

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 31, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Webex, pursuant to notice at 9:54 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
CARL BLAKE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
PETER G. MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
CRYSTAL MYERS
JONATHAN KIRSCHENBAUM
ANNE FOTHERGILL
MATTHEW JESICK
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, Esq.
JOHN RICE, Esq.

The transcript constitutes the minutes from the
Regular Public Hearing held on March 31, 2021.

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

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(Changed from decision hearing to continued hearing,
Postponed to April 28, 2021 7

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S. Williams (Postponed to April 7, 2021). 8

Case Number 20436, Application of Schmidt Development, LLC,
(Postponed to April 7, 2021). 8

Case Number 20410, Application of Bruno Fabi (Postponed to
April 7, 2021). 8

Case Number 20354, Application of Cambridge Holdings
(Postponed to June 30, 2021). 8

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

(9:54 a.m.)

CHAIRPERSON HILL: So the hearing will please come to order.

Good morning, ladies and gentlemen. We are convened and broadcasting this public hearing by videoconference. This is the March 31st, 2021, public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair; Board Members Carl Blake and Chrishaun Smith; and representing the Zoning Commission is Chairman Anthony Hood, as well as Peter May.

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's website after today's hearing. Accordingly, everyone who is listening on the Webex or by telephone will be muted during the hearing, and only persons who have signed up to participate or testify will be un-muted at the appropriate time.

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

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1 If you are experiencing difficulty accessing Webex or
2 with your telephone call-in, or if you have forgotten to sign up
3 24 hours prior to this hearing, then please call our OZ hotline
4 number at 202-727-5471, once again, 202-727-5471, to sign up to
5 testify and to receive a Webex login or call-in instructions.

6 All persons planning to testify either in favor or in
7 opposition should have signed up in advance. They'll be called
8 by name to testify. This is an appeal. Only parties are allowed
9 to testify. By signing up to testify, all participants completed
10 the oath or affirmation required by Subtitle Y, 408.7.

11 Requests to enter evidence at the time of an online
12 virtual hearing, such as written testimony or additional
13 supporting documents, other than live video, which may not be
14 presented as part of the testimony, may be allowed pursuant to
15 Subtitle Y 103.13, provided the persons making the request to
16 enter the exhibit explain how the proposed exhibit is relevant,
17 the good cause that justifies allowing the exhibit into the
18 record, including an explanation of why the requester did not
19 file the exhibit prior to the hearing pursuant to
20 Y 206, and how the proposed exhibit would not unreasonably
21 prejudice any parties.

22 The order of procedures for special exceptions and
23 variances are in Y 409. If this is an appeal, the order is in Y
24 507.

25 At the conclusion of each case, an individual who is

1 | unable to testify because of technical issues may file a request
2 | for leave to file a written version of the planned testimony to
3 | the record within 24 hours following the conclusion of public
4 | testimony in the hearing. If additional written testimony is
5 | accepted, then parties will be allowed a reasonable time to
6 | respond, as determined by the Board. The Board will then make
7 | its decision at its next meeting, but no earlier than 48 hours
8 | after the hearing.

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

14 | The Board's agenda may include previous cases set for
15 | decision after the Board adjourns the hearing, the Office of
16 | Zoning, in consultation with myself, will determine whether a
17 | full or summary order may be issued. A full order is required
18 | when the decision contains adverse to a party, including an
19 | affected ANC. A full order may also be needed if the Board
20 | decision differs from the Office of Planning's recommendation.
21 | Although the Board favors the use of summary orders whenever
22 | possible, an applicant may not request the Board to issue such
23 | an order.

24 | The District of Columbia Administrative Procedures Act
25 | requires a public hearing on each case be held in the open before

1 the public. However, pursuant to 405(b) and 406 of that Act,
2 the Board may, consistent with its Rules of Procedures and the
3 Act, enter into a closed meeting on a case for purposes of seeking
4 legal counsel on a case, pursuant to D.C. Official Code Section
5 2-575(B)(4), and/or deliberating on a case, pursuant to D.C.
6 Official Code Section 2-575(B)(13), but only after providing the
7 necessary public notice and, in the case of an emergency closed
8 meeting, after taking a roll call vote.

9 Preliminary matters are those which relate to whether
10 a case should be heard today, such as request for postponement,
11 continuance, or withdrawal, or other proper and adequate notice
12 of the hearing has been given. If you're not prepared to go
13 forward with the case today, you should let us know.

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

15 MR. MOY: Thank you, Mr. Chairman. Yes, we do, but,
16 again, I would suggest that for the efficiency for the Board that
17 I call those matters when I call the case. Other than that, I
18 would like to give the status of seven cases that were previously
19 scheduled on today's docket, if I may, for the record.

20 The first case is Case Application No. 20411 of Marcel
21 and Stacy Clark. This application has been rescheduled for a
22 continued hearing instead of a decision meeting, and that date
23 is April 28th, 2021.

24 Application No. 20157 of Eugene Long has been withdrawn
25 by the Applicant.

1 We have two cases -- or I should say three cases that
2 have been rescheduled to April 7th, 2021. Those three cases are
3 20434 of John F. Williams and Daniel S. Williams; 20436
4 application of Schmidt Development, LLC; and the third is 20410
5 of Bruno Fabi, F-A-B-I. These three cases, again, rescheduled
6 to April 7th, 2021.

7 Application No. 20354 of Cambridge Holdings, LLC, has
8 been postponed, rescheduled to June 30th, 2021.

9 And finally, Case Application No. 20425, of 616 Quebec
10 Place NW, LLC, postponed, rescheduled to May 26th, 2021.

11 Thank you, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Vice
13 Chair John, can you hear me?

14 VICE CHAIR JOHN: Yes, I can, Mr. Chairman.

15 CHAIRPERSON HILL: Did you enjoy reading the speech
16 last week?

17 VICE CHAIR JOHN: I did. I did. I did. I had to
18 speed it up at the end though, and I can understand your question
19 about having it tape recorded.

20 CHAIRPERSON HILL: Yes.

21 VICE CHAIR JOHN: (Indiscernible.)

22 CHAIRPERSON HILL: Yes. I know that Chairman Hood
23 understands us.

24 All right. Okay. Mr. Moy, you want to call our case
25 with the Chairman?

1 MR. MOY: Yes, sir. The first case in the Board's
2 hearing session is Application No. 20390. This is Potomac Venture
3 Group, LLC, captioned and advertised for a use variance from the
4 non-compliance special requirements, Subtitle C, Section 204.1.
5 This would add an additional unit to an existing detached 19-
6 unit apartment building, R-1-B Zone at premises 11 Nicholson
7 Street, NW, Square 3383, Lots 2, 23, and 24. And as the Board
8 will recall, you last heard this on March the 3rd.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. All
10 right. Give me a second. All right. Ms. Mouldenhauer, can you
11 introduce yourself for the record, please?

12 MS. MOULDENHAUER: Good morning, Chairman Hill and
13 members of the Board. My name is Meredith Moldenhauer, from
14 the law firm Cozen O'Connor, here on behalf of the Applicant.

