose a rear single-story addition as noted, to an existing three-story home in the RF-3 District. We are seeking relief only for lot occupancy. We are proposing 70 percent lot occupancy to go to the second -- well, actually, let me see here, we have

an unusual number of neighbors that are adjacent property owners. We have worked very hard with the neighbors to gain their support and so we have a letter of support from 309 A, off to the side, and then we have the rear property line of one, two, three, four, five neighbors along 3rd Street and I'll give the summary of those. There's this little kind of leg of an interior lot that kind of touches the back, that is also owned by the owner of 309 A Street. And just to note there's a very large tree sort of in the rear of the yard of 19 3rd Street, which is, of course, to the south and casts a lot of shadow on the whole area back here, the rear yards of these -- this group of houses.

This is a block that has no alley, so the -- our property as well as many others are landlocked and, as you can see, some of the rear yards are completely behind the existing length of the house on the subject property. Okay, now if you could go to the second slide, please.

Just to note, on the left photograph is the blue house is the front of our house. And then there is this existing pass through in the house on the corner, which is 27 3rd Street, and that walk-through is used by the neighbors of 25, 23 and our house at 307 and has been used in the past for just access to the back yards, construction projects. All the neighbors here in this little group of houses are pretty close and so have a pretty good relationship and communication about the use of that.

You'll see a bit later, there is a gate that goes from

that access into the backyard of 307 A Street and we're proposing to shift it down but retain that access into the backyard.

Looking at the little picture (audio interference) existing back of the house, the rear section of the house is only two stories in height but has the roof deck at the top. We are taking the picture from the elevated rear yard, which is shown in the right hand photograph. And when you're down in the lower part of the yard, there is a wooden fence to the west and an existing garden -- brick garden wall separating the yards of 307 from 309 and you can see that in the right hand photograph, the brick wall on the left side of the photograph. On the right this brick wall is the back of the house at 21 3rd Street. Okay, next slide, please.

Here is the gate -- so the wooden fence which is separating the rear of 307 from the rear yards of 21 and 23 3rd Street, this is the back of 21 3rd Street and this is the existing gate that we will be shifting down further to the south, but retaining that access. Okay, next slide, please.

Just looking at the block from the zoning map, which, of course, shows that there is an alley on the block, but it doesn't extend to where this group of houses is at the corner. Next slide.

So the original filing request for this project was for a rear two-story addition. We worked with the neighbors in order to gain their support for the project to reduce the project down

to a single-story rear addition. This just shows we are doing a significant renovation of the existing house on all levels and are requesting to extend the first floor only. So this is the removal of the gate that we mentioned previously and just removing the back wall for the first floor. Next slide, please.

The second floor you can see, the gray hatch indicates existing walls to remain, so we are retaining the length of the house at the second floor. Next slide.

Third floor, same thing, we're keeping it within the bounds of the third floor, keeping the roof deck, just reconfiguring the interior layout of the third floor. Next slide, please.

And this is the proposed first floor, extended first floor, and here's the gate that moved down to sneak in between the new end of our house and 21 3rd Street. Next slide.

Second floor, proposed layout. Next slide. And third floor. Next slide. Showing the roof plan. Next slide.

Okay. Rear addition, rear elevation, so this shows the existing on the left and on the right the proposed rear elevation and you can see that there is -- it's a little bit hard to see, there is a fence here that we are proposing to retain and then the existing brick garden wall between -- at this house, 307 and 309. There are large doors at the back of the single story addition and keeping the existing windows at the second floor. Next slide.

Also here you can see, this is shown from the viewpoint of the neighbor at 23 3rd Street, the gate and fence that they look at now and then showing how the single-story addition would pop up above that and leaving the fence that they're used to looking at to try to reduce the amount of change that they will be experiencing. Next slide. Next slide, please.

Oh, that's the end. Okay. Very good. So as far as the criteria for approval, we are -- the light and air available to neighbors will not be adversely affected. Again, we've worked very hard to gain the support of 23 -- actually, Mr. Young, you could go back to the first slide just to kind of give everyone the overview of the relationship of these properties. Thank you.

So we've worked very to gain the support of the neighbor at 23 3rd Street. They obviously, have the greatest impact by the changes and we have -- you know, it's not really about light since the rear of 307 -- since the house is oriented in a north-south direction there's little shadow that would be cast on the neighbors on the two sides near the existing fence and brick wall that further sort of already provides shadow into the neighbors' yards as the sun travels across the path. But there's no neighbor to the north that would experience the bulk of any addition on the back of the house.

And 25 is actually not affected whatsoever, 27 is not affected whatsoever. And we do have a letter of support from the two that are primarily affected, which would be 309 A and 23

3rd Street.

We have reached out to 27 3rd Street. It is not owner-occupied. I don't have a relationship with that neighbor and so we did send a Certified mailing offering to discuss the project and have not heard anything from them.

19 3rd Street is owner-occupied, and we've knocked on the door several times, left a letter for them and have not had any -- they have not reached out to us to provide any input on the project.

So we believe that we are not affecting the light and air available to the neighbors in a substantial way. The privacy of use and enjoyment will not be unduly affected. We have windows only on the rear façade of the single story addition looking into our own enclosed backyard.

The proposed will not substantially visually intrude upon the character, scale and pattern of the other buildings, this will not be visible from the street, the alley does not extend into those corners and not even visible from the alley because of the sunken nature of sort of the corner of this lot and all the backyards. The middle of the lot is much higher and separated by, as I mentioned, large trees, buildings and fences. It is designed in a style common to residential additions, so it would fit in with the context as well.

We do have the letter of support from the ANC, we have letters of support from the neighbors, we have a letter of support

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from Capitol Hill Restoration Society. We have a letter of schematic approval from the Capitol Historic Trust.

So, in summary, we feel like the project safely meets the requirements of the special exception and that would conclude my presentation, but I welcome any questions.

CHAIRPERSON HILL: Thank you, Ms. Brittingham. Does the Board have any questions of the applicant? Mr. Turnbull?

COMMISSIONER TURNBULL: Just one question. So -- but you do have favorable approval from 21, 23 and 25?

MS. BRITTINGHAM: That is correct.

COMMISSIONER TURNBULL: Okay. I just wanted to clarify that. Thank you.

CHAIRPERSON HILL: All right. I'll go ahead and turn to the Office of Planning.

MS. THOMAS: Good morning, Mr. Chair, Members of the Board. Karen Thomas with the Office of Planning. We will rest on the record in support of this application. We believe it has met the task for the lot occupancy and we see minimal impact with the adjoining neighbors. Thank you.

CHAIRPERSON HILL: Okay. Great. Does anyone have any questions for the Office of Planning, meaning the Board? Does the applicant have any questions for the Office of Planning?

MS. BRITTINGHAM: No.

CHAIRPERSON HILL: Mr. Young, is there anyone here

wishing to testify?

MR. YOUNG: We do not.

CHAIRPERSON HILL: Okay. Ms. Brittingham, do you have anything you'd like to add at the end?

MS. BRITTINGHAM: No, thank you.

CHAIRPERSON HILL: I'll just make a comment. It's really like an odd little project. I mean, that whole thing in the back -- that whole thing with 27 -- 23rd Street -- 27 3rd Street, that's just a weird building. I guess it's an apartment building?

MS. BRITTINGHAM: Yeah, I think it's broken up into a couple different units.

CHAIRPERSON HILL: Okay. All right. All right. I'm going to go ahead and close the record of the hearing, excuse everyone, thank you very much.

Would someone else like to begin deliberation, perhaps. Commissioner Turnbull, may I start with you?

COMMISSIONER TURNBULL: Sure. It's always interesting what a -- I'm on a case that I have to report that I'm also sending in a letter commenting on Capitol (audio interference). It's strange and I think this may be the first time that I've actually had to look at my own report, so. But, obviously, looking back on the Capitol (audio interference). There's no impact on the operations at the U.S. Capitol.

I think, you're right, this is a very unique case, no

alley, landlocked and the applicant has worked very well with the adjacent neighbors to -- that this is -- you have -- allow access to the backyard. To be that concerned in working with the neighbors to get the right effect and to solve the issues of being that "cheek and jowl" next to people and to have this work out. So I think -- I mean, I have no -- I mean, the Capital IC -- I mean, Mr. Peterson from the Capitol Hill Restoration Society has responded, they're okay, ANC is okay. I think to have this kind of input and interaction with your neighbors, I have no -- I think what they're asking for is minimal and I would vote to approve this.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: I completely agree with Mr. Turnbull. I think it gives great weight that they could get support by and from the adjacent property owners that are pretty much right up against them at 21, 23rd and 25th 3rd Street and 309 A Street as well. So I will rest on the staff report as supplied by OP. I do believe that given that the addition is only one foot in height it would not have any -- one feet in height -- one story -- one feet in height, must be mice -- one story in height -- being that it's one story in height it would not impact any -- have any adverse impact to light and air to the neighbors that are in support of this request.

And also, we did receive letters in support from the ANC, the adjacent property owners, the Capitol Hill Restoration

Society and our own Mr. Turnbull in his capacity as the Architect of the Capitol, so with that I would support the special exception.

CHAIRPERSON HILL: Ms. John?

VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree with Mr. Smith and Mr. Turnbull. I also would like to commend the applicant for working with the neighbors. I mean, this is a deceptively complicated case in terms of making sure the neighbors (audio interference) and so I will support the application based on that (audio interference). And so I'll leave it at that.

CHAIRPERSON HILL: All right. Thank you. I don't have anything to add. I guess, I would agree with the analysis of the Office of Planning. I do appreciate the applicant and I do believe they're meeting the standard for which we can grant the application.

I do appreciate them working with the neighbors, what I was trying to say, it's a weird little thing. It's a weird -- I mean, up on Capitol Hill there, just all kinds of -- it's a old neighborhood, obviously.

So anyway, I'm going to make a motion to approve Application No. 20407 as captioned and read by the secretary and ask for a second, Ms. John.

VICE CHAIR JOHN: Second.

CHAIRPERSON HILL: The motion has been made and

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

MR. MOY: Thank you, Mr. Chairman. When I call your name if you would please respond with a yes, no, or abstain to the motion made by Chairman Hill to approve the application for the relief being requested. The motion was seconded by Vice Chair John. Zoning Commissioner Michael Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a board seat vacant. Staff would record the vote as 4 to 0 to 1. And this is on the motion of Chairman Hill to approve the application, seconded by Vice Chair John. Also in support of the motion, Mr. Smith and Zoning Commissioner Michael Turnbull. The motion carries sir, 4 to 0 to 1.

CHAIRPERSON HILL: Okay. Great. Thank you. All right. Thanks, everybody. Let's take a 15-minute break; is that good? Okay. See you guys in a little bit.

(Whereupon, the above-entitled matter went off the record and then resumed at 11:15 a.m.)

CHAIRPERSON HILL: All right. Mr. Moy, you can call

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our next case.

MR. MOY: Thank you, Mr. Chairman. The Board is back in session after a quick recess and the time is at or about 11:15. The next case application before the Board is Application No. 20415 of James Francis Smyth S-M-Y-T-H. This is an application for special exception under the lot occupancy requirements of Subtitle E, Section 304.1. This would construct a second-story addition to an existing detached single-story accessory structure in the RF-1 Zone at premises 515 10th Street S.E., Square 0949, Lot 821. Thank you.

CHAIRPERSON HILL: Okay. Ms. Brittingham, can you hear me? If you could please introduce yourself for the record?

MS. BRITTINGHAM: Hello, my name is Lacey Brittingham. I am the architect for the project for the applicant. I'm agent for the applicant.

CHAIRPERSON HILL: Okay. If could go ahead, Ms. Brittingham, and walk us through your presentation as to -- wait, is there -- you have a waiver for a deadline? Or no?

MS. BRITTINGHAM: Well, I guess we did upload new drawings based on the HPRB requirements, changes to the design to be all brick.

CHAIRPERSON HILL: Ms. Cain, were those late?

MS. CAIN: There was a request that came in at Exhibit 35 to waive the 21-day filing deadline. I believe that was for proof of the underlying lots, that may also be for the plans as

well.

CHAIRPERSON HILL: Got it. Okay. Unless the Board has any issues, I'm going to waive the filing deadline, because I would like to see everything in the record.

So, Ms. Brittingham, you can go ahead and begin whenever you'd like. If you can also speak to the general criteria as to how you're meeting -- you know, it's not going to affect the neighboring property and it's in harmony with the zoning regulations, as you're kind of talking it through. And you can begin whenever you'd like.

MS. BRITTINGHAM: Okay. Sure. And Mr. Young can pull up the presentation, please.

So this case is only requesting relief from Section 304.1 for lot coverage in order to add a second-story to an existing single-story accessory structure. The structure to the north at 513 10th Street Southeast is a very large garage that is rented by a commercial cabinetry company for commercial use and the property to the south at 517 10th Street, Southeast, obviously, they are one of the neighbors that do not have a existing garage. There are an unusual number of garages on this block, and we'll look at that on the next couple of slides.

But we have -- just as an overview, we have letters of support from 508 10th Street, 511 10th Street, 513 10th Street, 517 10th Street. We have a letter of support from 514 9th Street who is across the alley and 516 9th Street who is also across the

alley and then we mailed letters, drawings and product information to a number of other neighbors that were required for the HPRB process.

So we have very much worked with the neighborhood to make them aware of the project and hopefully gain their support and we have -- I've done that with a number, as I've mentioned. So we go to the next slide, please.

So in the center of the photograph on the left is the view of the existing garage from the alley. To the north, that blue structure is the large garage that takes up a very large part of that lot and there's that cabinetry manufacturing company.

The south has a car gate but no garage there and then the photograph on the right is the existing view of an existing single-story garage from the rear yard of this house. Next slide, please.

So this is a look at the block from the zoning map just showing the number of garages on the block. This is a large wide alley at 30 feet wide, so there is a lot of air and light available into the interior of this block because of the large alley. Let's go to the next slide, please.

So this is looking at the context and of the garages across the alley, noting that there is a combination of siding and brick structures, all single story. Next slide, please.

And then looking out to the end of the alley and then

on our side, there is, again, a number of brick and siding structures, all single story. Next slide.

Existing garage floor plan. Next slide.

Existing -- I'm sorry, proposed first floor plan doesn't change except for the stair that goes up to the new second story. Next slide.

Proposed second floor will have a rec room, a full bathroom and a storage closet for use by -- all for use by the primary residents. Next slide. Roof plan. Next slide.

Okay. So this is showing the existing alley elevation on the left, the proposed on the right. Again, this was revised in order to meet the Historic -- the requirements from HPRB. We were on the calendar last month, on the consent calendar, and so we were given approval for the project. Next slide.

The view -- proposed -- sorry, existing on the left, proposed on the right of the structure from the yard of the house. And you can see from this angle that -- obviously, the existing structure does not -- is behind the structure to the north and then with the addition you pop up just above it by a couple of feet. Next slide, please.

Okay. Showing the changes from the -- as viewed from the property to the south and it just (audio interference) a lighter brick wall and, again, this was at the request of HPRB and it's an entirely brick structure. Next slide, please.

And then here is -- there is no existing because it

would be behind the structure and then you pop up by a few feet once the second floor is proposed. Next slide.

Just looking at this in a section of the existing versus proposed. So our structure is 17.5 inches in height from the grade of the yard and 18.10 from the grade of the alley. And then actually you can go back to the first slide again, so we can see the overview.

Okay. So the light and air will not be unduly affected as noted. Any shadow cast would be to the north on that large garage at 513, but on the roof of it, essentially, just by ours projecting up a few feet above their roof. No affect to the neighbor to the south and then because of the wide alley at 30 feet, we are a nice distance from the other structures that are on 9th Street and then also pretty deep yards, so we're pretty far from the primary structures at 517 and 517 1/2.

The privacy of use and enjoyment, essentially, it's the same sort of argument to be made that because of the wide alley and the distance from the primary structures on 10th Street, our changes would have no affect on the neighboring properties.

And then we worked very much with HPO to propose a structure that was, obviously, approved by HPRB and their criteria, so we feel that it safely fits in with the context of the neighborhood and other structures.

So we feel that this safely meets the requirements of the special exception and I would welcome any questions.

CHAIRPERSON HILL: All right. Thank you. Thank you for your presentation. Does the Board have any questions of the Applicant?

Mr. Turnbull?

COMMISSIONER TURNBULL: I just had one. The existing garage is brick. It looks like it's painted brick.

MS. BRITTINGHAM: Uh-huh.

COMMISSIONER TURNBULL: So you're going to paint -- I guess what's -- if you're going to match your -- you don't have to worry about matching the brick. You're just going to put up brick as close as possible and then you're going to repaint the whole structure then?

MS. BRITTINGHAM: That's right.

COMMISSIONER TURNBULL: Okay. Thank you.

MS. BRITTINGHAM: Uh-huh.

CHAIRPERSON HILL: Anyone else?

(No response.)

CHAIRPERSON HILL: Yeah, I'm going to turn to the Office of Planning.

MS. VITALE: Good morning Mr. Chair, members of the Board. Elisa Vitale with the Office of Planning. I am sitting in for my colleague, Mr. Kirshenbaum on this case. The Office of Planning will rest on the record in support of the requested special exception relief for lot occupancy and I'm available to answer any questions. Thank you.

CHAIRPERSON HILL: All right. Does anyone have any questions for the Office of Planning?

(No response.)

CHAIRPERSON HILL: Ms. Brittingham, do you have any questions for the Office of Planning?

MS. BRITTINGHAM: No.

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

MR. YOUNG: We do not.

CHAIRPERSON HILL: Ms. Brittingham, do you have anything you'd like to add at the end?

MS. BRITTINGHAM: No thanks.

CHAIRPERSON HILL: Okay. All right. I'm going to go ahead and close the record and the hearing. Thank you all for attending.

Okay. I didn't have any issues with this application. I thought, again, it's interesting that Ms. Brittingham has had both of our more, I don't know, crowded cases. I mean, I thought that they were meeting the criteria concerning light and air, privacy, and enjoyment. I also just think that they've met their general special exception standards and I didn't have anything to say about it.

I believe that the Office of Planning's report is thorough, and I would agree with it as well as no issues from the ANC 6B. It looks like there is -- they have put a lot of outreach

to the immediate neighbors and also have been working with historic preservation. So I have -- going to be voting in favor of this application.

Mr. Turnbull, do you have anything to add?

COMMISSIONER TURNBULL: Not really, Mr. Chair. I think you covered it really well. I think, once again, we see Ms. Brittingham has done an excellent job for her client, I think, meeting with the ANC, Capitol Hill Restoration Society and HPRB working all throughout the -- and the neighbors getting consensus of approval from them. I think this is really is a fairly straight forward case and I would go along with you in voting approval.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: I agree with what you and Mr. Turnbull stated. I commend Ms. Brittingham for reaching out to the adjacent property owners, receiving letters of support from some adjacent property owners for the proposed addition. I stand on the OP staff report. I believe that this will have a fairly minimum impact given the size and the scale of this particular project and I do believe that it's relatively in character with what we see in that particular neighborhood. So with that, I would be in support of the special exception.

CHAIRPERSON HILL: Vice Chair John?

VICE CHAIR JOHN: Mr. Chairman, I'm in support of this special exception and I agree with all of the comments so far.

CHAIRPERSON HILL: All right. I'm going to go ahead and make a motion then to approve Application No. 20415 as captioned and read by the secretary and ask for a second. Ms. John?

VICE CHAIR JOHN: Second.

CHAIRPERSON HILL: Mr. Moy, the motion has been made and seconded. If you could take a roll call vote?

MR. MOY: Yes. Thank you, Mr. Chairman. When I call your name if you would please respond with a yes, no, or abstain to the motion made by Chairman Hill to approve the application for the relief requested. The motion was seconded by Vice Chair John. Zoning Commissioner, Michael Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a Board seat vacant. Staff would record the vote as 4 to 0 to 1 and this is on the motion made by Chairman Hill to approve seconded by Vice Chair John. Also in support of the motion is Mr. Smith and Zoning Commissioner Michael Turnbull. Motion carries 4 to 0 to 1, Mr. Chairman.

CHAIRPERSON HILL: All right, great. Thank you, Mr.

Moy. When you're ready, Mr. Moy, you can call our next case.

MR. MOY: All right. This would be case Application No. 20421 of Love Properties, LLC. This application is captioned and advertised for a special exception from the rear yard requirement, Subtitle G, Section 405.2. This would construct a two-story rear addition to an existing attached two-story commercial building in the MU-4 zone. This is at premises 2818 Pennsylvania Avenue, N.W., Square 1195, Lot 817.