15 CHAIRPERSON HILL: And Ms. Moldenhauer, who's here with
16 you today?

17 MS. MOLDENHAUER: I have with me today, Tenika Felder,
18 the architect who'd previously been qualified as an expert. I
19 also have Kyle Tangney who would be testifying in regards to
20 (audio interference), as well as -- I don't see him yet in the
21 panel box, but a representative from the Applicant, Mr. Ron
22 Bergman.

23 CHAIRPERSON HILL: Okay.

24 MS. MOLDENHAUER: He's there now.

25 CHAIRPERSON HILL: Okay. Ms. Felder, could you

1 introduce yourself for the record, please?

2 MS. FELDER: Yes. Good morning. My name is Tenika
3 Felder. I'm an architect with Red Leaf Group Architects.

4 CHAIRPERSON HILL: Mr. Tangney, could you also
5 introduce yourself for the record?

6 (No audible response.)

7 CHAIRPERSON HILL: You're on mute, sir.

8 MR. TANGNEY: There we go. No wonder why you guys
9 couldn't hear me. My name's Kyle Tangney, I'm a senior managing
10 director with Greysteel, a commercial real estate brokerage firm.

11 CHAIRPERSON HILL: Okay. Great. Mr. Bergman, would
12 you like to introduce yourself for the record?

13 MR. BERGMAN: Yes. I'm Ron Bergman. I am one of the
14 partners at the subject property.

15 CHAIRPERSON HILL: Okay. All right. Ms. Moldenhauer,
16 I mean, we went through this quite a bit the last time, right?
17 And -- but I know we asked for some things. Can you tell us
18 what's happened since the last time and (indiscernible) your
19 PowerPoint?

20 MS. MOLDENHAUER: Yes. We have a very brief PowerPoint
21 that really, kind of, addresses the two questions that were asked,
22 and then just simply supplements to the record in a very directed
23 way based on the case law that we articulated that answered some
24 of the questions that were asked last time. And we're happy to
25 go through this, you know, expeditiously, and then be available

1 for questions.

2 CHAIRPERSON HILL: Could you repeat the two questions
3 that the Board had?

4 MS. MOLDENHAUER: They're on the PowerPoint. If --

5 CHAIRPERSON HILL: Okay.

6 MS. MOLDENHAUER: -- it that's okay, I can pull that
7 up.

8 CHAIRPERSON HILL: Sure. Mr. Young.

9 (Pause.)

10 CHAIRPERSON HILL: Ms. Moldenhauer, I think you're
11 saying that Mr. Tangney's already been qualified as an expert,
12 right, as Ms. Felder, so I don' have to do any preliminary
13 matters with them?

14 MS. MOLDENHAUER: Well, Ms. Felder's been previously
15 qualified in this case. Mr. Tangney has been previously qualified
16 in a prior case that we reference, but not in this case. So you
17 would need to formally qualify him for purposes of this record.

18 CHAIRPERSON HILL: I wonder if that's really correct.
19 I don't think that's right. I thought that once you were in the
20 book, you're in the book, but I'm going to ask somebody else.

21 Is the -- who's on this? Ms. Cain?

22 MS. CAIN: Yes. Give me one minute. I want to double
23 check the regs on that.

24 CHAIRPERSON HILL: Yeah, I thought if you're in the
25 book, you're in the book, because we've never -- in the past, if

1 | you're in the book, you're in the book. And so I don't really
2 | want to change that, but I'll let you look.

3 | And Ms. Moldenhauer, you can go ahead and start
4 | whenever you like.

5 | MS. MOLDENHAUER: Okay. Can we go to the next slide?

6 | The Board is familiar with this. We're talking about
7 | adding a 20th unit here that's 498 square feet. This is a use
8 | variance with an expansion of a non-conforming use, and so we are
9 | going to be focusing mostly on the question of undue hardship and
10 | the standard there as -- and, you know, just noting, obviously,
11 | that from a detriment of public good, we do have OP and ANC
12 | support.

13 | The next slide.

14 | You can skip the next slide and the Board can make a
15 | decision on this point later.

16 | So the first question was posed specifically from
17 | Commissioner Hood. Commissioner Hood asked that there were
18 | references in our submission, as well as in OP's submission,
19 | regarding reasonable use. And the question was, you know, "Is
20 | this," you know, "Where does this come from?" We made a high-
21 | level reference to the *Palmer* case, but we wanted to, obviously,
22 | supplement that and provide more detail.

23 | The *Palmer* case does specifically address, you know,
24 | how should the Board interpret what satisfies a use variance.
25 | And the Board has from that date and in other Court of Appeals

1 cases, which is the next case, continued to utilize the Court of
2 Appeals' explanation of how one should look at a use variance.
3 And they outlined the standard that says, you know, quote, "Where
4 a reasonable use cannot be made of the property in a manner
5 consistent with the zoning regulations."

6 And then they go on to, kind of, provide a -- for
7 example, in the Court of Appeals decision and findings that, you
8 know, that including the use of property in question for any
9 purpose which is -- that's a reasonably adapted, i.e., cannot -
10 - "can the premises be put to any conforming use with a fair and
11 reasonable return arising out the ownership."

12 And so based on this Court of Appeals case, then,
13 various other OP reports and Board decisions, the legal standard
14 for looking at a use variance with an undue hardship portion is
15 can the premises be adapted for any conforming use that would be
16 worth the effort to a reasonable homeowner or to a reasonable
17 business owner for the property, and not the broader question of
18 can the premises just be adapted to any conforming use. It really
19 has to do with can it be reasonable adapted, and is that a
20 reasonable expectation for a fair and reasonable return for the
21 homeowner.

22 The next slide.

23 Then Board Member John asked, then, a even more, kind
24 of, you know, specific question of, "Well, if we were looking at
25 reasonable adaptability, are we looking at reasonable

1 adaptability of the entire building, or are we looking only at
2 reasonable adaptability of the space within the building?"

3 And in looking at that question, obviously, the Board
4 is looking at the question of, well, when you look at the
5 exceptional condition, we have to look at the property as a whole.
6 And that is true, but when you are not looking at the first prong
7 but the second prong of undue hardship, the Court of Appeals
8 specifically addressed this question that Board Member John
9 brought up in the *Oakland Condominium Case v. the Board Zoning*
10 *Adjustment*.

11 This was a case where there was an existing 12-unit
12 building. There wasn't a C of O, there was only a C of O for
13 (audio interference), and they went to get a use variance to
14 expand the 8-unit C of O for the additional four units. And the
15 Board in that case only looked to the undue hardship of expanding
16 those four units, not the entire building.

17 And when this was brought to the Court of Appeals, the
18 petitioner questioned this, and said, "No, the Board was wrong
19 in not looking at the entire building." And the Court of Appeals
20 in that case said, "No, we agree that the Board properly focused
21 only on the expansion of the four units alone rather than
22 considering the entire building."

23 So this case, the *Oakland Condominium* case,
24 specifically addresses and gives the Board the guidance that, in
25 looking at our case, you're not required to look at the entire

1 building, you're only required to look at the reasonable adaptive
2 use of the 498 square feet that we're asking for here. And then
3 looking at that in regards to the analysis of the case.

4 Next slide.

5 And so in doing that, we just wanted to elaborate,
6 because there were questions about, well, you know, how could
7 that space be adapted. And so we wanted to provide some
8 additional information on that. And the Applicant went to a
9 third-party contractor and obtained the list for a contractor,
10 which is now in Exhibit 40-A. And I will turn to Ms. Felder to
11 walk through the level of effort and requirements that would be
12 to potentially adapt this and why we believe, and we submit to
13 the Board, that it would not be reasonable. Ms. Felder.

14 MS. FELDER: Yes. So and again, I am Tenika Felder,
15 and I am an architect with Red Leaf Group Architect. So based
16 on our assessment of the space, it would not be a simple task to
17 convert the proposed unit into an amenity space. It would be
18 complicated, disruptive, and would require extensive construction
19 work. This list that's shown here represents the minimum scope
20 of work that would be needed for the conversion.

21 Specifically, if the space is used for a business
22 center, then the entire space would need to be demolished,
23 including the existing bathroom and kitchen. The electrical
24 service to the space would need to be upgraded to accommodate the
25 new equipment. Computers produce heat, so a new mechanical unit

1 would need to be installed to provide adequate cooling to keep
2 the equipment functional and the users comfortable. New flooring
3 would have to installed.

4 The demising walls in the proposed unit are all
5 masonry, so there would need to be penetrations made through the
6 existing masonry walls in order to feed the necessary utilities
7 to the space.

8 The existing entrance door would need to be enlarged,
9 per ADA standards, and a new more secure door would need to be
10 installed. And also a new security system, including cameras,
11 would also need to be installed.

12 If this space is used for a gym, then the -- again, the
13 entire space would have to be demolished, including the existing
14 bathroom and kitchen; electrical service would need to be
15 upgraded to accommodate the equipment; a new mechanical unit
16 would need to be installed to provide adequate cooling and
17 ventilation. This is especially important due to the effects of
18 COVID. Additionally, building management will most likely need
19 to hire someone to man the gym to make sure that the equipment
20 is kept clean and sanitized to help prevent the spread of COVID.

21 Again, with this, new flooring would be installed.
22 With the existing demising walls being masonry, you have to do
23 penetrations through that masonry for utilities. Entrance door
24 would need to be enlarged per ADA standards, and also a security
25 system, as well, including cameras, needing to be installed.

1 If the space is converted to a community room, then the
2 existing bathroom and kitchen will need to be demolished and
3 reconfigured to meet ADA standards. The bathroom will also need
4 to be relocated. It's current location -- well, it's located
5 currently right in the middle of the space, so it would divide
6 the room into two parts, making it difficult to use the space as
7 a community room.

8 This will involve (indiscernible) cutting the existing
9 concrete floor slab to relocate drain lines for the bathroom
10 fixtures. Also the existing entrance door will need to be
11 enlarged per ADA standards.

12 By comparison, if the space is permitted as a dwelling
13 unit, there would be no extensive construction work that is
14 (indiscernible; only minor touch-up work would be needed, because
15 there are existing dwelling facilities in the space.

16 Next slide, please.

17 CHAIRPERSON HILL: Hey, Ms. Felder?

18 MS. FELDER: Yes.

19 CHAIRPERSON HILL: So, and Ms. Moldenhauer, and I know
20 that you guys -- you guys got 15 slides, and, like, we had -- I
21 mean, I know you've got another witness, too. I'm just saying
22 if you can, kind of, run me through this. I mean, I think these
23 are helpful. We looked at all the exhibits beforehand and saw
24 all of the information. So just, kind of, highlight things. I
25 just, kind of, have to keep you guys moving along, because I know

1 we're going to have questions.

2 MS. FELDER: I'll be brief on the next slide.

3 CHAIRPERSON HILL: Okay.

4 MS. FELDER: Okay. Next slide, please.

5 Okay. So again, if the proposed unit is converted to
6 an amenity space, it will become a space for public use and will,
7 therefore, have to conform to ADA standards. So one of the key
8 to the existing bathroom in this space, it would need to be fully
9 demolished --

10 CHAIRPERSON HILL: Yes, yes.

11 MS. FELDER: I'm sorry?

12 CHAIRPERSON HILL: I said, "Yes."

13 MS. FELDER: Okay. And then it will have to be
14 enlarged. The existing bathroom is 4 foot, 10 x 6 foot, 9. It
15 would have to be demolished to at least 7 feet x 7 feet 6 inches
16 to be an ADA compliant toilet, and which will further reduce the
17 usable space.

18 Next slide, please.

19 In addition to enlarging the bathroom, we would also
20 need to enlarge the entry door. And, of course, this is an
21 existing masonry wall, which means that you would have to saw-
22 cut the existing masonry and also install a new metal door and
23 frame.

24 Next slide, please.

25 In addition to the issues already discussed, converting

1 the (indiscernible) to a gym poses usability issues, and it's
2 because the existing ceiling height is 7 feet 5. For a gym, the
3 typical standard ceiling height is 8 feet in order to provide
4 proper head clearance for the user when they are on various
5 equipment.

6 At only 7 feet 5, the existing ceiling height creates
7 an awkward space, particularly for anyone who would be taller
8 than 6 feet tall. Therefore, the ceiling height would negatively
9 impact the residents' ability to use standard exercise equipment,
10 especially those with incline features, such as a treadmill or
11 elliptical.

12 Next slide.

13 As illustrated in this slide, you can see the
14 difficulty a person who's 6 feet tall or taller would have using
15 the standard equipment, the elliptical machine, and the
16 treadmill, both of which are common for any gym, due to the lack
17 of headroom clearance. Even a person who is 5 feet 6 inches tall
18 would feel claustrophobic when using exercise equipment with
19 incline features because of the lack of appropriate headroom
20 clearance in the space. In my professional opinion, this makes
21 the cellar space unreasonable for a gym use.

22 Ms. Moldenhauer.

23 MS. MOLDENHAUER: If we can go to next slide, then Mr.
24 Tangney can now provide a brief testimony. Then we'll be
25 available for questions, Chairman Hood. Sorry.

1 MR. TANGNEY: Kyle Tangney with Greysteel here, senior
2 managing director. I've worked in the DC real estate market for
3 12 years, including 9 at Greysteel. I broker the purchase and
4 sale of real estate with a specialty focus on multi-family
5 properties throughout the DC Metro Area, and more specifically,
6 this upper northwest quadrant.

7 Since January of 2012, I've sold 140 multi-family
8 properties in the District of Columbia and sold 40 properties
9 since January 2012 in the submarkets north of the Petworth Metro
10 Station west of the Fort Totten Metro Station, east of Rock Creek
11 Park, and south of the Silver Spring border, mainly known to us
12 primarily as Ward 4.