Also, Mr. Chairman, apparently there is a waiver of the 21-day filing prior to a hearing to allow an OGP report into the record.

CHAIRPERSON HILL: Okay. That's it?

MR. MOY: Uh-huh.

CHAIRPERSON HILL: All right. Great. Thank you. Ms. Wilson, could you introduce yourself for the record?

MS. WILSON: Hi. Alex Wilson from Sullivan & Barros on behalf of the Applicant and I'm joined by Sean Buehler who is the project architect and then the owner should be on too here for it. I don't know if he's been on, but he should be signed on now.

CHAIRPERSON HILL: Okay. All right. Let's see. And Mr. Sullivan's on, but I guess it's if we need him, is that what that's for?

MS. WILSON: I think so.

CHAIRPERSON HILL: Okay.

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MS. WILSON: I'm not 100 percent sure if he's there, but.

CHAIRPERSON HILL: Okay. But he's noted. Okay. All right. So let's see. As far as the waiver goes, unless my Board members have any issues, I'm going to go ahead and approve the waiver because I want to see what the Applicant has for us and I don't think it's going to prejudice any parties, so unless somebody raises their hand -- nobody is raising their hand. Okay. We're going to go ahead and allow that in.

And Ms. Wilson, you can go ahead and begin whenever you like.

MS. WILSON: Great. Thank you, so much. Mr. Young, could you please pull up the presentation? Thank you. So the property is located at 2818 Pennsylvania Avenue, N.W. Next slide, please? The property is currently improved with a small two-story commercial building and the Applicant is proposing to construct a small two-story rear addition to the building.

I did want to note that the plan said it's a printing shop, but I wanted to note for the record that it's actually an art gallery use. It doesn't impact the request, but I just wanted to clarify.

The subject property is in the MU-4 zone requires a minimum rear yard of 15 feet and we are proposing a rear yard of 7 feet and 7 and 3/4 inches. Accordingly, we are seeking special exception relief pursuant to G 1200 and 1201 from the rear yard

requirements of G 405.2. Next slide, please?

ANC 2E unanimously supports the application. Their report was submitted yesterday, I believe, as Exhibit 35. The Office of Planning is recommending approval of the application. DDOT has no objection and OGB has granted concept approval. Next slide, please? I'm going to turn it over to Mr. Buehler briefly to walk through the project.

MR. BUEHLER: Thank you. My name is Sean Buehler from Ben & Frank McCarthy Architects who are the architect for the project. This slide shows a site plan. The red is the existing building. The hatched area is the proposed addition to the rear. The pieces to note here, we're along Pennsylvania Avenue. Most of the block is row house scale and they're all commercially used. The buildings to either side of us, 2820 and 2816, are both already deeper than we're proposing to go.

And then immediately behind us is the Four Seasons Hotel which is, for the first several floors, a large, solid, brick wall with no windows so there's really no impact to them for our addition. You can see a modest alleyway. It's not actually a recorded easement. It's just a general agreement that that space is left available for folks to empty their trash, but that's not a public way. Next slide, please?

So here's a slightly larger site plan that simply shows the footprint of our building, the proposed rear addition, the buildings to either side of us, and the depth of those buildings.

So we're proposing to go back to 7-foot 7 and 3/4 on the one side, 7'10" on the other. It's a slight angle to the rear property line and those numbers are based on achieving the FAR allowed on the lot and so that's how we got to that number. Next slide, please?

The rear elevation is essentially going to be a brick façade with punctured windows. That was worked out largely with OGB input and the sides of our addition will be brick as well and you can see the smattering of construction to the side of us with a variety of materials that you'll see in pictures in a moment. Next slide, please? So we're --

MS. WILSON: I can go ahead and --

MR. BUEHLER: Go ahead.

MS. WILSON: -- take it over here. Thank you so much. Regarding the general special exception criteria, the proposal to add to additional commercial space is consistent with the MU-4 zone's purposes of permitting moderate density mixed use development. The proposed reduction in depth of the rear yard would not adversely affect the use of neighboring properties, all of which are commercial.

There are no nearby residential uses. The adjacent properties to the east and west have deeper additions as Mr. Buehler mentioned and even smaller rear yards and would not be adversely impacted by the proposal and the hotel to the south has blank walls that go up higher than the level of the proposed

addition. Next slide, please? So these photos --

MR. BUEHLER: There we go.

MS. WILSON: -- demonstrate the conditions at the rear. As you can see, it's relatively condensed back there, and the adjacent buildings will continue to extend even beyond the addition which is only 13 feet long. Next slide, please? And this is the wall of the Four Seasons Hotel we were talking about and again, there are no windows facing our property. Next slide, please?

Regarding the specific criteria, the Applicant meets the requirements as the Applicant is not proposing an apartment of office use and the only non-parallel adjacent building, the Four Seasons at 2800 Pennsylvania, has windows that begin above the subject building and addition so there will be no sightlines into habitable rooms. And finally, the Applicant is not required to provide any parking or loading. Next slide, please?

That concludes our presentation. The request is relatively straightforward, and we safely meet the special exception criteria, and we are happy to answer any questions.

CHAIRPERSON HILL: Ms. Wilson, what are they going to do with the addition?

MS. WILSON: I'm sorry? I was getting feedback. I couldn't hear your question.

CHAIRPERSON HILL: What are they using the addition for?

MS. WILSON: I believe it's just a --

MR. BUEHLER: They're --

MS. WILSON: It's going to be an art gallery use. Is that correct, Mr. Buehler?

MR. BUEHLER: Yeah. The proposed use for the building is an art gallery and it's a very small building and so they're simply just trying to create some extra floor area, but both floors above grade are largely going to be a single open space so that they have -- will have more floor area to work with.

CHAIRPERSON HILL: Okay. I wasn't sure of the interior. Okay. Does anyone have any questions of Ms. Wilson or the architect?

Mr. Smith?

BOARD MEMBER SMITH: I just have a quick question just piggybacking off of Mr. Hill. How will the service functions function at this site? Will they be accessed through the rear addition or that'll be taken care of by the client?

MR. BUEHLER: I expect it'll be out of the rear. The basement is going to have some storage space and that's where trash cans will be, is in the back and everything. So coming and going will largely be through the back. It's not -- there's not a lot of in and out here. They're displaying artwork and so it's -- there's not a lot of heavy loading and unloading.

BOARD MEMBER SMITH: Okay. Thank you.

CHAIRPERSON HILL: Ms. John, did you have any

questions? I thought you had your hand up.

VICE CHAIR JOHN: No. No questions.

CHAIRPERSON HILL: No? Okay. All right. I'm going to turn to the Office of Planning, please.

MR. COCHRAN: Thanks, Mr. Chair. I'm Steve Cochran representing the Office of Planning in Case 20421 and OP's pleased to stand on the record and answer questions, of course.

CHAIRPERSON HILL: Okay. Great. Does anyone have any questions for Mr. Cochran?

Mr. Turnbull?

COMMISSIONER TURNBULL: (Audio interference) you're in a very interesting background, Mr. Cochran. You look like you're in an Irish castle. Where are you?

MR. COCHRAN: In fact, sir, this used to be -- all of these stones used to be under your jurisdiction.

COMMISSIONER TURNBULL: Are you in a park-like setting?

MR. COCHRAN: I'm within a national park, yes. That's one down, panel, and 27 to go.

COMMISSIONER TURNBULL: I know where you are. Okay. Thank you.

MR. COCHRAN: Okay.

CHAIRPERSON HILL: Oh, no. Mr. Turnbull, where is Waldo?

BOARD MEMBER SMITH: I was thinking where in the world is Carmen San Diego, but I may be dating myself.

MR. COCHRAN: They're all -- they're stones from the former east front of the Capitol that are -- that I ran across in Rock Creek Park when I was taking a walk the other day. They're generally just stones like this, a very large block of stones, but there are also some remaining ornamental stones from Capitol's and architraves and things like that. It's very interesting.

CHAIRPERSON HILL: All right. All right, Mr. Cochran.

MR. COCHRAN: It goes on forever.

CHAIRPERSON HILL: You'll continue to be -- this is going to be very -- I'm sure there's going to be something another time, so you look forward to that, Mr. Cochran.

MR. COCHRAN: Thank you, sir.

CHAIRPERSON HILL: Oh, no the (audio inference). All right.

COMMISSIONER TURNBULL: That was for Mr. -- that was for Mr. Cochran because I see he's wearing his green tie and --

CHAIRPERSON HILL: Yeah, that's good.

COMMISSIONER TURNBULL: -- and Ms. Wilson.

CHAIRPERSON HILL: Okay. That's right. Everybody's got their green on. All right. Mr. Young, is there anyone here wishing to testify?

MR. YOUNG: There is not.

CHAIRPERSON HILL: Okay. Ms. Wilson, you have anything you'd like to add at the end?

MS. WILSON: (No audible response.)

CHAIRPERSON HILL: Okay. Shaking her head no. All right. Thank you all very much. See you guys next time.

I'm going to let someone else start as soon as this is over and we'll start with the leprechaun if that's okay, Mr. Turnbull.

COMMISSIONER TURNBULL: Well, thank you. Mr. Chair, I have no issues with the case whatsoever. I think they're -- they've met the special exception criteria. I think there is really no issues with neighbors. There's the setting. I think this is a practical exception of the office with buildings on either side being -- are longer than it. I think that there is no really -- there's -- I'll be voting in favor of this. I don't see any reason not to. Thank you.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: I agree with Mr. Turnbull. I believe that this is a practical extension of a commercial use. I do believe that they have, Ms. Wilson and the OP staff report, has sufficiently demonstrated that the proposal request meets the general standards for granting a special exception. I do believe it's in harmony with the general purpose and intent of the Zoning Regulations were the zone that is that state or the intent of that zone is for medium density commercial uses there and this would meet that intent, and I do not believe that it affects the use of the neighboring properties.

The neighboring properties are commercial and as stated by Ms. Wilson, the Four Seasons to the rear of this property is substantially bigger in mass, and bulk, and size than the proposed special exception and may be the ramose request before us today, so I do not believe it would have any adverse impact upon any adjacent properties and it meets the intent of the zone. So with that, I would be in support of the special exception.

CHAIRPERSON HILL: Ms. John?

VICE CHAIR JOHN: Thank you, Mr. Chair. I'm in support of the application. It is fairly straightforward, and the request is not for a substantial relief. I would just note that in addition to the comments from Commissioner Turnbull and Board Member Smith, there is some concern from DDOT in the DDOT report concerning upon how trash is supposed to be handled and I don't believe it's been stated as a condition. So based on the fact that there's a group effort and the Applicant had demonstrated how the Applicant meets the criteria for approval, I will support the application.

CHAIRPERSON HILL: Okay. Thanks, Ms. John. Thanks for bringing up the issue with DDOT. I do believe you're right. I shouldn't have even mentioned it, but I do think that trash should only be rolled to the M Street curb or private driveway through that back alley, it looks like, and that's why they're an alley, that backway, and so it looks as though they're keeping that open because everyone seems to be bringing their trash back

that way. So thanks for mentioning that, but I didn't have an issue with it. I also thought that -- I mean, it's just kind of a weird little -- we got weird little back extensions going on today and so, you know, I mean there's -- I didn't have any issues with it. I mean, it's basically up against the brick wall there of the hotel.

I'm going to make a motion to approve Application No. 20421 as captioned and read by the secretary and ask for a second? Ms. John?

VICE CHAIR JOHN: Second.

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

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

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a Board seat vacant. Staff would

record the vote as 4 to 0 to 1 and this was on the motion of Chairman Hill to approve seconded by Vice Chair John. Also in support of the motion is Mr. Smith and Zoning Commissioner Michael Turnbull. The motion carries 4 to 0 to 1.

CHAIRPERSON HILL: Thank you, Mr. Moy. Let me see here. You can call the next one when you get a chance, Mr. Moy.

MR. MOY: This would be Case Application No. 20384 of Charles Wood and Eliza Van Beuren as amended for special exception under Subtitle D, Section 5201. This is from the rear yard requirements of Subtitle D, Section 306.2; Lot Occupancy Requirement, Subtitle D, Section 304.1, 304.1. This would construct a rear deck to an existing two-story attached principal dwelling unit in the R3 Zone at premises 2414 Observatory Place, N.W., Square 1301, Lot 543.

And this was last heard by the Board at its hearing on March the 3rd which a Board decision on the request for postponement. The merits were not heard. That's it, Mr. Chairman.

CHAIRPERSON HILL: All right, great. Thank you, Mr. Moy. All right. Let's see. Is it Mr. Shah?

MR. SHAUT: Yes. Hi, Mr. Chairman. Neil Shaut with Case Design.

CHAIRPERSON HILL: Okay. Can -- well, I guess you just -- could you introduce yourself for the record? I'm sorry. You, kind of, just did.

MR. SHAUT: Yes. Neil Shaut with Case Design for the Wood residents at 2414 Observatory Place.

CHAIRPERSON HILL: Okay. All right. Mr. Shaut, I'm going to go ahead and let you give your presentation. If you could tell us about your project, and also tell us why you believe you are meeting the standards and criteria that we should grant your relief requested and you can begin whenever you like.

MR. SHAUT: Sure. Thank you, Mr. Chairman and the Board. We are proposing to build a deck. We had initially gone through the ANC process to build a 10-foot deck which was approved. In discussing with the Office of Planning, we realized we needed to bring it back to 6.5 feet to keep it under 70 percent lot occupancy. We do have the ANC approval and both neighbors and most people in the alley have the actually 10-foot deck. Again, we are -- we have reduced it to 6.5 feet to keep it under the 70 percent lot coverage.

CHAIRPERSON HILL: Okay. Does anybody have any questions for the Applicant before I turn to the Office of Planning?

Mr. Smith?

BOARD MEMBER SMITH: Mr. Shaut, could you briefly explain how your proposed -- the proposed deck would not adversely affect the neighbors?

MR. SHAUT: Well, it will be -- obviously, it will not be built on any of their property. They already have existing

decks in, you know, in their area and the decking will or the proposed area will not, you know, infringe any light or anything along those lines upon the neighboring properties.

BOARD MEMBER SMITH: Okay. Thank you.

CHAIRPERSON HILL: Anyone else?

(No response.)

CHAIRPERSON HILL: All right. I'm turning to the Office of Planning, please.

MS. FOTHERGILL: Good morning Chairman Hill and members of the Board. I'm Anne Fothergill for the Office of Planning for BZA Case 20384 and the Office of Planning rests on the record in support of the application for the two special exceptions that have been requested. As the Applicant mentioned, they had initially requested a variance and it is now -- they are now (audio interference) special exceptions for lot occupancy and rear yard, and we find that they meet the criteria of 5201 as well as the general special exception criteria in Subtitle X and I'm happy to take any questions. Thanks.

CHAIRPERSON HILL: All right. Does the Board have any questions for Ms. Fothergill?

VICE CHAIR JOHN: Just one question. Could you talk about the general -- I'm sorry, the impact on light, and air, and privacy?

MS. FOTHERGILL: Sure, the -- this is a substandard lot and so they meet both (audio interference) because it is

1,373 square feet as are many of the lots on the block are also substandard and the -- this is a relatively small rear deck. They have reduced it in order to make it a special exception, keep it under 70 percent. It is open. It's not enclosed. It's not covered, and the -- as the Applicant mentioned, the adjoining properties, many of them have rear decks and the impact to adjoining properties light and air should not be adverse as a result of this deck and I believe the neighboring property owners have written letters of support. But again, it's open, small (audio interference) not enclosed or covered and we find it would not have an adverse impact on neighbors.

VICE CHAIR JOHN: Thank you.

CHAIRPERSON HILL: Okay. Ms. Fothergill, are you jumping around today? You got stuck shut -- you got sent down to the basement; is that what happened?

MS. FOTHERGILL: That is exactly right. Hopefully you will never see me down here again, but all the --

CHAIRPERSON HILL: All right. This is just -- this COVID thing is so weird. All right.

COMMISSIONER TURNBULL: You could have gone to Rock Creek Park with Mr. Cochran.

MS. FOTHERGILL: I know. I need to get out more.

CHAIRPERSON HILL: All right. Mr. Young, is there anyone here wishing to testify?

MR. YOUNG: We do not.

CHAIRPERSON HILL: All right. Okay. Mr. Shaut, do you have anything you'd like to add at the end?

MR. SHAUT: Simply that we do have letters of support from the neighbors. I know that was something that you brought up and Ann brought up, so that's it.

CHAIRPERSON HILL: All right. Great. Okay. I'm going to go ahead and close the record and the hearing and excuse everyone from the room, Mr. Young, please.

I believe that, you know, this was here before for a variance because they were -- the deck was too big basically and they came back here for the special exception. I believe they're meeting all of the criteria for us to grant the special exception; light, air, privacy, character, visually intruding, and then also the general exception criteria and standard.

I really just didn't have an issue with it. I thought that -- I'm glad that they had a lot of outreach to their neighbors and also the ANC was in support of the larger deck, so I assume they're in support of the smaller deck. They didn't send a supplemental ANC report to us, but and then I would agree with the analysis that the Office of Planning has provided and that also DDOT.

Commissioner Turnbull, do you have anything you'd like to add?

COMMISSIONER TURNBULL: I would say, Mr. Chair, that you've covered it quite well and I would concur with all your

comments.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: I agree. I'll piggyback off of Mr. Turnbull. I do agree that you have sufficiently covered the metrics of this particular case and I would be in support of the special exception.

CHAIRPERSON HILL: Vice Chair John?

VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm in support of the application and I agree with the analysis and comments so far.

CHAIRPERSON HILL: All right. I'm going to go ahead and make a motion then to approve Application No. 20384 as captioned and read by the secretary and ask for a second. Ms. John?

VICE CHAIR JOHN: Second.

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

MR. MOY: Thank you, Mr. Chairman. When I call your name, if you would please respond with a yes, no, or abstain to the motion made by Chairman Hill to approve the application for the amended relief requested. The motion was seconded by Vice Chair John. Zoning Commissioner Michael Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

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MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a Board seat vacant. Staff would record the vote as 4 to 0 to 1 and that is on the motion made by Chairman Hill to approve seconded by Vice Chair John. Also in support of the motion, Mr. Smith and Zoning Commissioner Michael Turnbull. Motion carries 4 to 0 to 1.

CHAIRPERSON HILL: All right. Great. Thank you, Mr. Moy. When you have a chance, you can call our next case.

MR. MOY: Okay. Next up is Case Application No. 20420 of 428 Manor Place, LLC. This is an application captioned and advertised for special exception under the residential conversion requirements of Subtitle U, Section 320.2 and from the minimum vehicle parking requirement, Subtitle C, Section 701.5; minimum court dimensions, Subtitle E, Section 203.1; rooftop element requirements, Subtitle E, Section 206.1. This would construct a third-story addition and a three-story rear addition to an existing attached two-story principal dwelling unit and convert the principal dwelling unit to a three-unit apartment house in the RF-1 zone and this at premises 428 Manor Place, N.W., Square 3036, Lot 66. That's it.

CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Moy. Let's see. All right. Mr. Sullivan, if you could introduce

yourself please for the record?

MR. SULLIVAN: Sure. Thank you, Mr. Chairman and members of the Board. My name is Marty Sullivan with Sullivan & Barros on behalf of the Applicant.

CHAIRPERSON HILL: Okay. Great. Let's see. Commissioner Boese; is that you? Do you want to introduce yourself for the record?

COMMISSIONER BOESE: Sure. Ken Boese, ANC 1A -- for ANC 1A.

CHAIRPERSON HILL: Okay. Welcome, Commissioner. Let's see. Okay. Mr. Sullivan, I'm going to ahead and let you give your presentation. I am curious. I can't recall -- well, I'm kind of curious about the property next door and I don't know whether -- did you come before us for the property next door?

MR. SULLIVAN: We did, in January.

CHAIRPERSON HILL: Okay. All right. So I had a question about that later then, but okay. You can go ahead and begin whenever you like.

MR. SULLIVAN: Okay. We have Adam Crain, the architect here and also Matt Scorzafava, the representative of the owner.

CHAIRPERSON HILL: Okay.

MR. SULLIVAN: Great.

CHAIRPERSON HILL: Let's see. Mr. Crain, can you hear me?

MR. CRAIN: Yes, I can. For the record --

CHAIRPERSON HILL: Mr. Crain, could you --

MR. CRAIN: -- Adam Crain, project architect.

CHAIRPERSON HILL: Thank you.