13 The multi-family inventory in these submarkets are
14 generally made up of smaller buildings that were built prior to
15 1975. They carry low vacancy rates and lower market rents
16 compared to other Northwest DC submarkets.

17 I'm familiar with the 19-unit apartment building
18 located at 11 Nicholson Street, NW, which is located in the
19 Chillum-Brightwood submarket. Those properties in Chillum and
20 Brightwood are very similar to the others that I described in
21 Ward 4, which were built prior to 1975 and walk up. They have
22 many limited common-area space with some properties offering
23 shared laundry as its only amenity. 11 Nicholson Street is unique
24 as it does have a large basement partially above-grade, with
25 storage, laundry, and an existing superintendent unit.

1 Based on my experience, gyms, community, and business
2 centers are generally designed and planned for larger, newly-
3 built properties, and larger properties which undergo a
4 significant redevelopment. These newer, renovated, larger
5 properties are typically Metro-oriented and often feature high-
6 end unit features.

7 Based on my experience, a gym, community center,
8 business center, or computer room are not seen in older properties
9 unless significant redevelopment or renovation has occurred.
10 Furthermore, even properties that undergo a significant
11 redevelopment or renovation that are similar in size to 11
12 Nicholson Street, typically, do not include those amenity spaces.

13 Due to COVID-19, for those buildings which have shared
14 spaces such as gyms, community centers, business centers, these
15 spaces have been closed. In discussions with industry leaders,
16 property management companies, owners, many are currently
17 rethinking the design of these spaces because of resident
18 concerns and the focus on safety and also a resident desire of
19 not utilizing shared spaces.

20 Investing in and extending the labor and time described
21 by the architect, in my opinion, it's unreasonable, given the
22 current market and would not be a reasonable business decision.

23 Amenities beyond the laundry room are atypical for a
24 property of this size and age. As such, in my professional
25 opinion, a gym or community center, business center, or computer

1 room would not be a reasonable modification of the property.

2 11 Nicholson is a fully-leased asset and is -- and it
3 would not be reasonable to alter the space into a gym, community
4 center, or computer room given the amount of work, noise, and
5 effort with no return and, most likely, limited post-pandemic
6 use.

7 MS. MOLDENHAUER: Thank you, Mr. Tangney. The next
8 slide simply summarizes that we believe that based on the legal
9 standard outlined in the *Plummer* and in the *Oakland Condominium*,
10 that we have addressed the Board and Commissioner's questions and
11 that we do satisfy the undue hardship standard here showing that
12 any potential alternative use that could be made of the space is
13 not reasonable and that, you know, given the existing layout of
14 the space, that it would be within the Board's authority and
15 satisfying the legal standard to grant the use variance for the
16 space.

17 I will open ourselves up for an questions the Board
18 has.

19 CHAIRPERSON HILL: Okay. Great. Thank you, Ms.
20 Moldenhauer. Let me just let Mr. Young drop the slide that's up
21 so I can see everybody.

22 (Pause.)

23 CHAIRPERSON HILL: Okay. I'm going to go around the
24 table for questions if anybody has any. Mr. Smith, I'll start
25 with you if that's okay.

1 BOARD MEMBER SMITH: Sure. Ms. Felder, in the
2 presentation that you gave about the unfeasibility of conversion,
3 and you spoke to the specific construction work to convert the
4 space to amenity space, would many of these items, I would say,
5 maybe 12 of those 15, would they have to be done to convert the
6 space to a legal residential unit to get a CO?

7 MS. FELDER: No. The way the space currently exists
8 will suffice as a legal dwelling unit. There will be no changes
9 needed.

10 BOARD MEMBER SMITH: So DCRA wouldn't require you to
11 bring that space up to code, even though it doesn't have a CO?

12 MS. FELDER: There is no code requirement that it's
13 violating. It has the windows for light and air. The ceiling
14 height for residential use is 7 feet, according to the
15 International Residential Code, and it's at 7 feet 5 inches. So
16 there will be no other requirements that are necessary that DCRA
17 would require to make that into a dwelling unit -- a legal
18 dwelling unit.

19 BOARD MEMBER SMITH: Okay. Thank you. That's the only
20 question that I have for now, Mr. Hood.

21 CHAIRPERSON HILL: Okay. I love it. Everybody's
22 calling me Mr. Hood today. Ms. Felder, I'm just getting (audio
23 interference). Ms. Felder, can you tell me how much the
24 conversion -- and I appreciate, I mean, you all listed all this
25 the last time, like, you know, everything that it takes to convert

1 | it, and I totally get it, but how much would that cost?

2 | You can just think about it, but that's -- I don't need
3 | a hard number, but I'm just curious. Okay. If you can give me
4 | an idea as to how much that costs. All right. And if not, or
5 | if Ms. Moldenhauer wants to think about it, that's fine. You
6 | all can text each other.

7 | Chairman Hood, do you have any questions?

8 | CHAIRPERSON HOOD: I don't necessarily have any
9 | questions, I just have some statements I have. I think, Ms.
10 | Moldenhauer, the *Oakland* case, I think, it's distinctly different
11 | here. I also think -- for me it, since I've been around, it
12 | seems like the *Palmer* case is the fix for everything when you're
13 | trying to make a case. So Palmer's been showing up -- I know
14 | it's been, what, 1972, and it seems like Palmer has been the fix
15 | for everything.

16 | But let me just ask this question and whoever wants to
17 | answer it, Ms. Felder, or Ms. Moldenhauer, or Mr. Tangney, whoever
18 | wants to answer this. So maybe it's about how you present your
19 | argument. I think, you know, and it's also about impression and
20 | how you interpret. Some of the things that were said about how
21 | you can convert the room, some of those things, Ms. Felder, I
22 | believe -- and I think I'm directing this to you, and I'm trying
23 | to pull your PowerPoint back up. I don't need Mr. Young to pull
24 | it up, because I have it up here. Now, you had a list -- when I
25 | look at your list on page 6, Additional Evidence, Extensive

1 Construction Work, (indiscernible)things, I don't think, in a
2 conversion, so if you did a computer room, some of those things
3 don't have to be done. And again, it depends on how you trying
4 to sway to present your argument. Some of those things do not
5 have to be done. Would you say that's a fair statement?

6 MS. FELDER: Yes. That's why I listed specifically
7 according to the use. That's why I went through, and I said what
8 would need to be done if it were converted to a business center
9 versus a gym versus a community room, if you remember in my
10 testimony.

11 CHAIRPERSON HOOD: Okay.

12 MS. MOLDENHAUER: Ms. Felder, I think the question that
13 Chairman Hood is asking is would it absolutely be necessary or
14 are we saying, you know -- you're saying that that is a bare
15 minimum; is that correct?

16 MS. FELDER: That's correct.

17 CHAIRPERSON HOOD: Okay. So let me just read it out
18 loud so I make sure I comprehend it. "To convert this space,
19 the following items would need to be built." That's what the
20 first sentence says. So me looking at this and I'm, you know, I
21 mean, I don't always remember all of your testimony verbally, but
22 I look at what your presentation and what you submit. It says,
23 "To convert this space, the following items would need to be
24 built," and that's the way I interpret that. So you're saying
25 all 15 of those items need to be built, the way I'm interpreting

1 it.

2 MS. FELDER: Yes.

3 CHAIRPERSON HOOD: That sounds good. Now, Mr. Tangney,
4 you're saying that -- and I know we put a lot of stuff on COVID.
5 COVID is going to change a lot of things, but I think, once we
6 get past this summer, those things, I think, are still the
7 unknown. Mr. Tangney, are you just saying you haven't -- in your
8 experience, you have never seen certain establishments, like, I
9 think you said, a computer room. Now, I will tell you this, I
10 do buy the argument of the equipment -- the gym equipment. I do
11 buy that argument, but there are some other options out there,
12 and I'm not there with you all the way. Look, I'll just leave
13 it at that.

14 I don't necessarily have a question, Mr. Tangney, but
15 I just think that that is doable. Even though I (indiscernible),
16 I think it's doable. So that's I have, unless someone has
17 comment. Thank you all. Thank you, Chairman Hood -- I mean
18 Chairman Hill.

19 MS. MOLDENHAUER: Chairman Hood, I want to respond,
20 because I think that while you may think it's doable, part of
21 our testimony is that the standard is a reasonable property owner,
22 and here we are saying, and Mr. Tangney's testimony is providing
23 the fact that in the industry, there are certain reasonable
24 expectations of what a property owner who owns an asset for a
25 long period of time, and also an asset that's fully tenanted,

1 | what they would or would not do in a reasonable condition. And
2 | I think that's really the question here, is, you know, we're not
3 | dealing in a vacuum where we can just simply say, well, what
4 | would be done, but we're saying given the fact that we have an
5 | asset that is fully leased that was always tenanted, what would
6 | a reasonable property owner want to do, and what is a reasonable
7 | adaptable use. I think that's the standard that we would be
8 | looking at.

9 | CHAIRPERSON HOOD: Right. So again, when I said "me,"
10 | I mean my interpretation about the property owner reasonable is
11 | the question. And, I mean, if you want to do something, sometime
12 | we might exercise or exhaust the word "reasonable."

13 | So I think -- I understand -- I will continue looking
14 | what you provided me, and also look at the case law. Thank you.

15 | CHAIRPERSON HILL: Thank you, Chairman Hood. All
16 | right. Let's see. Ms. John, do you have any questions?

17 | VICE CHAIR JOHN: Yes, Mr. Chairman, for Ms. Felder.
18 | There isn't a slide in your presentation, or a page, that
19 | describes the layout of the basement. Can you just walk us
20 | through what other uses are on that first floor -- based on that
21 | --

22 | (Audio interference.)

23 | CHAIRPERSON HILL: Mr. Young, can you pull up, I think
24 | it's Slide 14 and 15.

25 | VICE CHAIR JOHN: Thank you, Mr. Chairman.

1 (Pause.)

2 CHAIRPERSON HILL: Mr. Young, are you there?

3 MR. YOUNG: Yes, I'm here.

4 CHAIRPERSON HILL: Could you pull up Slide 14 and 15?

5 MS. MOLDENHAUER: (Indiscernible) there's a -- on the
6 cellar level, okay. We're looking at the slide now. I'm just
7 going to --

8 MS. FELDER: Okay. So this is the floor plan, the
9 current layout of the cellar. To the left, you see a staircase
10 that is more towards the left-hand side. To the left of that is
11 a boiler room. And then the -- there is a storage room below
12 that that has equipment and things for the building itself. There
13 exists a laundry room, which you see towards the south of the
14 stairs. Towards the right of that staircase is -- those two
15 rooms, they're utility rooms, so one is an electrical room and
16 one is a gas meter room.

17 Again, the space to the right of that where you see
18 the individual toilet with the sink, that's actually -- it's a
19 storage room, but it's actually maintenance, because the toilet
20 is there for the building maintenance to be able to use the
21 facilities if they need to.

22 You see this long corridor. The space below the
23 corridor that has the "X" through it is a crawl space. It's
24 unusable space, you don't even have access to it except for just
25 to access the structural system. And then the staircase to the

1 right provides the second means of egress. The hatched area that
2 you see there represents the existing unit.

3 VICE CHAIR JOHN: And so if I could follow up, there
4 is no usable space in those dotted lines. Is that what the dotted
5 lines mean?

6 MS. FELDER: That's correct. So to the left, that
7 dotted line just shows the outlines -- the rest of the outlines
8 for the building. That's a crawl space. It's not excavated at
9 all. And then to the right-hand side, that's basically unusable,
10 as well.

11 VICE CHAIR JOHN: Okay. Thank you. That's all I have
12 right now.

13 CHAIRPERSON HILL: Okay. Thanks, Mr. Young. All right.
14 Mr. Blake, did you read into this one? I can't remember.

15 BOARD MEMBER BLAKE: I haven't read into this case.

16 CHAIRPERSON HILL: Okay. Do you have any questions?

17 BOARD MEMBER BLAKE: I do, and please forgive me if I
18 digress a little bit. One question I had with regard to the
19 costs, which I appreciate getting some commentary about just to
20 assess the magnitude of the conversion. The second question I
21 had was with regard to the existing unit. As I understand, the
22 owner purchased the buildings, the unit was already in place. At
23 that time, I think he would have gotten a C of O issued for the
24 building. At what point, why was that not considered as an option
25 to have that build -- that particular unit as part of the CO and

1 make it a 20-unit building?

2 MS. MOLDENHAUER: At that time the property owner
3 acquired the building, the unit was there. The property owner
4 did not do any work to create this unit, and it was being used
5 from time to time as a superintendent unit, but is no longer
6 needed for that purpose, and at this point is when the property
7 owner contacted our office to potentially seek the ability to
8 convert it to a by-right -- or not by-right -- to a permitted
9 public unit.

10 BOARD MEMBER BLAKE: Okay. So for clarification. You
11 are saying that at the time they issued the C of O for the 19-
12 unit building, they decided they didn't want the 19th unit -- the
13 20th unit at that point, they wanted just to maintain it as a
14 maintenance quarters?

15 MS. MOLDENHAUER: So when a property owner acquires a
16 property, there is just simple a change in ownership obtained
17 with a C of O, that they obviously obtained the change of
18 ownership C of O, but did not go through any further process to
19 obtain the 20th unit.

20 BOARD MEMBER BLAKE: Okay. Thank you.

21 MS. MOLDENHAUER: And obviously, this process is time
22 intensive and cost intensive to go through.

23 BOARD MEMBER BLAKE: Thank you.

24 CHAIRPERSON HILL: Okay. All right. Mr. Jesick, can
25 you hear us?

1 MR. JESICK: Yes, Mr. Chairman.

2 CHAIRPERSON HILL: Could you introduce yourself for the
3 record, please.

4 MR. JESICK: Thank you. My name is Matt Jesick
5 representing the Office of Planning on this case.

6 CHAIRPERSON HILL: Okay. Mr. Jesick, the question I
7 have, and I know you did your report, again, can you, again, go
8 over why you think they're meeting that first prong?