Mr. Scorzafava, can you hear me?

MR. SCORZAFAVA: Yes, I can.

CHAIRPERSON HILL: Could you introduce yourself for the record, please?

MR. SCORZAFAVA: Matt Scorzafava, the Applicant. ERB Properties.

CHAIRPERSON HILL: Okay. And Mr. Sullivan, maybe this is the one. Is this the one where you guys got parking across the street for the other property?

MR. SULLIVAN: This is the one where there was an arrangement where -- we didn't get parking for the use of 426. So the address of the other one was 426 Manor. If we pull up the PowerPoint, I'll -- you'll see it. It's on --

CHAIRPERSON HILL: Okay. Great. You can just --

MR. SULLIVAN: -- the cover page.

CHAIRPERSON HILL: If you can speak to it as you, kind of, are going through this?

MR. SULLIVAN: Okay. But you're right.

CHAIRPERSON HILL: I'm just trying to remember.

MR. SULLIVAN: What we did was we worked with a neighbor who did not have a parking pad. They had space available for parking at the rear of the house, but not a parking pad and

the Applicant provided her with a parking pad. So the parking is for her use, it wasn't for --

CHAIRPERSON HILL: Got it.

MR. SULLIVAN: -- our use.

CHAIRPERSON HILL: Got it. I remember now. Okay. All right. Mr. Sullivan, thank you so much for that and go ahead and walk us through your presentation. And again, if -- since there is kind of, you know, a lot of opposition or some opposition including the ANC, if you can speak a little bit, you know, more closely to the standard, that would be helpful.

MR. SULLIVAN: Sure, and I think it would be helpful for me, I want to just do an overview of some of the key points particularly in relation to the case that we just did. So in the other case we had the same relief request, one parking space, three-unit conversion and court relief. Some things that stick out about this particular case is that the Applicant made a substantial pullback in the addition in deference to the neighbor at 430 Manor; so the one impacted neighbor on this road here by this.

And he pulled back the addition, and you'll see the architect will show that, to match up with their addition including setting back the top story as well and it matches up exactly. And we didn't initially ask for 10-foot rule relief, so the structure was already in a massing that was matter-of-right before, but Mr. Scorzafava wanted to work with the neighbor

and so he scaled it back and so that's what I think is a positive in this case.

When it comes to the parking, there was nothing we could do about the parking because we don't have an alley and we did what we could on the last case, but we wanted to work with the neighbor as much as possible and find the positives in the project, and we think that was one of them.

The other thing is that the intention or the plan now is also to replace the front porch to restore it to what it -- what was there before. There was a porch there I think maybe 10 years ago or more and that was something that was looked unfavorably, I believe, by the ANC although Mr. Boese can speak for himself, of course, and that's why we're actually -- we need that relief here as well just to be safe.

We're not certain that we need the relief because the regulations say that if you can show what you're creating was what was there before -- we're not sure we can do that because it was so long ago. So we're asking for relief to be able to put that porch back. And --

CHAIRPERSON HILL: Give me one second. I don't see that --

MR. SULLIVAN: Yeah.

CHAIRPERSON HILL: -- relief in your caption.

Mr. Moy, is that in their caption?

MR. SULLIVAN: It's in -- it's on page -- oh, on the

caption? It might not because it was amended, so it might not be on the original notice.

CHAIRPERSON HILL: Okay.

MR. MOY: Can Mr. Sullivan repeat to me, for the record, the amended -- the new amended relief or the new relief --

MR. SULLIVAN: Yes.

MR. MOY: Go ahead.

MR. SULLIVAN: We're asking for special exception relief from E 206.

MR. MOY: And that's E 206 from?

MS. CAIN: Mr. Chair?

MR. SULLIVAN: What subtitle is that?

CHAIRPERSON HILL: Yeah?

MS. CAIN: Just to point out, it is shown in the caption on the Office of Zoning website, on IZIS.

CHAIRPERSON HILL: Where?

Ms. CAIN: The main case page. It does list rooftop elements requirements of E 206.1.

CHAIRPERSON HILL: Are you looking at --

MR. SULLIVAN: Can we go to the --

CHAIRPERSON HILL: -- (audio interference).

MR. SULLIVAN: Can we go to the next slide, please? I think I have it --

CHAIRPERSON HILL: Okay.

MR. SULLIVAN: -- on the next slide.

MR. MOY: Mr. Chairman, I did cite that. I did make that citation in my -- when I called the case.

CHAIRPERSON HILL: Okay.

MR. MOY: Subtitle E, Section 206.1. So that was in my opening remarks.

CHAIRPERSON HILL: Okay. I just didn't see it on the original. Give me one second. I'm looking through Mr. Sullivan's presentation. Mr. Sullivan, which one is it on your slide deck?

MR. SULLIVAN: I included it on the -- page 2. Here, it's noted.

CHAIRPERSON HILL: Oh, got it. Okay. Okay. Okay. I see. I see. Okay. All right. You can go ahead and begin again then. Thank you, Mr. Sullivan. Oh, I guess Mr. Crain and Mr. Scorzafava, I don't think you guys have been sworn in. If you'd take the oath administered by Mr. Moy.

Mr. Young, could you drop the slide deck for a minute?

All right. Mr. Moy, if you could administer the oath?

MR. MOY: Thank you, Mr. Chairman. Gentlemen, do you solemnly swear or affirm that the testimony you're about to present in this proceeding is the truth, whole truth, and nothing but the truth?

MR. CRAIN: Yes.

MR. SCORZAFAVA: Yes.

MR. CRAIN: Yes, I do.

MR. MOY: Thank you. Thank you.

CHAIRPERSON HILL: Okay. All right. Mr. Young, you can bring that back up then.

VICE CHAIR JOHN: Mr. Chairman?

CHAIRPERSON HILL: Yes.

VICE CHAIR JOHN: Before we get started again, I wanted to point out that there is a revised self-cert at Exhibit 27 that mentions the rooftop variance.

CHAIRPERSON HILL: Okay. Great. Thank you, Ms. John.

All right. Mr. Sullivan, you can begin whenever you like.

MR. SULLIVAN: Thank you, Mr. Chair, members of the Board. So we're on page 2 here and this is the relief that we're requesting. First, the conversion under U 320.2; court relief for minimum court width. We're providing a court, you'll see in the architect's presentation, facing the neighbor at 430 to provide more light and air on that side and parking special exception request for one space and then the discussed architectural elements. Next slide, please?

CHAIRPERSON HILL: Mr. Sullivan, what do you mean "one space required, one space credit?"

MR. SULLIVAN: Oh, so we had this discussion the last hearing as well. Our parking requirement is one because when you change an existing use or do an addition, you're subject to

the increase in your parking requirement and of the existing building versus what you're proposing. Because we're going from two units to three units, our requirement would go from one to two, but since we never required the one, there's language in the Regulations that says you're presumed to have met the requirement. And so if there was an alley here and there was no parking -- oh, that's a -- that's not a great analogy, but basically, we're subject to the increase in the parking requirement and that's why we ask for relief for one. The requirement would have been two if there was an alley here, yes.

CHAIRPERSON HILL: Okay. Thank you.

MR. SULLIVAN: And if we had a space, we would have had to keep that space and add a space. So we do -- similar to the last case, ANC 1A I opposing, we believe based on the parking relief. The Office of Planning is in approval as is DDOT. We do have one letter in support. Next slide, please? And I'll turn it over to Mr. Crain to go through the plans. Thank you.

MR. CRAIN: Sure. Thank you, Marty and hello to everyone. Are we on Exhibit 35? If so, could we pull up page No. 7 which would be the site plan? There we go. As mentioned, this is a three-unit special exception for an RF-1 zone. We're proposing a rear addition and a third-floor addition. If you guys remember, we did 426 Manor, the one directly adjacent to this a month or so ago that got approved. It's the same developer for both.

I believe the owner had numerous conversations with the owner of 430 Manor which would be on the top side of the site plan. They have an existing addition that goes -- makes the building depth approximately 64 feet deep, so we tried to match that on both 428 and 426 Manor. Initially, I proposed to the Applicant that we do additions kind of cascading with the 10-foot rule, but they were pulled back to provide light, air, and, I guess, mitigate privacy concerns to the neighbor at 430 Manor.

In addition, the footprint of both this one and the previous, 426 Manor, was pulled back so there's a court on the side. The whole purpose of this is to respect the neighbor and not provide as much of a tall party wall. It's a little more imposing if we did that. So pulling it back on this side against 430 and on the opposite side of 426, there's less building occurring along the party wall. Can we pull up the floor plans? That would be slide No. 8, next one.

We worked -- had several meetings with neighbors and the ANC on this and drastic results in reductions in the floorplan came about after those. As you can see, the second and third floor, there's kind of a -- I guess a massive chunk taken out of the rear. We had initially proposed that being filled in and matching the first floor and cellar. So there were -- Units 2 and 3 were three-bedroom units. They're now both two-bedroom units as a result of that reduction. And just as a reminder, the extent of our addition matches the footprint of 430 Manor

directly adjacent. Can we go to Slide 10, please?

This is a photo of 430 Manor showing that addition that we're matching. As you can see, that's two levels so we're going to be matching this on the cellar and the first floor and then the second and third floor will be pushed back so as not to impose or tower over this.

We can go to the front photos on Slide No. 5. In an effort to restore the streetscape, we are proposing to put the front porch back in. It was removed at some point in the past, so we feel this was an effort to be respectful of the streetscape and neighborhood.

In addition, being that this block has no alley access for trash service, trash days all happen on the sidewalk. You know, in meeting with the neighbors and the ANC, that was a big concern over the increase of units and trash being put outside. So what we've proposed, if you go back to the floorplans, Slide No. 8 is kind of a recessed trash receptacle at the cellar level at the front which will sit somewhat under the front porch. This kind of gives a home to the trashcan as opposed to them just being loosely in the front yard. We wanted to make some of those decisions early to respect the neighbor's concerns and I'll turn it over to Matt to maybe discuss the Applicant's outreach with the neighbors.

MR. SULLIVAN: Adam, before you finish, could you look at Slide 9, please, and explain the elevation --

MR. CRAIN: Sure.

MR. SULLIVAN: -- the outline of the neighbor's house

--

MR. CRAIN: Oh, sure.

MR. SULLIVAN: -- against our addition?

MR. CRAIN: Sure. So on that west party wall, you can see how we showed that dashed outline. That's the approximate outline of 430 Manor which we're aiming to match with the addition. You can also we've kind of -- on the second and third floor, we've kind of removed the whole chunk. We're providing a roof terrace there, but what was in our initial design was additional living space and sellable area. That's all being taken out to somewhat match that neighbor. Tried to sympathetic.

MR. SULLIVAN: Matt, yes, if you could talk a little bit about your work with the neighbors here?

MR. SCORZAFAVA: Yeah, Matt Scorzafava. Again, thanks for allowing us to come present. So with 426 and 428 we started having meetings with the ANC, ZPP, and some of the neighbors as a group and I think we had four to five meetings total in the fall including the ZPP and the ANC meetings. And what became pretty clear to me is that the initial design that matched the rear wall of these two properties to the 430 next door was a major concern for those neighbors at 430.

So in working with them, we did a complete redesign of the upper two levels, as Adam said, to change the -- from three

bedrooms to two bedrooms and with the goal of matching their rear deck so that they wouldn't lose the light and the view which is what they were looking for.

There were a couple properties across the street that didn't have parking, so we were looking for solutions so there was one lady there that took us up on our offer of allowing us to build a parking pad on her site which would -- and then we went to the ANC and it seemed like some of the things we were trying to do just weren't overcoming some of the concerns that some of the neighbors had about parking, so we just decided that the best thing to do would be to try to fix what we could control which was this massing of our property compared to 430.

So I'm a little bit disappointed that we couldn't get a little further with some of the neighbors, but I think we've done what we could do and what we could control. And the front porch, to speak on that, that's really something that I care about. So just I thought that would be a nice addition to the block and, I mean, and I believe that that's something that's in support.

And with the trash and the recycling, as Adam said we tried to come up with a creative solution. I originally was wondering if we could do private trash there, but it became pretty obvious from people on the block that they would rather have the trash day all on one day instead of two different days. So with that, I'll finish up.

MR. SULLIVAN: Thank you, Matt. And before I turn it over for questions, I do want to talk about the space that was provided in the last case for 426. Now, we did discuss that and want that to be considered as some -- as a mitigation of sorts and - but I think that the Office of Planning, from their transcript which I could read, and I believe the Board as well, based their decision in the last case on the parking.

And this is with Chairman Hood, and that the -- some of the mitigating aspects didn't involve so much that parking space, but it involved proximity to Metro and public transportation. And so I believe that's what the Board based its decision on, and I think that's -- obviously, that's the same case here because it's right next door. So that's our presentation if there are any questions.

CHAIRPERSON HILL: So Mr. Sullivan, there was no property within 600 feet where parking could be provided?

MR. SULLIVAN: I'll have Mr. Scorzafava answer that. We certainly searched for it. It would have --

MR. SCORZAFAVA: Yeah.

MR. SULLIVAN: It would have been great to find it.

MR. SCORZAFAVA: I mean, I reached out to neighbors and -- but no, I checked on multiple sources, MOS, rental sources. I couldn't find any parking. I may have even asked the ANC for some parking as well.

CHAIRPERSON HILL: Okay. Let's see.

Does the Board have any questions for the Applicant?
Ms. John?

VICE CHAIR JOHN: So Mr. Sullivan, I just wanted to clarify that is it still possible to provide that parking pad for one of the neighbors?

MR. SULLIVAN: I believe that's taking place. Is that correct, Matt? Do you --

MR. SCORZAFAVA: Yes.

MR. SULLIVAN: It's moving forward.

VICE CHAIR JOHN: Okay. And the second thing is the regulations also require to show that (audio interference) parking demand. I know there's TDM study required, but you, as I recall, you also have to show known reduction. I mean, somehow (audio interference) just not the inability to set aside the parking requirement, but that there will be less demand for parking.

MR. SULLIVAN: I think that's one of the available requirements, but it's not an "and." I think it's an "or."

VICE CHAIR JOHN: It's an "or."

MR. SULLIVAN: -- and the requirement that we're relying on is -- and I'm sorry, I should probably go back to the presentation. I realize I may have skipped over --

VICE CHAIR JOHN: Okay. That's the --

MR. SULLIVAN: -- the criteria.

VICE CHAIR JOHN: Thank you.

CHAIRPERSON HILL: Mr. Young, if you could pull that presentation back up when you get a chance? Thank you. Mr. Young? Okay. Mr. Young, are you there? Oh, great. Thank you. Sorry.

MR. SULLIVAN: And I would start on page 11, please. So next slide, please? So the general special exception requirements. Granting relief will be in harmony with the general purpose and intent of the RF-1 zone, the zoning regulations and zoning maps. Zoning regulations, of course, permit the conversion of a single-family dwelling to three units and the proposed building is within the height, lot occupancy, and rear yard requirements. We're not seeking 10-foot rule relief and as you've heard, we've done our best to work with the neighbor to accommodate their concerns about the size of the addition.

And also granting relief will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and map. Again, we think we have -- it's -- the structure itself is much less than matter-of-right. RF-1 zone does provide for three units by special exception relief. We think the trash solution helps address some of the concerns of the neighbors as well and also the addition of the porch. Next slide, please?

So the specific relief under U-320.2 for the conversion, these requirements, of course, are -- have been

reduced to the -- just these three requirements. The property is in existence. We're not doing a fourth dwelling unit and we do meet the minimum lot area of 900 square feet a lot. Next slide, please?

For the parking relief, the special exception conditions, we must comply with one of the requirements listed under this special exception and the one we're relying on is due to the physical constraints of the property, particularly that we are landlocked. The required parking spaces cannot be provided either on the lot or within 600 feet of the lot. And you see there our explanation on how we meet this requirement. Next slide, please?

And here's some criteria on the neighborhood, some of the things that the Office of Planning touched on in their report. I think in response to Board Member John's question about parking demand, in the last case, and obviously we'll hear from OP shortly, but Ms. Elliott noted in the last case that parking is available on the street. She referenced the Metro station proximity and other methods of transportation and what she noticed is that there is parking on the streets. It's not restricted and while she said that it may be inconvenient for some, that was something that we would consider not to be an undue impact on the neighborhood because it was available. Next slide, please?

For the court relief, we're actually providing more

light and air, I believe. I've always struggled to argue the court relief because it's almost always a benefit to provide a court because the option is to not provide one. So we believe we meet these requirements and we've also made other changes regarding privacy, use, and enjoyment of neighboring properties as was discussed in the presentation. Next slide, please? And that may be the last slide then. It is, yes. So if the Board has any more questions?

CHAIRPERSON HILL: Ms. John?

VICE CHAIR JOHN: (Audio interference). Mr. Sullivan, I was looking at 703.3 and it's the last phrase that I have difficulty with which is, "Any deduction in the required number of parking spaces shall be only for the amount that the Applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the Applicant."

So in my view, having that additional parking space or parking pad might show a reduction on demand.

MR. SULLIVAN: I think that's an excellent argument and that's -- I mean, that is the argument we're making. I don't want to make it in both cases, but I could say we are reducing demand in sum of one space for the two that we're requesting in total; the one that we've already been approved and then this one, so high-five.

VICE CHAIR JOHN: And if you are not providing this alternative parking pad, what would be the argument for reduction

in parking demand?

MR. SULLIVAN: Well, I can't say I've never, in the 20 or so cases that the Board has approved for parking special exception relief, that has never been raised and I don't know that it's been argued. I mean, I can argue, discuss generally, that I don't think demand changes much when a developer -- I know when a developer acquires a property in the RF zone and they usually have two options; if the lot is large enough and they want to go to the BZA, they would prefer to do three units.

In properties where they can't do that because the lot's not large enough or they decide not to go BZA, they often do two very large units and often co-living units with six master bedrooms and that's not an academic argument. That happens and that's in the market. So it ends up being more adults. You can -- you could end up with -- if you had a two-unit building here, you could end up with 12 master bedrooms. I don't know that they have the size for that here, but you could end up with more single car owners than families.

So I actually believe -- I don't have the data, but I believe that a three-unit building for three families, whether they be a single person, a couple, or a family, is potentially less demand for parking than having a larger, only two-unit space, that ends up with more bedrooms for adults. And I should probably try to find real documentation on that, but that's what I'm seeing playing out anecdotally.

VICE CHAIR JOHN: Well, thank you. There's no TDM plan required, and I was just curious about what the answer to that question would be.

MR. SULLIVAN: I think -- yeah, DDOT has required them, but usually not when it's one space and I know they didn't require it in this case or in 426 --

VICE CHAIR JOHN: Okay.

MR. SULLIVAN: -- I don't believe.

VICE CHAIR JOHN: Thank you.

MR. SULLIVAN: But we're happy to do that. I mean, if -- we're open to those conditions as well. It would -- TDM type conditions.

CHAIRPERSON HILL: Commissioner Turnbull?

COMMISSIONER TURNBULL: Thanks, Mr. Chair. Mr. Sullivan, I don't know if I agree with your analysis. It seems counterintuitive (audio interference) anybody would think. How far away is the Georgia Avenue Metro station, do you know?

MR. SULLIVAN: I don't know offhand. Let me look that up unless Matt or Adam know offhand. I'll try to find out.

COMMISSIONER TURNBULL: Okay. Thank you.

CHAIRPERSON HILL: Just real quick, Mr. Sullivan. The parking pad, again, was on the other case, correct?

MR. SULLIVAN: Well, it wasn't a condition. It was discussed in the other case, yes.

CHAIRPERSON HILL: Yeah. No, I'm just saying you guys

provided a parking pad to someone else for the other case?

MR. SULLIVAN: Yes.

CHAIRPERSON HILL: Yeah. Correct.

MR. SULLIVAN: Well, we discussed it in the other case, yes.

CHAIRPERSON HILL: Okay.

MR. CRAIN: Yeah. I have the Georgia Avenue Metro as like one long block down Park Road and then six blocks north on Georgia.

MR. SULLIVAN: I'm getting half a mile, 10 minutes.

COMMISSIONER TURNBULL: Oh, thank you.

CHAIRPERSON HILL: All right. Anyone else for questions?

(No response.)

CHAIRPERSON HILL: All right. Commissioner, do you have any questions for the Applicant?

COMMISSIONER BOESE: No, sir.

CHAIRPERSON HILL: Okay. You want to go ahead and give your testimony, Commissioner Boese?