9 MR. JESICK: Sure. Let me bring up that relevant
10 portion of the report. Yes. We did feel that the application
11 meets the first prong of the variance test in that it faces an
12 exceptional situation resulting in an undue hardship.

13 The space is already configured as a residential unit,
14 and to convert it would incur costs and be inefficient and result
15 in disruptions to the existing tenants. And an undue hardship
16 is also a result of that condition, in that no other reasonable
17 use could be made of that space.

18 We did agree with the Applicant that other permitted
19 matter of right uses, such as religious uses, government uses,
20 educational uses would not be appropriate in that spot. The
21 space is either not big enough, would be incompatible with an
22 apartment building, or would require its own external entrance,
23 which would be a major reconfiguration of the building.

24 And we also agree with the Applicant that other amenity
25 spaces could not be utilized in that area. So therefore, we felt

1 that the Applicant had made the case for the variance, and we
2 recommended approval.

3 CHAIRPERSON HILL: Okay. Does anybody have any
4 questions for the Office of Planning? Mr. Smith?

5 BOARD MEMBER SMITH: No questions.

6 CHAIRPERSON HILL: Chairman Hood?

7 CHAIRPERSON HOOD: Yes. Thank you, Mr. Chairman. Mr.
8 Jesick, you ran off a laundry list of how you garnered support
9 for this application. One of the things I heard you say,
10 disruption to the neighbors. Is that -- I'm just trying to figure
11 out, you know, I was with you, and I was trying to
12 (indiscernible). When you said disruption to the neighbors --
13 to the existing tenants, if that was the case, we wouldn't build
14 anything in this city or do anything. So was that a major part
15 of your analysis, or was that just something you threw in to help
16 support your position?

17 MR. JESICK: More the latter. I think it was -- it's
18 not a major focus of our analysis. We looked more closely at
19 could another reasonable use utilize this space. That was the
20 major thrust in our analysis.

21 MR. HOOD: And you answered my question perfectly.
22 Thank you. Thank you. Thank you, Mr. Chairman.

23 CHAIRPERSON HILL: Vice Chair John, do you have any
24 questions for the Office of Planning?

25 VICE CHAIR JOHN: None for the Office of Planning, the

1 Applicant.

2 CHAIRPERSON HILL: We'll come back to -- if you guys
3 could mute your line, if you're not talking. Somebody's building
4 something in the background. Let's see. Mr. Blake, do you have
5 any questions for the Office of Planning?

6 BOARD MEMBER BLAKE: I do not.

7 CHAIRPERSON HILL: Okay. All right. Ms. Moldenhauer,
8 do you have any questions for the Office of Planning?

9 MS. MOLDENHAUER: I would just follow up on the question
10 from Mr. Hood. Mr. Jesick, you found that the undue hardship
11 was -- was that also considering the fact that there's nothing
12 that needs to be done to maintain the space for a residential
13 unit? Was that also part of your factor by comparing what undue
14 hardship would be required for adapting the space?

15 MR. JESICK: Yes. I think that's correct that, you
16 know, any change to another use would require significant either
17 structural or mechanical, you know, improvements to the space,
18 so that would go towards the unreasonableness of any conversion.

19 CHAIRPERSON HILL: Okay. Is that good, Ms.
20 Moldenhauer?

21 MS. MOLDENHAUER: Yes. Thank you. No other questions.

22 CHAIRPERSON HILL: Okay. Ms. John, you said you had a
23 question for the Applicant? You're on mute, Ms. John.

24 VICE CHAIR JOHN: Yes, Mr. Tangney. I'm interested in
25 his analysis of whether or not it would be reasonable to convert

1 the space, and I didn't hear a discussion of any expected rate
2 of return. And I don't know what he means by a "submarket."

3 MR. TANGNEY: Sure. So I can address the latter. So
4 -- and then also the former, as well. So submarket, it's just
5 another nomenclature for neighborhood. You know, DC is broken
6 up into, you know, multiple wards. Here we're broken up into
7 Ward 4, and more specifically, within Ward 4, the Chillum and
8 Brightwood neighborhoods.

9 You know, oftentimes, you know, these neighborhoods
10 carried a specific type of building improvement just, you know,
11 based on, you know, within the District of Columbia, when a large
12 majority of the building took place or redevelopment took place,
13 you know, so you'll see, you know, redevelopment around the, you
14 know, the Metro areas, you know, carry, you know, newer-built
15 product that are larger in nature. For those older neighborhoods,
16 just based on the architecture and construction, most of them are
17 smaller apartment houses, you know, call it 50 units and under.

18 And Brightwood, more specifically, is known for, you
19 know, smaller residential buildings which are, we'll call it 25
20 units and under. So that's what I mean by "submarket." And
21 that's how, you know, in the real estate space, how we look at
22 evaluating and classifying and marketing specific properties.

23 You know, for your question as it relates to reasonable
24 return, it depends on, you know, the significance of the change,
25 also the risk associated with any sort of investment. You know,

1 obviously, if you're taking off line a use or a unit, you're
2 looking for, you know, at least to recapture that, you know, that
3 return, you know, plus recapture the investment which, you know,
4 which is made.

5 And just to give the group, you know, context as to,
6 you know, other comparable, you know, investment vehicles, you
7 know, for example, you know, the average bond, you know, return,
8 you know, from, you know, the, you know, mid-1920s to, you know,
9 late, you know, 2000, you know, to today is about 6 percent. If
10 you look -- and that's annual average return. If you look at,
11 you know, you know, the stock market, for example, the average
12 annual return there is about 10 percent.

13 VICE CHAIR JOHN: Maybe I didn't ask the question
14 correctly. For this to be economically feasible, which is part
15 of what I think we're discussing, if the Applicant were to invest
16 a certain amount, and Ms. Moldenhauer and Ms. Felder, think, you
17 know, what that amount would be, would it be more profitable in
18 the long run to convert the apartment to one unit -- to an
19 additional unit, making it a 20-unit apartment building as
20 opposed to a 19-unit apartment building with some other use?

21 MR. TANGNEY: It would make it more profitable, yes.

22 VICE CHAIR JOHN: Okay. That was my question. Thank
23 you.

24 CHAIRPERSON HILL: Okay. Mr. Tangney?

25 MR. TANGNEY: Yes.

1 CHAIRPERSON HILL: I just want a quick answer. So how
2 much could you rent the thing for, do you think, if it was rented?

3 MR. TANGNEY: (Indiscernible.)

4 MS. MOLDENHAUER: With a one-bedroom unit?

5 CHAIRPERSON HILL: Yes.

6 MS. MOLDENHAUER: Mr. Bergman might be more able to
7 identify that.

8 CHAIRPERSON HILL: All right. Mr. Bergman, how much
9 could you rent the unit for?

10 MR. BERGMAN: That unit would probably, since it's in
11 the cellar area, would probably go between, I would say 600, \$750
12 per month.

13 CHAIRPERSON HILL: Okay. That's no a lot. Okay. Mr.
14 Bergman, I'm just trying to let you -- I see over there, like,
15 we all live in the City. We've all done a lot of these. We all
16 -- I'm just trying to figure out the math on -- I know how much
17 you've already spent to get to this point, and so I'm, like, you
18 know, 700 bucks a month, you're going to be a little while trying
19 to get that back. So okay. All right. Anybody got any questions
20 for the Applicant still?

21 (No audible response.)

22 CHAIRPERSON HILL: No? Okay. Mr. Young, is there
23 anyone here wishing to testify?

24 MR. YOUNG: We do not.

25 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, I will let

1 | you have the last word, but the -- I have some bad news for
2 | everybody that's listening. There was a notification issue that
3 | happened on our side, and I am also going to blame COVID, and we
4 | are going to not be able to deliberate on quite a few cases today.
5 | Whether we were going to deliberate or not, we are unable to.

6 | So the next time we're going to be able to come back
7 | on this one is going to be April 28th, and I'm going to let
8 | everybody know that we are going to have continued cases. So
9 | and this is, again, a notification issue. There's nothing I can
10 | do about it, so there's no need to complain about it.

11 | And I will let people know as each case comes up what
12 | date you're going to be -- come back before us. So this will be
13 | a continued hearing, regardless, on April 28th, and whether we
14 | ask you any questions or not, and you can talk to Mr. Moy as to
15 | who needs to be here for that portion of it if we get to that
16 | point. So that's that. All right. Okay.

17 | So then, Ms. Moldenhauer, do you have anything you'd
18 | like to add in conclusion?

19 | MS. MOLDENHAUER: So I think that the question here of,
20 | you know, the property is unique. We have proven, and Office of
21 | Planning has agreed, and it did not seem to be the focus of this
22 | limited hearing, the question of whether or not it satisfied the
23 | first prong. The property is a uniquely large, as-built apartment
24 | building in an R zone. It is unique in the fact that it has a
25 | large, partially above-grade cellar, and the unique factor of the

1 existing superintendent building. The Applicant here has clean
2 hand. They did not construct this unit. It was there when they
3 bought it about 10 years ago.

4 And then we move on to the question of undue hardship,
5 I think one of the issues that, obviously, the Board has been
6 asking most of their questions on and engaging with. The question
7 of undue hardship then evaluates whether or not -- and to
8 Commissioner Hood's question of why *Palmer*. *Palmer*, because in
9 court cases, if a case is decided and there's no need to resolve
10 or change that determination, that case, then, is good law until,
11 you know, any other court case possibly changes that or until the
12 Zoning Commission changes the rules possibly requiring a new
13 interpretation. And so *Palmer* is still good law, and that is
14 why we look at it to try to understand why and how the Board
15 could evaluate these variances.

16 *Oakland*, in our opinion, is identical in regards to the
17 limited question of should the Board look at the entire apartment
18 building or just the one space that we are looking at to determine
19 whether it is an undue hardship for adapting that 498 square
20 feet. And in that case, the Board looked at the 498 square feet,
21 as Office of Planning has done in this case, and as Office of
22 Planning has done in other cases, and as the Board has done in
23 other cases. When you look at the 498 square feet in our prior
24 hearing, we went through a laundry list of all the permitted
25 uses, and explained why they weren't reasonable for this space,

1 why agricultural wasn't reasonable or why a church space wouldn't
2 be reasonable, and then we went to, kind of, a limited question
3 for this hearing, what about amending uses for the existing
4 apartment building.

5 And we believe that, through to the testimony of Ms.
6 Felder and Mr. Tangney, that we have put in an abundance of
7 evidence that a business -- apartment owner who's, you know, who
8 would not reasonably go through the effort, time, and money to
9 renovate this space, to disrupt its existing tenants in exchange
10 for a (audio interference) with no return given the market
11 condition for this apartment building.

12 From Mr. Tangney's testimony, apartment buildings of
13 this size and nature do not have these amenities, because they
14 do not -- are not able to recapture that amenity in the rental
15 income of those units. And so --

16 CHAIRPERSON HILL: Okay.

17 MS. MOLDENHAUER: -- if they do have -- it's an existing
18 apartment building with existing tenants, there's no substantial
19 renovation of the property that would recapture an additional
20 amenity use here.

21 We've also outlined the challenges of the construction
22 here and believe that the Board has sufficient evidence to support
23 this.

24 One last point. The property owners owned the building
25 for 10 years and never found it to be a business-reasonable

1 endeavor to renovate this space into an amenity use. I think
2 that, alone, is also, kind of, basic common sense. If a business
3 owner had found a value in creating an amenity and possibly being
4 able to increase rents because of that, it would have potentially
5 done that, because that could have been done by right.

6 CHAIRPERSON HILL: Okay.

7 MS. MOLDENHAUER: They have petitioned this relief, and
8 we believe with ANC support and OP support, that we have addressed
9 the Board's questions. And thank you for your time.

10 CHAIRPERSON HILL: Okay. Great. All right. Thanks,
11 Ms. Moldenhauer.

12 Okay. All right. So then Mr. Moy, this is back for a
13 continued hearing for April 28th, and you can go ahead and speak
14 to the Applicant, I guess. The part that I'm unclear on, Mr.
15 Moy, and I think you, kind of, figure this out as we move forward,
16 is I don't know who -- I mean, we're basically going to be doing
17 a decision unless something happens. And so, you know, I don't
18 know who the -- if there needs to be a representative or what,
19 and you all can figure that out. Okay. You can talk to the
20 Applicant. And so I guess we'll see everybody on April 28th.
21 Okay.

22 MS. CAIN: Mr. Chairman.

23 CHAIRPERSON HILL: Hold on. Hold on. Ms. Cain.

24 MS. CAIN: I just want to clarify, because it wasn't
25 clear, that the case is actually being -- it's for a continued

1 hearing. The record will need to remain open until the 28th of
2 April.

3 CHAIRPERSON HILL: Yes, the record -- see, Ms. Cain,
4 now this is where it's all going to get a little muddy for me.
5 The record's open, but we haven't ask for anything.

6 MS. CAIN: No. So the record just remains open. You're
7 not asking for anything, but this is technically going to be a
8 continued hearing. And then on the 28th, you can decide if you're
9 ready to (indiscernible) deliberations.

10 CHAIRPERSON HILL: So when you say that the record's
11 open, I can't close the record?

12 MS. CAIN: No.

13 CHAIRPERSON HILL: So then who can submit stuff?

14 MS. CAIN: In theory, anybody who wanted to, and then
15 you could take that up at the hearing on the 28th. But the record
16 does need to remain open and no deliberations can take place and
17 no determination on the closing of the record can take place
18 until the 28th of April.