COMMISSIONER BOESE: Sure. I'll address some of the things that the Applicant has, or Marty, has expressed just because I want some clarity. We are supportive of restoring the front porch. The house originally had one. It's been gone for decades. I'm appreciative that they're requesting the zoning relief although I'm confused as to how it would apply because an

original porch roof has been missing for years, so it's not really being altered or removed. It's being -- you know, a porch roof is being constructed, so there's nothing original there.

You know, as far as the -- you know, I think that the neighbors are appreciative of all the outreach and I know that the neighbors at 430 are very appreciative of some of the design changes that have been made, but it hasn't been enough to get support for the parking relief.

As you well know, in 426 Manor, the previous case, which is right next door, we just couldn't support the lack of parking or the relief from parking and we mentioned in that case that this case was coming up and that due to the conditions of the block, unlike other cases where the ANC has supported relief, other cases it has been an isolate property within an entire block. In this case, it's the condition for every property on the block. To keep apples to apples, it's definitely the same condition for everything on the south side of Manor Place. This is a series of dominoes that increased parking demand one-by-one-by-one.

I do think that there were a couple things that were said that I want to highlight. First of all, that there's no hard data on what the demand for parking is or what the impact on the neighbors is, whether it's for or against. Despite the proximity of the Metro station which does make it very easy for people to go to work back when we used to do such things as

commute, we do have a number of families with small children on this block in particular.

Parking is extremely tight on Manor Place when you're talking about trying to provision a household with a couple of small children and carry the groceries with nowhere to park and it's two blocks away. It's a hardship. You know, no one has a right to expect parking right in front of their house, but when it becomes the normal and not the occasional, it is a hardship and I think that there is something to be said for the inability to find a parking pad within 600 feet. I haven't seen adequate documentation that that doesn't, but if it were easy, it would have been found. If parking weren't an issue, it would have been found and they were unable to find that.

So I do think one difference between the two cases is while the ANC didn't support 426, during that hearing there was a discussion of creating an off-street parking space for a neighbor. Not as part of this project per se because the extra parking space wasn't for the perspective new residents of their property, but there was an off-street space created. That has not happened here and so it's just snowballing for us that one-by-one-by-one, we're increasing parking demand where there is no ability to provide parking.

You know, we even have neighbors on this block that are younger, have small children, are strong bike advocates and everyone will tell you once you have small children with doctors'

appointments, you need a car. That's just reality. We don't see that going away anytime soon.

So while we do think that Matt has done a great job of outreach and we think there's a lot of merits to what they're proposing, we just can't get behind relief from parking on this block. It's just not in us. And we -- you know, it was very clear that we explained the outcome of 426, that hearing, to the neighbors and we explained what we thought would happen at this hearing and they're -- it's still extremely strong opposition to this in the community.

And whether or not we agree with the Zoning Regulations, part of the ANC's job is to represent the community. So whether you agree with us or don't agree with us, we're doing our job and I'll leave it at that.

CHAIRPERSON HILL: Okay. Thanks, Commissioner.

Yeah. I guess my question is -- I mean, I know, Commissioner, you've been with us a lot and I mean -- you know, and I know your expertise. Like, as far as the regulations and what the regulations speak to as to what we're supposed to look at, I mean, you think that the regulations should be changed as far as the -- you know, they're hanging their hat on that it's landlocked and they can't find the parking 600 feet.

And it sounds as though, which I know isn't always the case, this particular developer has been very good or tried to work with the community and pulled back the -- that first floor

-- I'm sorry, that second floor and done things that often times other developers would not do, and -- but you think that the regulation should be changed?

COMMISSIONER BOESE: Well, I think the regulations do not take into account a situation like this. It's hard for someone writing regulations to know every block in the city and some of the conditions that may be following outside of what they think are normal conditions. I think this block is not normal and I do not think that situations like a block that may have, let's just say, 20 properties that are all landlocked because there's no alley and no way to put in an alley, I don't think it considers that.

And while I understand what the regulations are, I also think that the BZA does not and should not rubberstamp things any more than the ANC should rubberstamp things. I think we all have discretion. We're all supposed to use our best judgment and we're all supposed to look and see what the particulars of this property are.

I think while technically we're supposed to look at each property in isolation, if that were true then we wouldn't be considering impact on the neighbors because that is not on the property, right? There's a lot of things we consider to mitigate problems that aren't particular to the property that's being owned or considered, and so I do think we have an obligation to consider the bigger picture.

CHAIRPERSON HILL: Okay. And I'm not disagreeing with you and I know you don't -- I know your ANC doesn't rubberstamp things and neither do we, but I mean we kind of --

COMMISSIONER BOESE: (Audio interference) my point. Go ahead.

CHAIRPERSON HILL: And so we have to look at everything that's going on, but we do look -- we have to look at the regulations that are in front of us. And what about -- and I'll just -- this -- and we don't have to have a long discussion. I was just curious because you haven't been with us for a little while. What about the whole argument that you might have a bunch of people then developing properties that have a lot of master bedrooms so that you have a lot of comingled people so you're even going to get more demand for parking?

COMMISSIONER BOESE: Well, as Mr. Sullivan, said, he doesn't -- that's anecdotal. There's no data that would prove that that's true or not true. We have seen a number of properties developed in the neighborhood that seem to be more of the cohabiting model. We haven't really seen any significant change in parking demands where those have occurred, though none have occurred directly in this particular part of our ANC.

CHAIRPERSON HILL: Okay. All right. Thanks, Commissioner.

Right. So (audio interference) can't believe (audio interference). So you're saying that the comingling, you know,

the group house, you're saying you haven't seen the parking has increased or decreased?

COMMISSIONER BOESE: Not really and I will -- I mean, most of the group houses, per se, that I'm aware of in my single-member district are closer to the Metro station and that's an older housing stock that's more affordable where you might have six or seven young adults living in the multiple bedrooms. You know, we do have examples of group houses although I will say that seems to be an endangered species with how expensive housing is getting. So but we don't see that necessarily generating lots and lots of (audio interference) this.

CHAIRPERSON HILL: Okay. All right. It would seem to me that maybe you'd get more cars. That's the weird thing, right? But your argument is the small -- the young families. All right. Thank you, Commissioner.

Does anyone have any more questions for the Commissioner?

(No response.)

CHAIRPERSON HILL: Okay. I see Commissioner is wearing his green as well, so Happy St. Patrick's Day.

COMMISSIONER BOESE: Just so you know, I changed my shirt due to the earlier hearings.

CHAIRPERSON HILL: I wish I had something green. I wish I just had something green, I know. My wife's Irish too and so this is not a -- I'm not representing well. There you

go. Commissioner Turnbull right there. All right.

Can I turn to the Office of Planning, please?

MS. ELLIOTT: Good afternoon Mr. Chairman, members of the Board. I'm Brandice Elliott representing the Office of Planning for BZA Case 20420. Office of Planning is recommending approval for the special exception relief that's been requested, so that includes the conversion, the parking, the rooftop element for the porch, and also the court. I sort of suspect that maybe you want a little bit more of a presentation from me, so maybe I'll go there, pre-empt you from asking.

In terms of the conversion, we do find that the conversion itself meets the requirements of the special exception. The Applicant did provide a slide with some of those requirements including the 900 square-foot rule. There would be over 900 square feet per unit. In addition, they're also subject to the general special exception criteria which includes demonstrating that there would be no adverse impact on neighboring properties. And what we found in our analysis is we did not think that there would be an undue impact on any of the neighboring properties in terms of the shadowing that would be expected from the additions, particularly because all of the additions would meet the matter-of-right development regulations. So there's no additional relief needed for, you know, say the rear addition, or for height, or anything like that, so.

Also we found that the additions would not necessarily increase visibility into adjacent properties more than a matter-of-right addition would and the third story addition is actually being setback 7.5 feet from the front façade, so it maintains that - the neighborhood character that exists along the street. So that is the conversion analysis.

Next, there is a question about the porch roof. The Applicant has requested special exception relief for the porch roof that would be constructed on the façade. There is not one currently there. OP Is not certain that this relief is required. The Zoning Administrator certainly hasn't weighed-in on this. The regulation itself is really intended to address existing structures and since there hasn't been a porch there at least since 2007 from what we could see based on Google images, maybe even longer, that we don't think this provision applies, but we understand that the Applicant is moving forward very cautiously with this and wants to request it. We certainly have no issue with adding a porch to the front building façade.

The court relief, which is also a special exception, it could actually be argued that in this case it's sort of a mitigating design feature. It does pull the party wall back a few feet from, 5 feet, from the property line, so it does allow for more light and air to this property into the adjacent property, and so, you know, we do support that.

And then there's the final issue, the parking. OP does

support the parking relief. The Zoning Regulations provide a whole list of situations under which the special exception criteria would apply for parking. So things like, you know, accessibility to transit, certain land features. In this case, there is no alley and so the property -- the physical constraints of the property don't allow for that parking to be provided on the lot.

But what we also found is that the lot itself is about a quarter of a mile from Georgia Avenue. It's about a half-mile to the Metro station. You know, the presence of additional transportation options are a mitigation to not providing the parking on the property. Certainly, there's on-street parking as well as mentioned and we also have a -- the proximity of this neighborhood's location to other transportation options, it does allow some households, maybe not people who live, you know, at these, in these buildings, to forgo car ownership and we do think that there's a balance to be had there.

So we also have a report from DDOT that did their analysis based -- they did -- excuse me -- they did their analysis for the parking requirements and did not have any objection to not providing one for this property. So I'll leave it at that. I'm starting to jumble my words a little bit, so. But in summary, OP is recommending approval of all of the relief and I'm happy to answer any questions.

CHAIRPERSON HILL: Okay. Thanks, Ms. Elliott. No,

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that was helpful. I appreciate it. I appreciate it. It was really -- I was really kind of interested in the whole parking thing.

CHAIRPERSON HILL: Does the Board have any questions for the Office of Planning?

Commissioner Turnbull?

COMMISSIONER TURNBULL: Ms. Elliott, thank you and good morning.

MS. ELLIOTT: Good morning.

COMMISSIONER TURNBULL: Thank you for your explaining your position on it. I'm just curious though. Do you -- the ANC Commissioner has brought up some good points about the possibility of a domino effect going down the street here and I just get worried about the landlocked no alley scenario and it sort of -- it's not really covered by the Zoning Regs. The Zoning Regs cover an ideal situation, a typical street alley set-up.

And so this, sort of corollary to it with no alley, is a unique situation. I'm just wondering if maybe OP could look at that a little bit further, meet with Ms. Steingasser and just talk about the effect of no alley and that is -- are we really creating a hardship for a block like this by saying, "You don't need it because you have no alley and you can find alternate transportation."

Because a lot of times, as you say, with the families,

they're going to need cars to get around. You just can't take a four or five-year-old kid and talk them down to seven blocks though as I'm -- it's hard to walk even a 10, 12-year-old down seven or eight blocks. So I'm just curious. Does that -- are we missing something? Have we overlooked something in the Zoning Regs that we're not counting for -- counting on and being somehow more adaptive?

I mean, is there a way in the Zoning Regs that we can say -- talk about alternate parking scenarios? Not necessarily within 600 feet, but even further away that an Applicant should be maybe applying for something? I think there might be some other scenarios that maybe OP can look at and try to compensate for a block like this.

I just feel like we're building in a hardship for them and it's just -- I empathize that we might need more housing and that's what we're looking for, but I also empathize with the people who are living up on that block that now have to struggle with how do I take care of my family if I've got no place to park? So it's just something to think about.

MS. ELLIOTT: Sure. No, we would be happy to take that conversation further and see where it goes. You know, the Zoning Regulations are a tool. You know, they apply to -- it's not a -- this block doesn't have its own zone, you know, so we take the Zoning Regulations that apply everywhere, and it applies here whether or not it has the same characteristics as another

neighborhood. So it is kind of hard to tailor some of these regulations to specific streets, but it would be interesting to see, you know, if maybe there's a way to refine them as you're speaking of.

COMMISSIONER TURNBULL: Thank you.

CHAIRPERSON HILL: Okay. Anyone else?

Commissioner, do you have any questions for the Office of Planning?

COMMISSIONER BOESE: Just one and maybe a comment. Following up on Commissioner Turnbull, does the -- has the Office of Planning ever done an inventory of how many blocks in the city, particularly in the RF-1 have more than one or two landlocked properties due to the absence of an alley? Because it seems to me -- I hear what you're saying, that in a zone, you attempt to have consistency with what the regulations are for the zone, but let's also be honest. The RF-1 zone is a row house zone and within ANC 1A not all the row house blocks are the same.

In Columbia Heights, row houses tend to be three stories, better designed blocks that have allies. In our area, East and Georgia Avenue row houses tend to be two houses or two stories, and much narrower and much more modest. And assuming that what's good for the goose is good for the gander is not right here. You know, maybe it's not enough to change the zones, but there has to be enough flexibility to recognize that in Ward 1 in particular where almost all of these neighborhoods were

developed before zoning existed, before the L'Enfant Plan went north of Florida Avenue, before roads aligned appropriately.

We have a real hodge-podge of what happens when you let development run amuck with no standards and we've been struggling with that ever since and it seems to me that the Office of Planning has a responsibility to recognize those difference and mitigate the impact of these decisions. And so have you done an inventory?

MS. ELLIOTT: I honestly am not sure what sort of inventories of studies have been conducted regarding this specific issue. If you wanted me to get back to you later on that, I could.

CHAIRPERSON HILL: Okay. Well, it sounds like, Ms. Elliott, if you really can do that, Commissioner Boese is kind of interested in it. We'll probably see him again because, I hate to say it, I think that his domino theory is not something new. And Commissioner Boese, by the way, your domino theory works. We see it a lot, in a lot of rows, not -- and not just about the parking thing. Like, that is the whole consequence of what ends up happening with all of the things that we see here, you know. But okay. So let's see. Mr. Sullivan, do you have any questions?

MR. SULLIVAN: No, thank you.

CHAIRPERSON HILL: All right. Mr. Young, is there anyone here wishing to testify?

MR. MOY: Yeah, we have one person signed up.

CHAIRPERSON HILL: Okay. If you could bring that person in, please? Ms. Harris, can you hear me?

MS. HARRIS: Yes, I can hear you.

CHAIRPERSON HILL: Great. So, Ms. Harris, could you please first introduce yourself for the record?

MS. HARRIS: Yes. My name is Angela Harris and I'm the owner of 436 Manor Place.

CHAIRPERSON HILL: Okay.

MS. HARRIS: And I sent in a --

CHAIRPERSON HILL: Where is that --

MS. HARRIS: -- letter of opposition.

CHAIRPERSON HILL: Yeah. I mean, I've seen that one.

MS. HARRIS: Okay.

CHAIRPERSON HILL: Where exactly is that in relationship to the property just so I can get an --

MS. HARRIS: It's on the same side of the street. I'm just a few doors up from the property.

CHAIRPERSON HILL: Got it.

MS. HARRIS: And I apologize. My camera is not turning on for some reason.

CHAIRPERSON HILL: That's all right. We can hear you clearly.

MS. HARRIS: Okay.

CHAIRPERSON HILL: You'll go ahead and have -- and I'm

looking up your letter right now. You're going to have three minutes to testify, and you can go ahead and begin whenever you like.

MS. HARRIS: Okay. I just want to indicate that I'm a long-term owner of 436 Manor Place. I was born and raised in Washington, D.C. and I graduated from Park View Elementary School and my parents -- I'm sorry, my grandparents purchased this property in 1946 and I just remember stories of my father sharing with me that, you know, our family members couldn't even go around to the playground because they would run away from the playground because they were black.

And I'm deeply disheartened by the amount of gentrification and displacement of black residents that is taking place in the city and I have strong opposition to this project because it shows no concern and no regard for the history and the community of the residents here. It's only about profit and the residents are not being taken into consideration.

I understand that Mr. Scorzafava has contacted neighbors on the block. I've never interacted with Mr. Scorzafava and I do agree with Mr. Boese that this is -- this is going to be an impact to parking and the neighborhood has already lost its integrity due to the onslaught of new residents that are coming in. And for myself, you know, I'm getting stall tactics when I try to do improvements to my property. I've received blatant requests from people asking them to provide plans for my

property and it just seems that there are so many loopholes that are allowing these developers to get these projects pushed through.

I don't think it's acceptable that he's allowed to get an exemption because he built a parking space for a neighbor across the street. That does nothing for the people on this side of the block and also this block already has several multi-unit apartments on the other side of the street. So again, the parking is already constrained.

And my ask of you is that you just deny this request because it's not going to mitigate any of the adverse impacts that have already been presented to you. And honestly, this neighborhood was meant to be a single-family residential neighborhood and it's gotten away from that, and we need to get back to that.

CHAIRPERSON HILL: Okay. Okay. Thanks, Ms. Harris. I'm looking at your letter again. I remember seeing it before.

Okay. Does the Board have any questions for the witness?

(No response.)

CHAIRPERSON HILL: All right. Commissioner, do you have any questions for the witness?

COMMISSIONER BOESE: I have no questions, but I do thank her for her participation and speaking up. That's helpful for us.

CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have any questions for the witness?

MR. SULLIVAN: No, thank you.

CHAIRPERSON HILL: Okay. Ms. Harris, I second Commissioner Boese's comments and I'm sorry about some of the things that you're going through there but thank you for your testimony.

MS. HARRIS: Thank you.

CHAIRPERSON HILL: All right. Mr. Young, if you could please excuse the witness? Thank you.

Mr. Sullivan, do you have anything you'd like to add at the end?

MR. SULLIVAN: Yeah, I do. Just a couple thoughts.

CHAIRPERSON HILL: Sure.

MR. SULLIVAN: The parking, obviously we're focused on the parking special exception relief and I understand the arguments and I understand the conundrum. The Board has approved, as far as I know, just about every request. It doesn't mean they need to approve every request. At some point we will run into a situation where somebody doesn't meet that requirement. I think the way they were written, and I'm certainly not speaking for the Office of Planning or the Zoning Commission, there are, I believe, nine or 10 possible avenues by which you can meet the specific special exception criteria for parking relief.

So it was obviously intended to be very broad, and it's been very clear, and the Board has been very clear, that you only need to meet one of those not multiple. And so the reason it's approved is because I believe that it was intended to be a broad policy that allowed for reduced parking.

When it comes to the general special exception criteria, I happen to believe that's in place for the outlier cases, for the case which is -- it goes away beyond, not for the one unit. If the Board were to deny something and say, "This is the tipping point," I don't think it should be the case which is one unit. Regardless of the neighborhood, that one unit didn't create the parking problem and it's not going to make it measurably worse in my opinion.

And also, when you put the case together with the other things that the Applicant has tried to do to make it a better project overall hoping to secure support, I mean the addition pullback was done specifically, first, for the purpose of gaining the support of that neighbor and when the neighbor said, "I'm still going to oppose for parking," Matt decided, "Well, we're still going to do the pullback because we still -- we want to make it a better case and a stronger case and we think that's the right thing to do."

So and this discussion went on in the last case too and it was the tipping point, the tipping point conversation I'd say, that Chairman Hood had with the Office of Planning, and I get it.

And I think this is a Zoning Commission type discussion. I don't think that this particular -- especially this Applicant should not be caught in the crosshairs of that sort of reevaluation of a policy of sorts.

And maybe if, you know, five or six people came together with an application for five or six properties on this lot, then that would be clear, but this is -- in the end, this is just one unit. It's the second, of course, of two units and so I think for that reason we do meet all of the criteria for approval, both specific and general and that's all I have on that if you have any questions. Thank you.

MR. SCORZAFAVA: Marty, can I comment with one thing?

CHAIRPERSON HILL: Sure. Go ahead, Mr. Scorzafava.

MR. SCORZAFAVA: Yeah. Just at the last ANC meeting there was some talk about us constructing the properties together and there has been a lot of talk between me and Commissioner Boese about working together in the future on any potential future projects and yeah, I'm committed to both those things. I just wanted him to know that.

MR. SULLIVAN: Yes, and so that was a concern at the ANC meeting of some of the residents. They didn't want two different -- they didn't want the construction to take place at separate times and so the Applicant's just stating that he's willing to work with them on that if it were to be approved. Thank you.

CHAIRPERSON HILL: Okay. Sure. Mr. Turnbull?

COMMISSIONER TURNBULL: Mr. Scorzafava, does that mean you bought other properties on the block?

MR. SCORZAFAVA: We own the property next door, 426 Manor Place, which was heard previously with Commissioner Hood, I believe, and that's -- some of the talk today has been about that.

COMMISSIONER TURNBULL: But are you going to -- are you in the process of purchasing other --

MR. SCORZAFAVA: No, no.

COMMISSIONER TURNBULL: -- sites on the block?

MR. SCORZAFAVA: No, I'm definitely not purchasing anymore properties on this block.

COMMISSIONER TURNBULL: You mentioned that you had talked to people in the neighborhood, but we just heard a witness who said that you had never contacted her. Do you have any comment on that?

MR. SCORZAFAVA: Yeah. I'm very surprised about that because the -- her direct next-door neighbor, Mr. Daniel Nasser, who has been one of my main point of contacts, I have spoken to him on numerous occasions and I think, Commissioner Boese, if he's still on here, can talk to the amount of outreach that I've done between the ZPP meetings, the ANC meeting, and multiple Zoom meetings with the neighborhood.

COMMISSIONER TURNBULL: All right.

MR. SCORZAFAVA: I just -- she may not have been notified by her neighbors. Also (audio interference), she has a Washington state address, so I don't -- maybe she just wasn't local to that area.

COMMISSIONER TURNBULL: When you said you had talked to, I don't know, within 600 feet about a parking space or pad, is -- am I correct on that or had you gone further?

MR. SCORZAFAVA: I checked up and down Georgia Avenue to see if there was any rental -- I did an extensive search and I talked to Commissioner Boese about finding other areas where we could add parking which kind of led to this parking pad across the street and ultimately, even finding -- seeing if -- I mean, Commissioner Boese can speak to this, but I asked him if there were any other senior citizens in the neighborhood that would be open to us providing parking behind their property and we ultimately found Ms. Robinson who lives across the street who testified.

I think, she had a letter that she lived in the neighborhood for many, many years. But specifically to find parking for our properties, I couldn't find any that were either for sale or for rent in that area. I checked the MLS multiple times.

COMMISSIONER TURNBULL: On either block like one or two blocks off besides Manor Place? You went -- you said -- so you went to Georgia Avenue?

MR. SCORZAFAVA: I was looking for like a commercial property that might have extra parking for sale or for rent and I could not find it.

COMMISSIONER TURNBULL: You mean like a garage? A parking garage or?

MR. SCORZAFAVA: Yeah. I also checked the Manor Place and the streets around there, but they're mainly residential neighborhood properties and I did not find any for rent or for sale.

COMMISSIONER TURNBULL: All right. What do you think our solution is in the future?

MR. SCORZAFAVA: I didn't hear that question.

COMMISSIONER TURNBULL: What do you think our solution is in the future for a case like this?

MR. SCORZAFAVA: I mean, my solution, which I said before is -- Commissioner Boese said that if I'm looking at any properties in the area, that I should speak to him first and kind of get the ANC's initial gut reaction before we move forward, so that's what I'm planning on doing.

COMMISSIONER TURNBULL: Thank you.

CHAIRPERSON HILL: Okay. All right.

MR. SULLIVAN: I would note one thing that the -- a big -- I've had this with a lot of clients looking for the space in 600 square feet and often times when they do find one, it's required parking for another use. So we -- you can't use that

space, obviously, if it's already serving as required parking. Almost everything seems to be that.

COMMISSIONER TURNBULL: Should the requirement go beyond 600 feet then?

MR. SULLIVAN: I would -- that would seem like a good idea to me. I don't think the -- I think -- I'm sure my clients would agree with that, whatever gives them more ability to avoid having to ask for the relief, right. And there's no -- we don't get the Metro reduction in the RF zone either, so that makes our -- we don't have the 50 percent reduction even if we're within a half mile of the Metro.

CHAIRPERSON HILL: Okay. Anybody else? Ms. John?

VICE CHAIR JOHN: So, Mr. Sullivan, I don't want to lose sight of this. Is this Applicant providing a parking pad for someone else on the street? And that's a yes or a no.

MR. SULLIVAN: Matt, do you want to answer that?

MR. SCORZAFAVA: Yes. That's a yes.

VICE CHAIR JOHN: Okay.

CHAIRPERSON HILL: No, no, no. Hold on. Hold on. Not for this property.

VICE CHAIR JOHN: No, but to relieve the parking demand --

CHAIRPERSON HILL: No, I understand.

VICE CHAIR JOHN: -- (audio interference).

CHAIRPERSON HILL: I just want to be clear. And Mr.

Scorzafava, I'm not -- I think you're doing a -- you know, I think you're doing the best you can. The parking pad that you're supplying is for the previous property that was before -- meaning, you argued about that -- you're only supplying one and that was the argument you made on the previous case, correct?

MR. SCORZAFAVA: That is correct.

MR. SULLIVAN: Yeah.

MR. SCORZAFAVA: It doesn't have to do with the parking requirement. It was just looking for a creative solution to take parking demand off the street so the ANC could get behind our - - could support us.

CHAIRPERSON HILL: I understand.

I'm sorry, Ms. John. I didn't mean to interrupt you.

VICE CHAIR JOHN: No, it was good because maybe my question was not clear that I was speaking as to this case not the previous case which is not before us. I was speaking about this case and did I understand you to say you would provide a parking pad for some other resident on the street to reduce the parking demand?

MR. SCORZAFAVA: I don't have an agreement with anyone for this case, but I also wasn't actively searching based on some of my communication with the ANC after the previous case. If somebody wanted me to provide a parking pad, I absolutely would.

VICE CHAIR JOHN: Okay. I find that by providing a

parking pad to someone else, even though we can't probably require it as a condition, it does relieve the parking congestion problem and so I would be in favor of that. I don't know what anyone else thinks, but this is a difficult situation and I hear what the neighbors are saying concerning, you know, little kids, you know, homes with little kids who have a car, so I'm sort of sympathetic to that. I appreciate everything you have done to consider the interest of the neighbors in designing the structure, so I would just (audio interference) that (audio interference).

MR. SCORZAFAVA: I didn't hear the last part.

VICE CHAIR JOHN: Oh, there wasn't a question. I was just commenting on the other bit. Thank you.

CHAIRPERSON HILL: Okay. All right. Okay. Anyone else?

Commissioner Boese?

COMMISSIONER BOESE: I guess one comment. I agree with Ms. John that, you know, if a space were found that would be helpful, but I also don't want us to dilute ourselves at every property that may have room for an off-street parking pad in the back of their house would become a reality. One of the neighbors who is specifically offered that as a choice had small children and to them, that wasn't really a choice. I mean, based on the way the neighborhood developed, we are insufficient with park space and so when people do have enough backyard for small

children to run and play in, that is also highly prized and they're going to choose that over a parking pad any day.

So like just looking at the maps, the zoning maps, to see where there's enough space for off-street parking and legal maps to see where there's an opportunity, those shouldn't be considered givens either. I mean, every day we're making difficult choices in how to serve our families and if it's a place for your children to play safely, especially during this past year in a pandemic versus a parking pad, the parking pad's going to lose.

The other thing I'd like to throw out too is to Commissioner Turnbull is one thing I think would be very helpful is if the Office of Planning would actually take an inventory of landlocked properties just so that we know what the percentage is in any given area or zone. I think that would be very informative to see if there does need to be any changes or if it's a low enough percentage where these are anomalies.

For instance, Middow & Shannon developed this block and if you look on the west side of Water, there's another seven properties that are exactly landlocked. This is something they did as developers about 1907, 1910. So it's not just this block. There are other examples in the neighborhood that are just as landlocked even if they're not in this concentration.

CHAIRPERSON HILL: Okay. Thank you, Commissioner. All right. Is that it? Anybody got anything else, want to raise

your hand?

(No response.)

CHAIRPERSON HILL: All right. I'm going to go ahead and close the hearing on the record and excuse everyone. Thank you all very much.

CHAIRPERSON HILL: Okay. I can just start and, I guess, some people have things to say because we've been talking about this for a while. I guess, you know, I -- I think they meet the regulation, you know, and I think they meet the criteria to grant the requested relief. I mean, I don't think that there's -- you know, really the thing that came down to this discussion the most for the ANC as it was on the last one, was the parking.

And we have been faced with parking relief many, many times over the past, you know, whatever, five years I've been here, and I guess it is an interesting discussion wherein, I guess, the Zoning Commission or the Office of Planning can look at it wherein a whole block is going to be -- or, you know, there's just many blocks that are like this, right. And, you know, but this is what -- this is the regulation that was in -- that is before us. These are the standards that are before us. I believe the Applicant meets the criteria for which to grant the application.

And then further, to have granted -- well, the previous one that was the next-door property, they did supply a parking pad. Like they took, somehow, one car off the street as though

they were supposed to provide one parking slot. To now deny this one, even though again we look at each individual case on their own merit, is this the one that is the tipping point for the block and now are we going to, you know, deny all future relief requests from this block or are we going to go against the regulations that say that if they're landlocked, and they don't have the alley, and they can't provide parking within 600 feet, we're just not going to approve it anyway.

So I think they meet the criteria. I think the Applicant made their argument. I think the Office of Planning has also made the argument and I totally understand what the Commissioner is saying and the community in terms of their concerns about parking, but again, I don't know if the one spot is going to change things and so I'm going to -- you know, I'm disappointed that the community isn't in favor of this project or, I guess, any project on this row like this that might come before us.

And the last thing I'll mention is I think that -- to me it makes -- you know, if the developers are going to make, you know, co-habitable housing which is just more -- you know, they can get more money by -- but then again, that's a -- you know, it's anecdotal and hypothetical that you're -- the developers are now going to make more units that have group houses in it, but you could make the argument that you're going to get more cars.

So I'm going to vote in favor and I'm going to turn to

Commissioner Turnbull next.

COMMISSIONER TURNBULL: Mr. Chair, I hate to say I agree with you, but -- and actually after hearing the arguments, I do agree with you and I -- it's a little unsettling for me because I'm empathize with the residents in the community and I really feel that OP has to, and that's why I asked Ms. Elliott to go back to Ms. Steingasser and review these things and I will follow-up with an email to her also talking about that this is getting to be a difficult situation for the BZA.

We need -- we're put in an awkward position that an Applicant comes in and they're meeting the regulations. Yes, they're meeting the regulations and, but it's creating a hardship for the block, the neighborhood, and -- but at the same time, if you look strictly at the interpretation of the Zoning Regs, knowing the situation and what's there, I would agree with you.

I think I would have to say that I would agree and that I would be in favor of supporting this, but I'm not totally happy with it. I feel like I wish there was some other mechanism that could be put in place to supplement or help the neighbors better. I mean, a parking pad is one thing, but you can't put a parking pad in front of everybody's house. I mean, there's regulations against -- you don't want to destroy a block by putting parking pads. You can put them in the back, but -- so it's a conundrum.

This is really a conundrum that we have to deal with and it's unfortunate that we don't have a -- the regulations

don't offer some more flexibility on this, but basically, I would agree with you that strictly based upon interpreting the regulations as they are now, I think the Applicant has satisfied and meets the merits of being -- us voting in favor. Thank you.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: So I believe this is a fairly common conundrum that we face here, and I think in, you know, a lot of the neighborhoods where we see these special exceptions, especially in an urban dense city such as the District of Columbia. I believe the intent of the special exception regulations, while they -- and I do agree with Mr. Sullivan that they are broad and it seems to me that the reason why they are broad is to motivate or coax development in a manner that is more multi-modal, that seeks to push, honestly.

And I know that this is something that we don't want to hear, and I'm just going to put on my practicing planner hat, is to coax development to be more multi-modal to change these behaviors. And the reason why we see this more often in these higher density areas that are adjacent to the Metro is because they had these multi-modal transportation options. And fortunately, or unfortunately, depending on where you land in this neighborhood and how long you've been a resident or, you know, how you fall in this, Petworth is a victim of that, of its own success of being relatively adjacent to a Metro station.

So I do -- I did not like the term where we, quote,

unquote "rubberstamp" these decisions about parking reductions. And I -- you know, as long as I've been on this Board, I haven't rubberstamped anything. I'm looking at the special exception regulations in the context of any request that is before us. And in this particular situation, it is within a quarter mile of the Metro station.

In most planning studies, that is the ideal distance to be able to accommodate higher density development. And also, the property is within a 10-minute walk of the Metro station and a 10-minute walk of two or three bus lines that run along Georgia Avenue and along Quincy Street. So there is a multitude of transportation options within the neighborhood.

Now, I do understand -- so it seems to me that the -- this particular application, Applicant, we're, you know, kind of putting him through a ringer because he's a victim of his own success of solving this issue of parking outside of the Zoning Regulations and I do not want to -- I want to go on the record that the previous approval that -- and I was in support of the previous approval, it wasn't so much because they provided excess parking to the rear. I think that was icing on the cake.

I believed that particular case, even outside of finding additional parking on a neighbor's property met the standards for a special exception because of the same reasons why I listed previously, and I don't want to be in a position where we want to push developers to find parking on adjacent properties

because I also think that it's -- that's not solving the issue. The issue is the amount of cars within the neighborhood, within the street. Us moving or pushing a developer to find a property owner to be willing -- where they would be willing to build a parking pad is not -- he's not solving the issue. It's just moving one car off the street to make room for another car on the street. And also, to me, it runs into other situations that we run into here at the Board where the ANC may push for affordable housing provisions and we're seeing CBA agreements from the ANC. That's outside of the Zoning Regulations and I don't want to get into pushing developers to solve issues outside the Zoning Regulations. I believe it was icing on the cake.

But on its face, this particular case meets the standards for a parking reduction and with that, I would be in support of this application.

CHAIRPERSON HILL: Vice Chair John?

VICE CHAIR JOHN: Well, it is such a benefit to be the last person to speak because then I can just agree with everything that everybody else has said. I give great weight to the Office of Planning's report and I note that DDOT did not have any objection to the application. I agree that the Applicant meets the criteria for all of the reasons everyone has put forward.

And as Board Member Smith said, having this extra parking for another resident on the street would reduce the parking demand by one space and would be the icing on the cake.

However, the residents are not interested in pursuing that avenue even though the Applicant said he was willing, and the ANC is not interested in pursuing that avenue. I am -- and I have no authority to make that a condition because it's not a zoning requirement. It's not required by the regulations.

So this is a difficult case. I do appreciate the resident's concerns. I note that if you have room for parking at the rear of your property, I'm not sure how you would complain that there's a parking issue if there is room for a parking pad because by parking in the rear of your property, you reduce the demand on the street. And so that's just my view of parking in a city that has a serious parking problem. I appreciate the need for having room for children to play, but children can also play on a parking pad. So I am in support of the application.

CHAIRPERSON HILL: Okay. All right. Thank you for all your opinions and discussions. I'm going to make a motion to approve Application No. 20420 as captioned and read by the secretary and ask for a second. Ms. John?

VICE CHAIR JOHN: Second.

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

MR. MOY: Thank you, Mr. Chair. When I call your name, if you would each please respond with a yes, no, or abstain to the motion made by Chairman Hill to approve the application for the relief that is requested. The motion was seconded by Vice

Chair John. Zoning Commissioner Michael Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Mr. Smith?

BOARD MEMBER SMITH: Yes.

MR. MOY: Vice Chair John?

VICE CHAIR JOHN: Yes.

MR. MOY: Chairman Hill?

CHAIRPERSON HILL: Yes.

MR. MOY: We have a Board seat vacant. Staff would record the vote as 4 to 0 to 1 and this is on the motion of Chairman Hill to approve seconded by Vice Chair John. Also in support of the motion, Mr. Smith and Zoning Commissioner Michael Turnbull. Motion carries on a vote of 4 to 0 to 1.

CHAIRPERSON HILL: Okay. All right. You guys, I know we only have one left, but I think it might take a little while, so why don't we go ahead and take lunch. And then let's see, it's -- you want to try to say like 2:15? Is that good?

(No response.)

CHAIRPERSON HILL: Okay. All right. See you guys then. Thank you.

(Whereupon, the above-entitled matter went off the record and then resumed at approximately 2:20 p.m.)

CHAIRPERSON HILL: All right. Mr. Moy, I guess we're back and feel free to call our last case.

MR. MOY: All right. Thank you, sir. The Board is

back in session after a brief lunch recess and the time is at or about 2:20 p.m. in the afternoon. So before the Board is Case Application No. 20411 of Marcel and Stacy, S-T-A-C-Y, Clarke. This is an application captioned and advertised for special exceptions under the penthouse requirements of Subtitle C, Section 1500.4, penthouse setback requirements, Subtitle C, Section 1502.1; area variance from the rear yard requirement, Subtitle E, Section 306.1. This would subdivide the lot and construct two three-story flats in the RF-1 zone, and this is at premises 2600 4th Street, N.E., Square 3551, Lot 1.

CHAIRPERSON HILL: Okay. Great. Is it Mr. Sullivan or Ms. Wilson? I guess they're still getting online maybe.

MS. WILSON: Mr. Sullivan is going to be presenting.

CHAIRPERSON HILL: Okay. Great.

MR. SULLIVAN: I'm here.

CHAIRPERSON HILL: All right. Mr. Sullivan, I guess, who do you have here with you?

MR. SULLIVAN: For the record, my name is Marty Sullivan with Sullivan & Barros on behalf of the Applicant. With us here is the Applicant, Marcel Clarke and we also have the architect team which includes Rob McClennan and My Ly, and I think that's it. Yeah.

CHAIRPERSON HILL: Okay. I see a Sally Hobaugh.

MR. SULLIVAN: SMD Commissioner.

CHAIRPERSON HILL: Oh. Okay.

MR. SULLIVAN: ANC Commissioner.

CHAIRPERSON HILL: Okay. Great. Commissioner, are you there? Can you hear me?

COMMISSIONER HOBAUGH: (No audible response.)

CHAIRPERSON HILL: Commissioner Hobough?

MR. SULLIVAN: She had not -- she had mentioned to me that she had meetings throughout the day, but she would be on and hopefully she'll be able to --

CHAIRPERSON HILL: Okay. Well, let's --

MR. SULLIVAN: -- testify --

CHAIRPERSON HILL: -- see what happens.

COMMISSIONER HOBAUGH: Sorry.

MR. SULLIVAN: -- when her time comes up.

COMMISSIONER HOBAUGH: Yes, I'm here. Thank you.

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

COMMISSIONER HOBAUGH: Sure. My name is Sally Hobough. I'm the Commissioner for ANC 5E SMD 10.

CHAIRPERSON HILL: Okay. Great. Thank you, Commissioner.

COMMISSIONER HOBAUGH: Sure.

CHAIRPERSON HILL: Well, I'll tell you what, Mr. Sullivan. Are others presenting with you? Is that also the case or?

MR. SULLIVAN: Actually, Mr. Clarke was going to start.

We do have a presentation and then --

CHAIRPERSON HILL: Okay.

MR. SULLIVAN: -- the architects also would present -

-

CHAIRPERSON HILL: Okay. Let me --

MR. SULLIVAN: -- (audio interference) the Board allows.

CHAIRPERSON HILL: Let me then go -- I'll just go around the table.

Mr. Clarke, can you hear me?

MR. CLARKE: Yes, I can hear you.

CHAIRPERSON HILL: Could you introduce yourself for the record, please?

MR. CLARKE: My name is Marcel Clarke. I am the current owner and developer at 2600 4th Street, Washington, D.C., zip code 20002.

CHAIRPERSON HILL: Okay. Mr. McClennan, can you hear me?

MR. MCCLENNAN: Yes, I can. Rob McClennan with ZDS Architecture & Interiors. I'm the managing director.

CHAIRPERSON HILL: Okay. And is it Ms. Ly?

MS. LY: Yes, it's My Ly.

CHAIRPERSON HILL: Okay. Is My Ly the -- your last name?

MS. LY: My is my first name. Ly is my last name.

CHAIRPERSON HILL: Okay. Ms. Ly, can you introduce yourself for the record?

MS. LY: Sure. I am My Ly, I'm with the architect team; MyLy Design.

CHAIRPERSON HILL: Okay. All right. Mr. Sullivan, I'm going to ahead and let you begin whenever you like.

MR. SULLIVAN: Thank you, Mr. Chair. If we can have the presentation, please, Mr. Young? And then if you could turn to page 2, the next slide? All right. This shows the -- this -- the second slide would show the existing house on the property and then what I'd like to start with is Mr. Clarke's testimony and then if you could -- I wanted the Board to see this. If you could go to Slide 6, please, Mr. Young, for Mr. Clarke's testimony? Thank you. Go ahead, Marcel.

MR. CLARKE: Yes. Chairperson, if you could actually go back to Slide No. 2 because I wanted to start there and then we can -- and I'll let you know when you can go to Slide 6. Perfect. Again, I am Marcel Clarke. I am the owner and developer for the property at 2600 4th Street. My responsibility is to let you know exactly how I became involved in this project and to let you know exactly where we are to-date. Basically, my friend, Daniel Fields, is the current occupant and he was the original owner, he's been living there his entire life. We were raised together. We went to the same high school together. So I've been visiting Dan for years at the property.

So honestly, one time I was at the property. We had been paying attention to the development in the neighborhood and Dan and I, you know, we started a conversation and I literally was like, "Dan, this house is now -- looks really out of place and it's almost an eyesore." He didn't really like that part. I think he was a little offended. He almost kicked me out.

I guess best friends could do that, but later on in the year he gave me a call. He said, "Hey, Marcel. You know, they're doing a project up the street." 2610, 2612, 2616. That's basically a six-unit development and he was like, "You know what, you're right. You know, we have this beautiful house, but, you know, it's out of place and it's on this large lot. Let's see what we can do."

So I do have a development company. We worked it out. He said, "Listen, if you could figure out a way to ensure that I can stay, you know, in the neighborhood, then I'd be happy to entertain an offer." So I went back to my team, we took a look at the situation and we came to the conclusion that, you know, we could -- if we could put up a four-unit, we would definitely grant Daniel Fields with one of the units, so he'll still stay in the neighborhood and he liked the idea.

So he actually sold me the property and once he sold me the property it was just a matter of doing a little bit of research and formulating a team. So I reached out to two well-known architects that I know, again My Ly and Rob McClennan.

They were very helpful. They've done a number of really good projects in the D.C. Metropolitan Area. They came up with some really, really good drawings. I liked them. But the difference in a drawing is, we knew what we -- what I wanted, but the question is what can you actually do.

So enter Attorney Sullivan. I reached out to him. He thought the plan was incredibly doable. He said he was going to get on board. He actually granted us great legal mind in Alexandra Wilson. She's been incredibly helpful with the outreach in the community.

So can we move to Slide 6? Perfect. So in speaking of outreach to the community, our next goal was -- once we had our team together, the next goal was to commence on extensive outreach. So Dan was responsible for knocking on all of the doors in the immediate community, so everyone that was in eyesight of the project. I'm happy to announce that we have a multitude of written support from a number of the surrounding homeowners and property owners.

Secondly, we made sure that we sent out notification to all of the surrounding properties in a three-block radius. Thirdly, we started to do community outreach. So we attended a civic association meeting which went really well. We also have full approval for zoning and most importantly, we have the full approval and backing of the ANC which I might add, I've been told they can be very particular. So kudos to us, but that went

really well. And then obviously we posted the BZA signage so everyone would know about the meeting today.

In closing, obviously it can be hard to get 100 percent coverage. So, you know, every time we were in a community meeting, there would always be the person that's like, "Hey, we didn't hear about your project." So to me that's almost -- it's kind of hard to do. However, we have. We have had an exhaustive amount of community outreach and everybody that we could touch on this project, we have basically talked to. So with that in mind, I can return to Attorney Sullivan.

MR. SULLIVAN: Thanks, Marcel. I would turn it over to Rob now to talk about some of the aspects of the property and the project. And if you could go to page 3, please.

MR. MCCLENNAN: Sorry, I was muted. Thank you. Thanks, Marty. Good afternoon. I just wanted to quickly -- if we could actually go to Slide 7 just for a minute. Just wanted to show you sort of the context of the property. This is an RF-1 zone. Our street has -- our side of the street is primarily townhouses, but there are about 11 actually sort of low-rise apartment buildings also in the neighborhood. You can see our subject property there on the corner of 4th and Douglas, the northwest corner. And then the next slide, please?

And then here you see, again, the existing house just from a couple different angles. We believe it's a wood frame house. It's not a masonry house. Also, if we could just quickly

go back to Slide 2? The house is also not attached. It does not have a party wall with its neighbor to the north. So it's a free-standing home. So in terms of any sort of addition to the building, we perceive that as not something that we could functionally accomplish.

It's just -- the way the building is laid out on the site, the one-story nature of the building, the wood frame walls. So we quickly sort of thought there's no way we could any -- do any sort of addition to this property and that's when we started to look at this other option. Now, if we could go to page 4, please? Sorry to bounce around so much.

So anyway, the lot itself -- I'm sorry. Page 3 then. This is not the page I wanted. One page back, I believe. Thank you. Okay. So the lot itself is what we consider a double sized lot. You know, it's over 4,000 square feet. It has a substantially deteriorated structure that we just -- we cannot add onto.

If we subdivide the lots into two lots, we'll still have lots that are larger than the minimum width and area and also there's 147 feet of possible frontage for this site. But of that, 107 of the possible frontage is restricted by a 15-foot Building Restriction Line and I'll go to the site plan in a minute and show you how the site works. So 38 percent of the entire subject property is off limits. In other words, we can't build on that. So that's an area of almost 1,600 square feet that is

dedicated to that Building Restriction Line.

The subject property meets the lot dimension requirements for matter-of-right subdivision into two generously sized record lots and would meet those requirements and two alternative configurations with a choice between two street frontage, both of which safely meet the frontage and width requirements.

So if both of those matter-of-right subdivision options make utilizing a home on each resulting lot impossible, the one option just leaves the practical difficulty on not being able to build on just one of the lots. So if we could now go to page 7, please? I'm sorry 9. So here you see the lot and so it's a -- it's 40 feet wide, a little less than 107 feet deep. So normally in a normal situation we would typically subdivide this into two 20-foot-wide lots. So you would have two 20-foot lots 107-foot deep.

We could do, you know, two very nice townhouses with two units each, but because of the Building Restriction Line, if we bisect the lot longitudinally, we're left with a 20-foot lot to build on and then a 20-foot lot of which 15 feet would not be buildable on. So we would have a 5-foot area that's just not practical. So our proposal is to bisect the lot, essentially down the middle in the transverse direction which then would give us two lots that meet the requirements of the lot requirements that are also buildable. So Marty, I think I'll turn it over to

you from there.

MR. SULLIVAN: If we could go to Slide 4, please? I just want to follow-up on some of what Rob laid out there. I think the important thing to note, and I -- and this is, I think, something that we kind of were maybe miscommunicating with the Office of Planning or the Office of Planning didn't recognize that the subdivision is a matter-of-right. We have the option to subdivide, so we're not asking for minimum lot area relief. We're not asking for minimum lot width relief and we're not asking for more density than a 4,200 square foot site would provide normally, but for our unique situations.

And in their report, the Office of Planning mentioned that the subdivision -- they seemed to throw in the subdivision with the area variance request and say that because we subdivide, because we would be subdividing by choice, that it's a self-imposed practical difficulty and I'm sure the Board has heard this before, that the self-imposed hardship rule only applies to use variances and, in fact, the Court of Appeals has said many times that it's not a factor to be considered in area variance cases.

So I think that they're using the wrong standard for that. I think they're using a use variance standard instead of an area variance. Once we subdivide -- so it's a two-step process. Once we subdivide, now our practical difficulty is a result of the BRL and the Board has on many occasions used the

extraordinary condition of a BRL for -- to justify meeting the -- meeting prong one and prong two. We would be able to have a 5-foot-deep house, but for the rear yard relief. Next slide, please?

So the great thing about this property is because we have frontage on Douglas Street and there are other homes on Douglas Street, so moving to Douglas Street fits in with the character of Douglas as well. In fact, right across the street to the south this exact same situation was played out with two lots that are much older than these lots would be, once subdivided obviously, but there are two homes facing that mirror what we're proposing here.

So the structure that will solve the practical difficulty is not much larger than the structure you would be left with if you could build just on the one lot. If we did nothing, if we did nothing and just rebuilt a two-unit house on the lot, it would be a little smaller in area than what we're proposing here, but it would only be two units and those two units would be extremely large and what we're proposing here provides fully sized lots and provides houses and units, flats, which are compatible with the size of other units in the neighborhood and fit more in with the neighborhood. Next slide, please? I think I'd like to turn it over to My and on Slide No. 7. My, if you'd like to talk about the design? I don't know if you wanted to start on 7 or further on down where the plans are.

MS. LY: I can start here. Hi, everyone. I am wearing green for Saint Patrick's Day in celebration. So you can see here the neighborhood and the property is on the corner of 4th and Douglas as Rob has mentioned. The neighborhood character has a lot of brick buildings and on the three other corners to our property, there are larger brick buildings. If you can go to the next slide, please?

The whole 4th Street character is also brick buildings. Three doors down there's a larger multi-unit building that fronts 4th Street and the character of that is also brick. Next slide, please? Okay. Rob started to describe what the existing conditions are on the site as well as the orientation and the subdivision. Currently, we have entrances on the Douglas Street side and after meeting with the Edgewood Civic Association, the president Michael Clark suggested that everyone who is on 4th Street faces 4th Street.

So with that recommendation, we moved one of the entrances to 4th Street just so it tied in well with the neighborhood and Mr. Clark was very supportive of this project and also considered the current house an eyesore and he was very excited for improvements and he's been a long-term resident of the neighborhood. Next slide, please?

Here are the layouts for the various units and these are family-sized units. They are three and four-bedroom units and we felt like this would be great for the community to provide

not just one and two bedrooms, but really maximize the square footage for family-sized units. Next slide, please?

In the site plan on the upper left-hand corner, you can see that along the alley we have three parking spaces and then along Douglas Street we have three entrances and then we have one entrance on 4th Street and we're providing a lot of green space. And then as previously described, the character in the neighborhood is predominantly brick and there are square buildings on the other three corners directly facing our property.

So the architectural character, we definitely borrowed some of the language and we wanted this building to be cohesive and the materials as well as the windows and the entrances are very much -- very much compliments the neighborhood. Next slide, please?

MR. SULLIVAN: Thank you, My. I'll take it from here and I want to talk more about the area variance relief. So to prove area variance relief, we need to prove that we have an exceptional condition that results in a practical difficulty and here are some of the Court of Appeals cases on that. Property has a peculiar physical aspect or other extraordinary situation, or condition and that condition may arise from a confluence of factors. Next slide, please?

We believe we have such a confluence. We have a very large lot and again, that lot is able to be subdivided in

requirements of that zone without needing relief for that. So and this is a key aspect, the second bullet point here, the structure is unable to be preserved or added to which leaves out the option of a conversion because conversions only work with existing houses. And as part of that, this house is detached which is a unique condition for this block and that makes it more difficult to preserve. When you have an attached building, you have to preserve 40 percent of the exterior walls of your building in order to be able to call it an addition not new construction.

And when you have a party wall, and especially when you have two party walls, it's free space essentially. As long as you have a party wall, you get that space. We don't have any party walls on this. It's completely detached from that building and that makes it harder to say.

147 feet of street frontage. 107 of that is BRL space. Almost 40 percent of the property is restricted by the BRL. And if we subdivided -- there's two ways we can subdivide. One of the ways we subdivide makes it impossible to do four units. One of the homes would be impossible because you can't get relief from a BRL, of course. But the other option makes it possible with just rear yard relief. Next slide, please?

So why is this confluence of factors exceptional? The Office of Planning states that we haven't sufficiently demonstrated an extraordinary exceptional condition. I hope --

I got the sense that maybe that leaves the door open, that they just thought we hadn't provided enough information. I'm not sure about that because we didn't know that they had a problem with the area variance test until we saw the report in the file.

They did note in their report one other property on the other end, the other endcap property, as -- I don't -- not sure if they were pointing that out as something we could do or trying to negate the exceptional condition, but I would just point out that one of the differences is the condition of the house that adds to the exceptional condition here.

And also to be considered an exceptional condition with a peculiar practical difficulty, does not require that it be the only one of its kind in the city or even on a block. And so there are other corner properties that, at first glance, look similar to this one, but we think they're distinguishable. There are two across the street that are 14-unit buildings. They're large apartment buildings.

The one opposite across Douglas Street has already been subdivided and then the one that Office of Planning mentioned has already been converted into two units and could be converted into three if they could do an addition which we heard from the architect we cannot do here. Next slide, please

Regarding the extraordinary condition, just to point out the example that a property doesn't need to be the only property of that kind in a block, this is a map from an Office

of Planning report from last fall for a case that was approved by the Board for area variance relief and they noted that the subject lot was small for its zone and that was considered to be an extraordinary condition even though you can see that there were six lots in similar size to it.

And I'm not pointing this out as a precedent. I'm just saying it's an example of the fact that a -- the exceptional condition does not have to be 100 percent unique. Next slide, please?

I think you've heard enough about this. This is the additional condition beyond any of the ones that are in any of the surrounding area is the condition of the house. So no other property around here has all three conditions and I -- the next slide, please?

Basically, it requires a raze and when you do a raze then you're subject to just the two units and we lose two units. The practical difficulty is losing the ability to do a house on land if you have, and as the Board has heard before, idle land is a sufficient practical difficulty as well.

These are some of the other corner lots that have similar conditions, but you'll notice -- I'll -- go to the next slide, please. 2601 3rd Street which was the block to the left on Douglas Street. It's much smaller. It doesn't have the space to be in two units. It doesn't have the lot frontage or width to do two units. Next slide, please?

Across the street on Douglas is an apartment building. I believe this one is 14 units and there's the same thing on the north side of this block on the right side of 4th Street. Next slide, please? And this is the property that the Office of Planning cited in its report. Again, it is something that could be renovated. I think it may be attached. I'm not certain about that, but it could be converted to three. The difference with our house is it can't be preserved. Next slide, please? And then you see the property across the street which is -- has already been developed similar to what we're proposing here, and these two properties are in the R3 zone to the south. Next slide, please? Just a note on the self-imposed hardship rule. It applies to (audio interference) and the Court of Appeals has said many times that it's not a factor to be considered and this is critical in this case because we have the ability to subdivide. Once we subdivide as we're intending here, then we're left with a practical difficulty regarding rear yard and the Board has, on many occasions, cited the existence of a BRL in certain situations like this to be an extraordinary condition resulting in a peculiar or practical difficulty which justifies variance relief. Next slide, please?

This is another case that was approved last fall and the Office of Planning supported. It's similar in the sense that there's two record lots there and we could have combined the two lots and built a single house and complied. That was an option.

That was a possibility, but the test for area variance relief is not that what you want to do is impossible, it's just unnecessarily burdensome.

And in the end, the Office of Planning supported and ANC 7C supported side yard relief to do two houses. One of the reasons they did that was because they thought the smaller houses would be more compatible with the neighborhood rather than one large house. And we have a similar situation here, we believe, where the matter-of-right option would lead to two units way oversized for the community when the solution is actually -- fits in with the block, fits in with the neighborhood, and meets the variance test, and satisfies the ANC and the surrounding community as well. I think that's the last slide, so if the Board has any questions for any of us.

CHAIRPERSON HILL: Okay. Ms. Ly? Ms. Ly, can you hear me?

MS. LY: Yes, I'm here. Thank you.

CHAIRPERSON HILL: I was told that you hadn't taken the oath yet actually, so could you please take the oath which Mr. Moy is going to administer?

MS. LY: Sure.

MR. MOY: Do you solemnly swear or affirm that the testimony you're about to present in this proceeding and that you have presented is the truth, the whole truth, and nothing but the truth?

MS. LY: I swear. I do.

MR. MOY: Thank you. Thank you.

CHAIRPERSON HILL: Okay. Great. All right. Thank you, Ms. Ly.

All right. Does the Board have questions for Mr. Sullivan?

VICE CHAIR JOHN: Just one question for now. So do I understand that the two lots that can be corrected created a frontage on Douglas Street would be two record lots?

MR. SULLIVAN: Yes, they can be subdivided as record lots. They'll meet the minimum lot dimensions.

VICE CHAIR JOHN: Okay. All right. Thank you.

CHAIRPERSON HILL: Commissioner Turnbull?

COMMISSIONER TURNBULL: Yeah, how does granting no rear yard, how's that going to affect the property to -- next door?

MR. SULLIVAN: I know that Mr. Clarke has talked to the neighbor next door. It is -- it's a little longer than if we were building on 4th Street. We would be asking for 10-foot rule relief, so it is a longer -- little bit longer than it would be as a matter of right, but there could still be a building up against their house, but Marcel if you want to talk about your -
-

COMMISSIONER TURNBULL: Well, let me ask you.

MR. SULLIVAN: About that.

COMMISSIONER TURNBULL: If you built on 4th Street,

you would need to provide a 5-foot side yard; is that my understanding?

MR. SULLIVAN: Or we could go lot line to lot line.
That's --

COMMISSIONER TURNBULL: Go lot line to lot line?

MR. SULLIVAN: -- probably the backup plan.

COMMISSIONER TURNBULL: So you could build on 4th Street. It would be a 25-foot-wide structure; is that right?

MR. SULLIVAN: Yes.

COMMISSIONER TURNBULL: And that could be like a two flat? Would that be a two flat, or would that be a three because you're going three?

MR. SULLIVAN: That would be two. We can't do three because we can't preserve the existing building.

COMMISSIONER TURNBULL: Okay. So it would be a two flat. Okay.

MR. SULLIVAN: Yes.

MR. SMITH: Mr. Chairman?

CHAIRPERSON HILL: Yeah. One second. It looks like Ms. John's asking a question.

VICE CHAIR JOHN: So could you build, say, a two level with a cellar since this is (audio interference) lot line to lot line and maybe that -- a basement, a cellar, apartment and two apartments on either floor; one and two?

MR. SULLIVAN: Unless we do two separate buildings, we

can only do two units. So we -- we're limited to two units regardless of where we put them, if I understand the question correctly.

VICE CHAIR JOHN: So it's the --

MR. SULLIVAN: Two units for each record lot is what we're going to be (audio interference).

VICE CHAIR JOHN: Right. Okay. Okay. Thank you.

CHAIRPERSON HILL: Mr. Smith?

BOARD MEMBER SMITH: Yes. As to Mr. Sullivan's point, he just raised that the structure can't be preserved. Have you done any architectural studies or any field studies to show in what way that home cannot be preserved to achieve the same points that Ms. John just raised and are you prepared -- do you have that information at-hand and you conceded that into the record to -- that it's evidence?

MR. SULLIVAN: We haven't done -- I haven't seen anything formal. I can have Rob speak to that and I'm sure we could submit something.

MR. MCCLENNAN: Well, I think, you know, there's a couple issues here. The first is it is a one-story wood frame building, so it's hard to add onto from that standpoint. But most importantly, because the building is set off of the adjacent lot line by 5 or 6 feet, if we were to try and preserve that wall, we would have a wall running 5 feet within our property that would be very hard to deal with.

So I think from a practical standpoint, we don't see a way to save the building. The other -- the southern wall Also is not on the BRL. So again, we've got these walls that are located internally in the lot that both work for the type of structure we'd like to place there.

COMMISSIONER TURNBULL: If you're 5 feet off the property line on the one side, that's what you need to be.

MR. MCCLENNAN: No, we don't need a side yard setback for that --

COMMISSIONER TURNBULL: Yeah, but the -- you're on a lot line.

MR. MCCLENNAN: Yeah, right. Just like all of the other townhouses on the block do. Yeah. Like I said, the existing structure is a bit of an outlier, being a stand-alone structure.

COMMISSIONER TURNBULL: That's a very doable proposition.

MS. LY: If I can also --

CHAIRPERSON HILL: Okay.

MS. LY: -- add the -- in addition to it being wood frame construction, one story with cellar, it's also stucco on both sides the long way and then there is stucco and, I think, like faux stone on the front and back. So it would be very hard to add another story over that and retain the existing walls.

CHAIRPERSON HILL: Does anyone else have any questions

before I turn to the Office of Planning?

(No response.)

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

MS. VITALE: Good afternoon Mr. Chair and members of the Board. Elisa Vitale with the Office of Planning. The Office of Planning is recommending denial of the request rear yard variance relief. The Office of Planning has also recommended denial of the penthouse relief since that is, in fact, you know, tied to the building design and proposal that's necessitating the rear yard variance.

OP understands that the Applicant is able to subdivide the property in the manner proposed for this RF-1 zone property. However, that subdivision and proposed building layout on the lot would result in no rear yard being provided and that could negatively impact the 4th Street property, the property directly to the north that faces 4th Street. The Zoning Regulations are there for a purpose. There is the 20-foot rear yard requirement in the RF-1 zone and that serves to create that separation between properties to provide that open space.

Under the proposed figuration, this -- the two new flats would span, you know, quite a distance along that side property of the property directly to the north that fronts on 4th Street. The Zoning Regulations even now have that, you know, 10-foot rule about extending beyond the rear wall of an adjoining

the property. The Applicant isn't requesting that here because they're subdividing the lot, but this is a situation that the regulations are, you know, attempting to prevent and we don't believe that the Applicant has made a sufficient case to justify the development of these two lots with no rear yard provided at all.

The Applicant has also stated, OP notes this in its report and I think the Board has alluded to it today, the Applicant has a conforming RF-1 lot without the subdivision that could be either developed by adding on to the existing building. I understand the Applicant is saying today that that would be difficulty, or the existing building could be torn down and the property could be developed as a matter-of-right with the row building that goes lot line to lot line.

Again, this is the RF-1 zone. The Applicant could increase the density on the site. Right now there is one dwelling unit. They could do a flat with two dwelling units as a matter-of-right on the property and that could be developed as a matter-of-right. It would conform to the Building Restriction Line along Douglas. It would front on 4th Street similar to the other properties in the square and provide the required rear yard. I think I'll wrap up there and I think we've heard and saw a lot of new information from the Applicant today in the presentation, but I don't believe that changes the OP recommendation at this time.

CHAIRPERSON HILL: Okay. Ms. Vitale, I don't know where are going to end up getting with this today necessarily. I'm just trying to kind of think this through a little bit. There is a lot of information that you are just looking at or getting right now you're getting a little bit more information, and do you think that it would be worth taking a longer look at it or you just don't know?

MS. VITALE: I don't believe that I've seen anything today that would change the OP recommendation, no.

CHAIRPERSON HILL: Okay. All right. Let's see. Does the Board have any questions for the Office of Planning?

Mr. Turnbull?

COMMISSIONER TURNBULL: Yeah. Good afternoon, Ms. Vitale. Thank you for your report. Got a question. The penthouse is not allowed as a matter-of-right, am I correct?

MS. VITALE: That is correct.

COMMISSIONER TURNBULL: The Applicant is saying that the penthouse relief will be harmonious with the Zoning Regulations because such relief is permitted by special exception and the proposed design will result in a better and less visually intrusive building design. Can you comment on that?

MS. VITALE: Sure. I believe the Applicant -- again, the proposed subdivision and the lot configuration pushes, you know, pushes the two buildings that are being proposed into a fairly shallow lot. They're working with that 15-foot BRL on

Douglas Street, so they're pushing the buildings back towards that adjoining property that -- to the north that fronts on 4th Street, but by pushing it back you've got a more shallow, you know, a squatter, a more wider, building form than you might normally have in the RF-1 in the row house typical, you know, building character.

We've already established you have to get a special exception to do a penthouse. In the RF-1, you can't do that roof access stair as a matter-of-right. There are limits. It has to be below 10-feet in height. I think the Applicant's proposing 9 feet, so that conforms. There are square-footage limits. It needs to be just the stair and then a small, you know, 30 square-foot, I believe, storage area.

So this would conform to that, but then there are setback requirements. And again, given the smaller box that we're working in here given the proposed subdivision, they can't meet those setback requirements. There's no way to put the penthouse on the roof and meet that setback because they've just -- they've created a very shallow site.

If they fronted on 4th Street and just did one new building, they may be able to do a roof stair that conformed to the penthouse setback regulations, but that's not what they're presenting today.

COMMISSIONER TURNBULL: Well, it's interesting that they can build a conforming building with their current -- with

the site on 4th Street but dividing it into two lots and going on the other street, they're setting up their own practical problems. To me, this is -- I'm not going to say it's self-imposed, but they're creating -- they're asking for a lot of relief on the Zoning Regulations that normally wouldn't happen if they developed it on the conforming site. They're making -- to me; they're really -- it's imposing -- they're really changing or working the Zoning Regulations to such a degree that I find is very -- I find it hard to agree with their proposal. I don't know what you think.

MS. VITALE: We are -- we're recommending denial. I think we're struggling with the same thing. They have a conforming lot, I understand. I wouldn't agree with their statement that it's a double lot. It's a corner lot. It's larger. That's consistent with other corner lots in the square and other corner lots throughout the District, honestly, and particularly given the fact that there is that 15-foot BRL, having that extra lot area, I don't think that creates -- I don't think that's setting up the difficulty or practical difficulty or unusual situation that the Applicant is stating, you know, is there for this corner property.

CHAIRPERSON HILL: Mr. Turnbull, you looked like you were about to say something else.

COMMISSIONER TURNBULL: No, no.

CHAIRPERSON HILL: Oh.

COMMISSIONER TURNBULL: I --

CHAIRPERSON HILL: Oh.

COMMISSIONER TURNBULL: I'm fine. Thank you.

CHAIRPERSON HILL: Okay.

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

CHAIRPERSON HILL: Okay. Mr. Smith?

BOARD MEMBER SMITH: I don't have any further questions.

CHAIRPERSON HILL: Ms. John?

VICE CHAIR JOHN: Nothing further. Thank you.

CHAIRPERSON HILL: Ms. Vitale, the only thing that I'm kind of thinking about, we'll see how my colleagues get to this whole thing, is that, again, they can -- am I understanding it correctly that they can subdivide as a matter-of-right, correct?

MS. VITALE: That's correct.

CHAIRPERSON HILL: And then once they subdivide, what can they do with those lots?

MS. VITALE: They're two -- they would have two conforming lots in the RF-1 zone. They could be developed with a single-family building or a flat. The RF-1 zone, you could do a semidetached or a row structure provided you conform to the Zoning Regulations. The reason they're here today is they can't build a semidetached building or a flat on those two lots without needing relief from the RF-1 development standards.

In this case, they've created lots that if they met the

-- they met the 20-foot rear yard setback requirement, they would only be left with 5 feet to build in. If you respect to the 15-foot BRL on Douglas and the 20-foot rear yard requirement in the RF-1 zone, they would only be left with 5 feet given the way that they've subdivided this. They make the same case for if you subdivided it along, you know, the horizontal access; if you went to east to west versus north to south.

Again, it's 30 feet. If you divided it east to west, you would have two 20-foot lots, but the southern lot, the one at 4th and Douglas, because of the 15-foot BRL, you're only left with 5 feet of buildable area. The Applicant said as much. It would be very difficult to get out from under that BRL. You can try to get out from under rear yard, so that's why they're here requesting the variance.

CHAIRPERSON HILL: Right. No, I mean, I'm just -- I'm not necessarily -- I don't know where I am with this. I'm not necessarily disagreeing, agreeing, whatever. I'm just kind of talking it through a little bit which is to say, you know, if someone else had subdivided those lots let's say, right, and they sold one to somebody, right, then what would that person -- then what could that person do with that lot? They would be back here asking for the variance, right?

MS. VITALE: Correct, or they may be asking for a different variance. You know, it may -- they might configure it in a different way. They may not be asking for complete relief

of the rear yard requirements.

CHAIRPERSON HILL: Right. Like, when I --

MS. VITALE: We're evaluating the application that's before us today which is to provide no rear yard for either of the proposed buildings.

CHAIRPERSON HILL: No, I got it. I mean, I think I kind of got it. I'm going to have -- you know, like I said, we'll see where my colleagues are. I might have to read a lot more about this, right, but that -- what I'm just kind of playing with, again, is, right, you know, the reason why this also is possibly not, at least, you know, according to your report, possibly not meeting the variance standard is, again, that they're in control of this lot, right. Like, if someone -- and I'm just kind of -- I mean, you can comment on it, I'm just kind of talking out loud because I can, is that, you know, the -- right, if this had been subdivided by someone else and someone sold one of those subdivided lots, they would need relief to be able to do anything, correct?

MS. VITALE: I don't think anyone's evaluated that. I don't think that's been presented.

CHAIRPERSON HILL: Okay. Just curious. Okay. And I forget --

COMMISSIONER TURNBULL: Mr. Chair, I -- Mr. Chair, just -- well, throwing that out, going on your thought about the two lots, if they develop the lot that's more on 4th Street, that

could be developed with an entrance on 4th Street as the front and they wouldn't need any rear yard relief that we're looking at right now because that would be their side yard.

CHAIRPERSON HILL: No, no. I guess, and maybe I'm not understanding, and I'll figure it out later or not, you know, depending upon what happens. I'm just curious if somebody -- you know, if this lot had been subdivided which they can do by right, right, then what happens to those lots if they were subdivided? I mean, the thing that we're kind of stuck here talking about and, again, this is what is in front of us, is this case as the Office of Planning is pointing out again is that, you know, -- I'm just thinking.

Okay. Anyone else have questions for the Office of Planning before I turn to the -- oh, and also, I forgot the Commissioner is here. I'm sorry. Commissioner -- well, Mr. Sullivan, I won't -- first of all, does the Board have any more questions for the Office of Planning?

(No response.)

CHAIRPERSON HILL: No. As of now, no.

And Mr. Sullivan, I'll get to you in one second concerning the Office of Planning.

Commissioner Hobaugh, are you there?

COMMISSIONER HOBAUGH: Yes, I'm here.

CHAIRPERSON HILL: Commissioner, I'm sorry. I neglected to ask you. Did you have any questions for -- and I'm

going to give you an opportunity to give your testimony. Do you have any questions for the Applicant or the Office of Planning?

COMMISSIONER HOBAUGH: No, I did not.

CHAIRPERSON HILL: Okay. Would you like to go ahead and give us your testimony?

COMMISSIONER HOBAUGH: Sure. So I would just like to start out by reiterating that the Applicant did do an excellent job with reaching out to the community, the nearby neighbors, as well as presenting at the Civic Association, and our ANC has a Zoning Committee. They presented there as well.

I also reached out to neighbors in my SMD. This case was included in my newsletter in the beginning of the year and all of the feedback that I have received has been very positive. I'm a little hesitant to say this as others have already, but that property has been an eyesore for as long as I've lived here which is like 13 years now. It's been under some form of construction or another/used as a car storage or maybe disabled car storage on the lot as well, so many neighbors were actually very excited to see the plans and to see that something new would be developed there.

I think the other feedback that had neighbors really excited about the project was that our neighbor would be staying in one of the units when it's completed, so we would be infilling with some density. We're very close to a metro, and then also retaining our neighbor that has lived on the lot for many years.

The feedback -- our Zoning Committee voted in support for the relief and at the ANC meeting we also voted in support for the special exception. We were neutral on the penthouse request and that was because it was brought to us later. It wasn't given with the initial application, so I didn't feel that we had enough time to get feedback from everyone for that one. The feedback that I did receive was positive for it, so we left it as neutral since it was an addition to the request.

CHAIRPERSON HILL: Okay. Thank you, Commissioner.

Does the Board have any questions for the Commissioner?

(No response.)

CHAIRPERSON HILL: Okay. Mr. Sullivan, you have any questions for the Commissioner?

MR. SULLIVAN: No, thank you.

CHAIRPERSON HILL: Okay. Do you have any questions for the Office of Planning?

MR. SULLIVAN: Ms. Vitale, you said that the lot -- you wouldn't call it a double lot. Does it have double the lot area required to have two record lots?

MS. VITALE: That's not how we evaluate. There is a minimum lot area and minimum lot width established for a zone, but that doesn't mean that a larger lot is a double lot.

MR. SULLIVAN: Okay. I guess it's semantics. So it is subdividable as a matter-of-right in the manner that we have proposed; is that correct?

MS. VITALE: That's correct.

MR. SULLIVAN: And you said if we did that, then we would have only a 5-foot-deep house; is that correct?

MS. VITALE: Given the way that you have proposed the subdivision and the layout of the buildings on the lot, given the 15-foot BRL on Douglas Street, you would have 5 feet if you provided the full 20-foot rear yard. You're providing zero rear yard here.

MR. SULLIVAN: So is your issue with that request the amount of relief that we're requesting if it was less than full than 100 percent rear yard relief? That would be a different position.

MS. VITALE: We're evaluating the application that's before us which was to provide no rear yard.

MR. SULLIVAN: Oh, well you said that nobody has made that argument. You said something about -- because Chairman Hill was asking about if somebody subdivided this property, or if we subdivided the property next week, and then come back with an application in two months with the same request for the same building and now we're asking for rear yard relief, as we are now, you said nobody is making that argument, I think. Is that what you said, nobody is making the argument for rear yard relief?

MS. VITALE: I'm not sure I'm following your statements.

MR. SULLIVAN: Okay.

MS. VITALE: I --

MR. SULLIVAN: Well, you say building --

MS. VITALE: You said property --

MR. SULLIVAN: -- a 5-foot -

MS. VITALE: Just --

MR. SULLIVAN: I'm sorry. Go ahead.

MS. VITALE: No, I was just going to say you guys are requesting full relief from the rear yard requirements. If --

MR. SULLIVAN: Correct.

MS. VITALE: -- this property was subdivided previously, and you brought the exact same case before us based on a prior subdivision, I think we would have the same concerns about providing zero rear yard here. I don't think the case has been made to justify the proposed layout of the buildings on the lot in the manner that's being proposed with a rear --

MR. SULLIVAN: So you --

MS. VITALE: -- being provided.

MR. SULLIVAN: So you're saying you don't think a 5-foot-deep house is unnecessarily burdensome because we're restricted by the BRL and the rear yard setback?

MS. VITALE: The 5-foot that's remaining is, again, the -- that's the situation that you have created here with subdividing the property in the manner that's being proposed --

MR. SULLIVAN: Okay. Are you --

MS. VITALE: -- placing the buildings on it in the

manner that's being proposed.

MR. SULLIVAN: Are you familiar with the case law about self-created hardship and the fact that it doesn't apply to area variance cases?

MS. VITALE: Yes, I understand that.

MR. SULLIVAN: Because your position seems to be because we're creating this with matter-of-right subdivisions, that that negates the ability to make the rear yard variance argument that we're making.

MS. VITALE: I would disagree. I would say, again, the rear yard variance argument has not been made. The BRL is there for a reason, to provide green space in the public way or along -- you know, adjacent to the public way, to widen sidewalks and provide planting area so that 15-foot setback on Douglas is established as part of the establishment of that 15-foot BRL and the 20-foot rear yard requirement is there and is a known kind of quantity in the RF-1 zone and you --

CHAIRPERSON HILL: You've got -- Ms. Vitale, what did you say? It is a known quantity in the RF-1 zone?

MS. VITALE: The RF-1 zone requires a 20-foot rear yard.

CHAIRPERSON HILL: Oh, got it. Okay.

MS. VITALE: So it's any -- anyone developing this property, anyone subdividing this property, goes into it with the knowledge that there is the 15-foot BRL on Douglas that is

difficult to get relief from, not something that -- you know, BRLs are not something that someone can go to the Board. This is not the Zoning Regulations. It's not something you can get relief from. So that 15-foot BRL along Douglas is established. You know, well-established.

And then the fact that the 20-foot rear yard is a requirement of zoning is also well-established and rear yards are set out. You know, the development standards in the Zoning Regulations are established to control, you know, the density, the bulk, you know, where buildings sit on a lot and how they relate to other buildings on adjoining properties. That's why we talk about, you know, side yards, and rear yards, and look at front setbacks.

It's all about kind of ensuring, you know, a degree of consistency of among the building form within a zone and then, you know, kind of the appropriate separation between buildings within a zone to allow for light and air.

CHAIRPERSON HILL: Okay. Okay. No, that's okay.

MS. VITALE: So --

CHAIRPERSON HILL: No, no, no. I got it.

MS. VITALE: -- that 20-foot rear yard is there for a reason and so the Applicant is requesting to provide no rear yard which we think would have potentially negative impacts on the adjoining properties --

CHAIRPERSON HILL: Okay. That's all right.

MS. VITALE: -- so the Applicant hasn't made --

CHAIRPERSON HILL: okay.

MS. VITALE: -- the variance case for the rear yard relief.

CHAIRPERSON HILL: I got it, Ms. Vitale. That's okay. I didn't mean to have like a big discussion actually here with everybody to try to argue our way out of this. Mr. -- I mean, not mister. Ms. Cain, you have a question?

MS. CAIN: I'm just going to note as a procedural matter that it seems like this line of questioning is merging into asking OP to make legal determinations. That is not their role. They are here to provide technical analysis from a planning standpoint. So just, for the Board's direction, those sorts of questions should not be being posed to OP.

CHAIRPERSON HILL: Okay. All right. There you go. All right. So let's see --

MR. SULLIVAN: (Audio interference).

CHAIRPERSON HILL: Mr. Sullivan, just give me a second. Okay. Sure. Well, wait a minute. Give me a second. I was going to say something. I forgot it. Okay. So did the Board have any further questions of the Office of Planning?

(No response.)

CHAIRPERSON HILL: Okay. Mr. Sullivan, you had a comment? I mean, by the way, I kind of agree with OAG, so. But what was your comment?

MR. SULLIVAN: It's the Office of Planning that raised the self-imposed rule in the first place. It is the reason why we're not entitled to a variance here, so I'm just asking a question about that. It's in their report, so --

CHAIRPERSON HILL: Okay.

MR. SULLIVAN: -- but I can talk about it in closing. I don't need to ask any further questions.

CHAIRPERSON HILL: Okay. That's all right. I'm just trying to say -- I mean, Ms. Vitale, and now that -- and I am going to ask a clarifying question now. Is it just the self-imposed issue that you guys think that they're not meeting the variance standard?

MS. VITALE: No, not at all. In our report, we -- you can go to page -- pages 3 and 4 of our report and those speak to the criteria for evaluating an area variance and we state that the Applicant has not sufficiently demonstrated an extraordinary or exceptional condition that results in an exceptional practical difficulty.

With respect to substantial detriment to the public good, we do note that, you know, the creation of the four dwelling units would not present a substantial detriment, however they have an existing record lot that's conforming, satisfies the minimum lot width and lot area requirements in the RF-1 zone and could be redeveloped for use as a residential flat with two dwelling units.

We do think that the Applicant's proposed redevelopment plan could have a detrimental impact on the adjacent lot. So again, the rear yard requirement is there to provide light, and air, and, you know, open space and the Applicant's requesting complete relief from that 20-foot rear yard and we don't believe that they've demonstrated the three-part test with respect to that area variance.

CHAIRPERSON HILL: Got it. Okay.

All right. Mr. Young, is there anybody here wishing to testify?

MR. YOUNG: We do not.

CHAIRPERSON HILL: All right. Mr. Sullivan, you were going to have a conclusion?

MR. SULLIVAN: Yes. Obviously, we disagree. Well, first of all, regarding the penthouse relief, we would officially withdraw it and if we can amend the plans and continue the hearing, we're happy to remove that. We didn't -- it was something that was preferred. It's not critical and so the penthouse can go away and a hatch situation can be inserted.

Regarding -- I'm really confused. I'm told that it's not based on the self-imposed rule, but again we keep coming back to the fact that we could just do -- we could just build two units. Of course, we could do nothing. We could leave the house there too. That's always an option, to not do anything, but we are being subject to, I believe, a use variance standard not just

for the self-imposed hardship rule, but for the entire analysis because the Office of Planning is saying there's other things we can do.

It's not impossible to use the property. That's the use variance standard. The area variance standard, much lower, is only that it's unnecessarily burdensome to comply with the regulations. If we need to, we'd love to buttress the record. There are plenty of cases where the BRL was an exceptional condition and now all of a sudden, it's not.

It's just -- it's viable and it can't lead to anything else. There's plenty of cases with rear yard variance relief. Office of Planning says the Zoning Regulations are there for a reason. The area variance regulations are there for a reason, to protect property to keep property from remaining idle.

A couple weeks ago this Board had a case where there was a use variance argument to add one unit into a basement of a 19 or 20-unit building which the Office of Planning supported based on the notion that leaving property idle also referred to or was applicable to just a portion of the property. In this case, it was just the basement. We're saying more than half of our property is going to go unused.

When I say, "double lot," we have enough to do two lots as a matter-of-right. We will end up with two record lots and either way we do it, either way we subdivide, one will be impossible, the other will be 5-foot buildings. There's no way

to do four units on this property. The practical difficulty of the rear yard is we have a 5-foot deep -- I don't understand why that's not, why a 5-foot-deep house is not a practical difficulty and there are multiple variables involved with this property that make it clear that it's an exceptional condition.

If you take the subdivision out, if we came back a year from now with subdivided record lots, what would the Board decide and what would the Office of Planning say because that's the question here. That's the argument we're making because the lot, we can do it. I mean, I keep hearing the self-imposed rule doesn't apply, but then the reason why we don't satisfy the Office of Planning is because we imposed this on ourselves. So, I mean, in a lot of ways Ms. Vitale made the argument when she talked about how it was difficult to have a 5-foot-deep house and you would need relief for that.

So I really think it's important to separate the fact that we can subdivide this as a matter-of-right, what the self-imposed hardship rule means and just saying that we don't have to subdivide it, we're not forced to do that, that's unnecessarily burdensome as well, in and of itself. We're still left with two units where we could otherwise do four. We could be providing housing desperately needed in the city in a way that is supported by the community. So it's an outstanding solution to a problem, to an area variance problem and I just -- I'm at a loss. I think if we could get past the fact that we're doing the subdivision

because that's -- I think that's the way the Board needs to look at it, that's what the self-imposed rule means.

CHAIRPERSON HILL: Okay. Yeah, sure. Ms. John, go ahead.

VICE CHAIR JOHN: Can I ask a question that is not clear in my head, Mr. Sullivan? Isn't there a line of cases that says that the side use can't be the source of the practical difficulty? I mean, you just said that you're -- basically the request is based on the need to have four units and I think that what I was thinking is that it basically presented to us as a lot that's buildable on which a flat could be built and so I'm having a little difficulty.

I guess confusion is the word of the day today, but I'm having a little difficulty in understanding the practical difficulty in putting the property to a reasonable use with a reasonable economic return by building two flats or a flat, sorry, two units. So can you address that? And the other thing is we're talking about a situation that's not before the Board. The subdivision is not before the Board. Maybe it would have given me greater clarity if there was a proposal with that lot subdivided so I could see for myself it's not buildable.

And then as a practical matter, why would anyone buy a lot that's not buildable? So in selling that as a record lot that's buildable, is there some sort of misrepresentation? I'm just not getting it. If you were to subdivide this property,

which is your argument, horizontally into two record lots and come back, but then it's not a buildable lot because of the 15-foot Building Restriction Line. So I don't understand the argument.

MR. SULLIVAN: So for the -- I think you're -- both questions are sort of the same nature and they relate to the use variance argument, and that the expectation of a reasonable return, that's a use variance argument. And we -- if we subdivide the property and come back in two months, then we have the subdivided property. The Board has before it the same thing it has now other than it's just been -- it's been done by the Surveyors Office and that lot then has a practical difficulty.

And what the self-imposed hardship rule means, or what the case law says about the self-imposed hardship rule is that applies to use variance. And I'm not saying we need to have four units because that's not the requirement. I'm saying that one of the reasons that area variance relief exists is to keep property from remaining idle. The Office of Planning has said that that applies to portions of property.

So without the subdivision as it stands now, to say we can just do two large units that don't really -- aren't really compatible with the community and have the rest of this very large property which is more than twice the size of what is permitted as a matter of right for a record lot, that's why I called it a double lot, then we're -- we have idle land and we're

not using this land and that is a practical difficulty.

So in either scenario it is, but we can subdivide the property and it's permitted. Here, you can subdivide the property and then once you're dealing with this property now you have a BRL condition and you can't do three units because you can't convert the building and all you need is rear yard relief which is supported, which is not -- I mean, it's not use variance relief. It doesn't affect the whole community. It would actually benefit the property next door that's about to be sold and now they can build that further. So I think that the question about the line of cases that applied to the use variance analysis.

VICE CHAIR JOHN: The self-imposed hardship can be considered as a factor, not the only factor, and I believe that's what Ms. Vitale was saying. It is one factor, but I can't talk about the subdivided lot horizontally in a vacuum. I would need to see what that relief looks like and -- so if providing some alternative of what the argument would look like and what that structure would look like, I think there's a problem anyway. And you keep saying that there are two buildable lots, but the Building Restriction Line applies in both cases. Nothing can be built there, so I don't see how it's a double lot if you (audio interference) because there's that 15-foot Building Restriction Line so it's not a double lot. Did I mishear you?

MR. SULLIVAN: The Building Restriction Line has been used in many cases and we can submit a supplemental submission

as justification for area variance relief because it affects where the building can be on a lot.

VICE CHAIR JOHN: I agree. I agree. I believe there's an exceptional condition that falls with the Building Restriction Line and that means that the property can -- the building can be setback, lot line to lot line, excluding that 15-foot and you could have two -- I mean, a flat there; two units. And I would need to look at the case law again to clarify that particular point, that that would be applying the use variance standard to say that you could build lot line to lot line and have to lose that -- not need such a significant rear yard relief. And I think the Board is at a disadvantage because we're being asked to evaluate something that's not before us.

MR. SULLIVAN: The plan -- the site plan and the plat have been presented as the two separate lots, two buildings on two separate lots. But we can -- I mean, we could go do the subdivision and bring it back with the subdivision.

CHAIRPERSON HILL: Okay everybody. All right. So listen, this is what I'm curious of and I can look at my Board members. And Mr. Sullivan, by the way, the Building Restriction Line thing, you keep mentioning over and over again that it gets brought up all the time. I don't think it's brought up all the time or you have to kind of like clarify it even for me. I've been here kind of a pretty long time now and like -- you know, you might have to reference these cases that you're bringing up

with the Building Restriction Line because it just doesn't -- I don't think it comes up as often as you're thinking it's coming up.

But anyway, so I got -- it's up to you guys, right, and if you all are ready then that's fine too. So I got two thoughts. One is we actually have -- because we haven't done it yet, an emergency closed session meeting with OAG to just kind of like hear a little bit what they have to say. So that's one, because, shockingly, it's not 7 o'clock which it normally is for us and we've had lunch and so that's number one.

Number two, if you guys are ready, then we can go ahead and start talking. Or number three, I'd still kind of want to wait and see -- I kind of want to chew on this a little bit. That's kind of my three options. So are any of you interested in option number one?

(No response.)

CHAIRPERSON HILL: Nobody is raising their hand. Okay. All right. Then I guess then, Mr. Sullivan, are you done?

MR. SULLIVAN: Yes, if there's -- and answer to your question about the BRL, I understand. It's not -- I don't think it's all the time, but there are cases and I'd be happy -- I'd love to have the opportunity to supplement the record and anything else the Board requests to --

CHAIRPERSON HILL: Okay. Well, let's see --

MR. SULLIVAN: -- flesh this out.

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CHAIRPERSON HILL: Okay.

MR. SULLIVAN: Thank you.

CHAIRPERSON HILL: All right. Well, let's see where we get once you're gone. And Mr. Clarke?

MR. CLARKE: Yes?

CHAIRPERSON HILL: Mr. Sullivan's working hard for you.

MR. CLARKE: He totally is and then finally though because I have -- we've been hearing a lot about the adjoining property, 2604 to our north. That's the Flemings. They have been well-informed about this project. Ms. Fleming has been incredibly supportive. The only reason why she didn't give us written support is because the actual property is one that they own that's in probate. So she was not comfortable signing anything to say that she supported the project, but we have her full verbal support.

CHAIRPERSON HILL: No, that's great. And Mr. Clarke, I appreciate you going out and talking to the ANC and Commissioner, thank you for being with us. I mean, unfortunately it's not -- or fortunately or not unfortunately, it's not a popularity thing. Like if everybody says yes, we get to say yes or no. I mean, we're struggling with the regulations, right, and so --

MR. CLARKE: All right.

CHAIRPERSON HILL: -- but anyway, thanks very much.

Commissioner, can you hear me?

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COMMISSIONER HOBAUGH: Yes.

CHAIRPERSON HILL: Thank you for attending.

COMMISSIONER HOBAUGH: Yes, thank you.

CHAIRPERSON HILL: All right. I'm going to close the hearing and the record and excuse everyone. Thank you.

Okay. All right. I don't know where I am, okay, so you guys can go ahead and talk your way or tell me what you think because I'm a little -- I mean, if my vote doesn't matter anyway, then it doesn't matter right because I only -- you know, three wins, right. So three votes win, so I don't mind losing, right, if you all are already where you are.

The part that has just been kind of confusing me that -- and I don't know if any -- I don't even necessarily know if I would have gotten there is, is, again, if this thing was already subdivided, right, is that if this thing was already -- you know, and I know that this may be looking at it the wrong way. That's why maybe I would take more time to look at it and I'd come back, and I'd be like yeah, you know, you don't have to hypothetically figure out something because it's hypothetical, right.

I mean, this is what is in front of us and even then, I'm a little confused. But if it was already subdivided by somebody else 50 years ago and somebody bought one of those lots, what are they supposed to do with that lot, right, and that's where I'm a little confused. And so, you know, the fact that those two lots are there and they're both subdivided and if they

were subdivided, I don't think they would be able to provide a back yard, right, because they can't. They'd have a 5-foot-wide house, right, or at least one of them. I guess one.

The one that's on -- the one that's -- they didn't have -- you know, the one that could -- god, I didn't get the streets (audio interference). They could -- one of the lots maybe could be built on, the one that was facing 4th Street, I guess, was it -- now I'm just looking at the map. Anyway, and so that's one thing that I've been kind of just kind of mulling over and then the other is that townhome that's already there, like they can build lot line to lot line.

Now, meaning there's no windows on that thing anyway right now, right. So if there were a back yard, I mean, the back yard's not protecting that townhouse from anything. But anyway, it doesn't really necessarily go to the variance argument, so I don't know. That's why I'm just kind of like wherever I -- so, Mr. Turnbull, I don't know where you are.

COMMISSIONER TURNBULL: Well, this is an awkward case. Like we don't get many of those, right. Here's my problem for the rear yard. The building that they're showing now, the buildings combined, are about three-and-a-half stories tall which is probably like 35 -- thirty-some odd feet high and the two buildings combined are like 70 feet long. So you've got 35 feet by 70-foot-long wall on the property line facing this property to the north. I'm sorry. That's not what the zone plan calls

for.

That is the whole -- as Ms. Vitale was saying, that's why we have a rear yard, to protect those neighbors. Now, the property adjacent they said, "Oh, she's in favor of it." Well, if it's probate, she probably doesn't really care. I don't know. But it does affect the future owner of that property. I mean, if you bought a piece of property and you come out and you look at it and you've got this 70-foot long by 35-foot-high wall on your property, what are you going to do?

It's a theoretical question. I don't really care, but the point is it's an imposition on the zone plan to be able to allow this to happen. You're right. If this came before us and it was subdivided already, they could easily build something on the property that is fronting 4th Street to be a normal development because it could be 25 feet wide, property line to the Building Restriction Line. It's the other one that could be a question and maybe you could give some kind of relief there. I don't know, but that's not before us.

What's before us now is this one with the no rear yard. I'm glad he's finally pulled off on the penthouse because I had trouble seeing that they could really reach the special exception criteria on that, but I'm very struggling with -- I guess I'm struggling with the fact that it's a buildable piece of property. You can get two units in this instead of four, but I mean, that's not before us either. But just the same, I can't really get to

the point of saying yes, I could approve this with a -- with this no rear yard relief. I'm struggling with that.

CHAIRPERSON HILL: Okay.

COMMISSIONER TURNBULL: But that's it for me for now.

CHAIRPERSON HILL: Okay. Mr. Smith?

BOARD MEMBER SMITH: I agree with Mr. Turnbull. It is -- and I -- I'll talk about this from two angles. Now, I understand that this is not the question before us today. Mr. Sullivan stated that this property may, you know, sit vacant and the purpose of the area variance provisions are to keep properties from sitting vacant and, you know, that's a common refrain that I hear as if this is 1980s, 1990s D.C. where that is a major issue, and I cannot -- I have an issue with that constantly being brought up.

But separating the fact that this is a developable, and I believe it's a developable lot in its current fashion for a flat, I am not sold that the existing home can't be saved, renovated or you can put an additional unit within that existing structure. Because why? The Applicant has not provided any hard concrete information stating that the home can't be saved, and I have an issue with that, that you throw that out as an argument, but you don't have any facts to back up that argument and that needs to change with many of these Applicants that come before us making that same argument. You have no argument if you didn't present any evidence to that argument.

But to the point -- to what we are presented with today, it's a subdivision, or a request, or a potential subdivision whereby the rear yard would be reduced to zero. I can get behind that it meets the first prong, but I am not sold that it meets the second prong and the third prong, and it comes down to the practical difficulty of developing the lot.

I do not believe that the Applicant has demonstrated that there is a practical difficulty in meeting -- in order to develop on that -- on this particular lot. They are -- what they're proposing to develop is very high density and even in granting a subdivision or in the example that you give, Chairman Hill, there are other development patterns or scenarios whereby they may not have a practical difficulty in developing on this lot.

The biggest hang-up I have is exactly what Mr. Turnbull said. I do not agree that this variance request meet these -- the public good. Another argument that Mr. Sullivan was making is that a single-family house is not in character of the neighborhood. You go up a block to Evarts Street, there are a number of single-family houses. There are a mixture of single-family, row home, and small apartment homes in this neighborhood. That is not out -- a single-family home continuing to exist is not out of character. The construction of something that is lower density that could be a single-family house is not out of character and that leads to my other point.

I do not believe that the Applicant has sufficiently demonstrated that it meets the intent of the zone plan. The zone plan, as Mr. Turnbull stated -- the purpose of a rear yard is to protect the health, safety, and welfare of the residents and it protects the -- health and safety of the residents and also the integrity and safety of the home in case of a fire and the whole point of a 20-foot setback is to preserve light and air, and also from a health standpoint, additional open space.

Now, the proposed design or the layout contemplated by the Applicant, you don't have any open space. You don't have any open space in the -- you have a little bit of open space in front. No open space in the rear. And I am concerned about reducing on essentially what would be a green-built development if we do approve this and we give a subdivision to that house, measurably reducing what is a side yard of 5 feet down to zero would, to me, create some -- have some -- create some safety concerns to the property to the north.

And also what's been contemplated when it comes down to the light, this particular size of homes would create a lot of shadow on the properties to the north and probably further up the alley. Applicant hasn't contemplated a lower density development that would counter-balance some of these adverse impacts. So in saying that, I do not believe they meet the second and third prong of the test. Now --

CHAIRPERSON HILL: Hello? Did I lose Mr. Smith? I

lost him. He's coming back.

BOARD MEMBER SMITH: -- could more closely meet the intent of the Zoning Regulations --

CHAIRPERSON HILL: We missed you --

BOARD MEMBER SMITH: -- (audio interference).

CHAIRPERSON HILL: -- Mr. Smith. You cut out just for about 10 seconds. Can you --

BOARD MEMBER SMITH: Okay. Well --

CHAIRPERSON HILL: -- go over your last point?

BOARD MEMBER SMITH: Well, my last point is that, you know, I -- as it stands now, I am having difficulty supporting a variance for all of the reasons that I stated. But the other scenarios that were brought up by the Applicant of the reason why they can't develop on this lot or they can't preserve the home, I do believe that they may meet the intent of the zone plan and may meet character -- meet the character of the zone and be within the public good of the zone, of the citizens. So that's where I am now.

CHAIRPERSON HILL: Okay. Ms. John?

VICE CHAIR JOHN: So I am a little confused about how to approach this case. On the one hand, I like the development in terms of the fact that it is providing housing, much needed housing, and that the owner would be able to live in one of the apartments and the application satisfies the first prong because of the BRL situation. So (audio interference) of the standard

that we're currently applying to the area variance and I would really like to look at it even more.

I think -- I'm not persuaded by the argument that the lot could be subdivided into two buildable record lots. I agree with Commissioner Turnbull, that one lot would be building, the one on 4th Street, but I don't know what to make of that argument. I also think that (audio interference) make a good argument as to why the criteria has not been met. Given those facts, I'm not really ready to make a decision today and I think I would deny to make a decision on it.

CHAIRPERSON HILL: Okay. Okay. So maybe we can ask the Applicant to supplement their submission addressing maybe the Office of Planning's report concerning self-created hardship or if they wanted to provide any case law concerning the BRL or anything else that they kind of brought up today as well as, I think, Mr. Smith, you had also talked about documentation as to why the conversion isn't feasible and then we can just see if we want to continue the hearing or is that enough then to make a decision. That might be then enough to make a decision, right?

VICE CHAIR JOHN: Or we could (audio interference) here if you wanted to do that.

CHAIRPERSON HILL: Yeah. You know --

VICE CHAIR JOHN: Just the submission of the -- on the new material that was submitted not on anything else.

CHAIRPERSON HILL: Right. I mean, the -- even the

problem that I -- because Mr. Turnbull, I mean, had -- Mr. Turnbull almost had me convinced anyway. Like again, and, you know, Commissioner, I appreciate everything that you said. Like, I mean I really wasn't realizing kind of the mass of that property as it is to the property to the north, right. Like, that property to the north, right, fell completely -- you know, the building will be just a big wall again up against their backyard, right. And so --

COMMISSIONER TURNBULL: It will be the north.

CHAIRPERSON HILL: Yeah, and then the shadowing also. You know, I don't know what the shadowing would be like, right. So we might want to see a shadow study, right. You know, I don't know if that does anything for you guys or not. Does any of that interest any of you guys?

COMMISSIONER TURNBULL: I have a feeling of what we're going to get. I mean, I sort of know that for part of the day the house is going to be totally dark because there's -- if it faces north-south, so in the morning the house at the right next to it will have light because the sun's coming from the east and then it's going to sit on the west. So when you get to past noon, that house is going to be totally dark, I think. Mr. Smith could also comment on that, but that's my feeling.

BOARD MEMBER SMITH: I agree with Mr. Turnbull. I don't -- I raise that not as a case where I need some additional information. I think based on the orientation and the fact that

they are proposing zero rear yard. That's what's going to occur. So I don't think that's going to change my opinion if I got some studies. I think that's pretty concrete.

CHAIRPERSON HILL: Okay. I got to tell you, I don't also want the applicant to have to pay more legal fees if this is also just not going to work. So does anybody actually need anything, or we just want a little time?

Ms. John, you just want a little time?

VICE CHAIR JOHN: I just need a little time. I don't need anything.

CHAIRPERSON HILL: Okay. And then if we do want something, I guess we can always ask for it. Right?

VICE CHAIR JOHN: Right.

CHAIRPERSON HILL: Okay. All right. Then we'll go ahead and put this off for a decision next week. Oh, no.

VICE CHAIR JOHN: No.

CHAIRPERSON HILL: I won't be here next week. So we'll put it up for a decision on the 31st.

VICE CHAIR JOHN: Yes.

CHAIRPERSON HILL: Mr. Moy, are you there?

MR. MOY: Yes, I'm here. I heard everything.

CHAIRPERSON HILL: Okay. So go ahead and put this on for a decision on the 31st.

MR. MOY: Done.

CHAIRPERSON HILL: Okay. All right. Do you all need

--

MR. MOY: And again, to clarify, Mr. Chairman, so the Board is not asking for any supplemental information at all, correct?

VICE CHAIR JOHN: No.

CHAIRPERSON HILL: No.

VICE CHAIR JOHN: Just to sit on it.

CHAIRPERSON HILL: I mean, if we --

MR. MOY: No?

CHAIRPERSON HILL: -- end up needing it after we've kind of taken a look at stuff, then we can see.

MR. MOY: (Audio interference).

CHAIRPERSON HILL: But as of now, we don't need anything more. And Mr. Turnbull --

MR. MOY: Okay.

CHAIRPERSON HILL: -- you can join us for the 31st for a decision?

COMMISSIONER TURNBULL: Yes, I'll make myself available.

CHAIRPERSON HILL: Okay. All right. Do you all need anything else from me?

(No response.)

CHAIRPERSON HILL: Okay. Mr. Smith, Ms. John has been very kind of help me out next week because I'm going to not be here --

BOARD MEMBER SMITH: Uh-huh.

CHAIRPERSON HILL: -- so please do help Ms. John.

BOARD MEMBER SMITH: Will do.

CHAIRPERSON HILL: Okay?

BOARD MEMBER SMITH: Will do.

CHAIRPERSON HILL: And you can second all of her motions.

BOARD MEMBER SMITH: That's what I was about to say.

CHAIRPERSON HILL: Okay. All right. All right.

Mr. Moy, is there anything else in front of the Board today?

MR. MOY: I don't have anything for the Board from the staff, Mr. Chairman.

CHAIRPERSON HILL: All right. Well, then I'm going to follow out on Mr. Turnbull's lead right there. Okay? You all have a happy Saint Patrick's Day.

BOARD MEMBER SMITH: Have a great Saint Patrick's Day.

VICE CHAIR JOHN: Thank you.

CHAIRPERSON HILL: Thank you.

BOARD MEMBER SMITH: All right. Thank you. Take care everyone.

CHAIRPERSON HILL: Bye-bye.

(Whereupon, the above-entitled matter went off the record at 3:58 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 03-17-21

Place: Teleconference

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