19 CHAIRPERSON HILL: (Indiscernible) -- this is going to
20 get so funny. Okay. That's fine. So the record's open. We'll
21 see what happens on April 28th, and I'm going to close the hearing
22 for now. So I'm going to just -- today is done. I'll see you
23 --

24 MS. MOLDENHAUER: Thank you very much.

25 CHAIRPERSON HILL: -- guys on the 28th. Thank you.

1 Bye-bye.

2 All right. So my fellow Board members -- oh, Chairman
3 Hood, are done with you?

4 CHAIRPERSON HOOD: Yes, this is it for me. You all
5 take care. Have a good day.

6 CHAIRPERSON HILL: We'll see if anybody calls me
7 Chairman Hood for the rest of the day. All right. Okay.

8 So we are going to take a break, I guess. That went
9 longer than I thought, and then we come back with Commissioner
10 May. So let's take 10 minutes. Is that good? Okay. Thank you.
11 Bye-bye.

12 (Whereupon, the proceeding above-entitled matter went
13 off the record at 10:53 a.m., and reconvened at 11:09 a.m.)

14 CHAIRPERSON HILL: Commissioner May, welcome.

15 COMMISSIONER MAY: Thank you very much. Glad to be
16 here. Welcome, Mr. Blake. Nice to have you onboard.

17 BOARD MEMBER BLAKE: Thank you.

18 CHAIRPERSON HILL: All right. Okay. Mr. Moy, if want
19 to go ahead and call our next case.

20 MR. MOY: Thank you, Mr. Chairman. After a quick
21 recess, the Board is back -- the hearing's back in session, and
22 the time is at or about 11:09. So the next case application
23 before the Board is Application No. 20386 of, I guess it's either
24 Simone or Simone Management, LLC, S-I-M-O-N-E, captioned and
25 advertised for special exception under the new residential

1 development provisions in Subtitle U, Section 421.1. This would
2 convert an existing two-story, detached principal dwelling unit
3 to a three-unit, 16-unit apartment house with cellar. This is
4 in the RA-1 Zone at premises 3044 30th Street, SE, Square 5720,
5 Lot 12.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Mr.
7 Carballo, could you introduce yourself for the record, please?

8 MR. CARBALLO: Certainly, and thank you for allowing
9 me to speak. My name is Adam Carballo. I represent Carballo
10 Architecture, as well as Simone Management, and Johnson Kunlipe
11 is the owner of Simone Management.

12 CHAIRPERSON HILL: Okay. And who is with you today,
13 Mr. Carballo?

14 MR. CARBALLO: I have a staff member of mine, Shimes
15 Sufina (phonetic), who is observing, and I believe Mr. Johnson
16 Kunlipe, who is the owner of the property, as well as Simone
17 Management, is also present, as well.

18 CHAIRPERSON HILL: Okay. I don't see that person yet,
19 but we'll see if he gets any questions with anybody.

20 MR. CARBALLO: Okay.

21 CHAIRPERSON HILL: Let's see. So Mr. Carballo, a lot's
22 happened since the last time you were with us.

23 MR. CARBALLO: Yes.

24 CHAIRPERSON HILL: And maybe you can, kind of like,
25 tell us anything that is going on. And I don't know if you heard

1 before, but there has been an issue with some posting notices
2 that was on our end, and unfortunately, because of that, we're
3 not going to be able to deliberate on that today, whether we were
4 going to this or not. And you guys are going to be back before
5 us again on May 5th, just to let you know, and it's just the way
6 it is, and there's nothing I can do about it. But Mr. Moy would
7 be able to explain a little bit more afterwards. But in the
8 meantime, I'm going to go ahead and let you tell us what has
9 happened since the last time you were here.

10 MR. CARBALLO: Certainly. We -- since the last time
11 we were here, we have continued our discussion with Matt Jesick
12 of OP. I believe we have his -- OP's recommendation for approval
13 with some minor conditions which we are amenable to. That was
14 not the case at our previously presented case last month.

15 In addition, there was a change of leadership at the
16 ANC. We had previously received support from the ANC under the
17 old leadership. I'm happy to report that we re-presented -- or
18 we met with the new leadership of the ANC recently, and we do
19 have their support, which has been documented, and I believe that
20 support has been documented in such a way that their
21 recommendation for approval will carry great weight for our
22 relief request.

23 CHAIRPERSON HILL: Okay. But what did you drop, now?
24 You dropped your -- what did you -- you dropped some of the relief
25 requested, correct?

1 MR. CARBALLO: I don't believe -- no. We're still
2 requesting a -- the same special exception for the project. The
3 project, as Mr. Moy stated, is in an RA-1 zoned district. The
4 existing property was a single dwelling unit -- single-family
5 house --

6 CHAIRPERSON HILL: Mr. Carballo, let me just stop your
7 for one second. Why don't just go ahead and tell us about the
8 property and argue why you believe you're meeting the criteria
9 for us to grant the requested relief.

10 MR. CARBALLO: Sure.

11 CHAIRPERSON HILL: And you can just begin whenever you
12 like.

13 MR. CARBALLO: Sure. Sure thing. You understand that
14 the property is located at 3044 30th Street, SE. The current
15 property is a single-family house, two story detached. We are
16 proposing a large addition and change of use to a three-story,
17 16-unit apartment building. This increases the gross floor area
18 by more than 100 percent. It also increases the number of
19 dwelling units by more than 100 percent, which is -- in an RA-1
20 zoning district, we are required to present to the Board for this
21 level of increase in GFA and number of dwelling units.

22 BOARD MEMBER SMITH: Mr. Carballo, if I can interrupt.
23 It looks, within the exhibits, that you have a PowerPoint
24 presentation?

25 MR. CARBALLO: Yes, sir.

1 BOARD MEMBER SMITH: Do you want to bring it -- so do
2 you want to bring that up and speak to the PowerPoint?

3 MR. CARBALLO: That would be wonderful if I have the
4 ability. If someone could allow me to share my screen, I'd be
5 happy to --

6 CHAIRPERSON HILL: No, no. That's all right. Mr.
7 Young will put it up. Thanks, Mr. Smith. I'm actually in there
8 right now.

9 MR. CARBALLO: Okay. Okay. So yes. This is our
10 presentation. As you can see, our subject site is located at
11 this red rectangle. Okay. So that is our subject property and
12 the subject site. The red outline reflects the property line.
13 As you can see on the drawing site plan, we are indicting the
14 existing footprint of the existing property, as well as the
15 proposed addition. Further to the upper left hand of the image,
16 you can see that we are, you know, surrounded by other apartment
17 houses as you would expect in an RA-1 zoning district.

18 If you could go to the next slide, please.

19 Sort of documented the, sort of, the zoning analysis.
20 Our -- so that the lot is 11,000 square feet, we're 50 feet wide.
21 We are not proposing any change to the lot size, width, or area.
22 Our existing FAR is a .14. We're proposing point -- excuse me,
23 1.06. We have an allowable at 1.08, so we are conforming with
24 respect to FAR. Again, with our height -- existing height is 28
25 foot 3. We're proposing 37 foot 4. We're allowed -- we have an

1 allowable up to three stories and 40 feet, so we are in compliance
2 with the height.

3 Lot occupancy, we're allowed a maximum of 40 percent
4 lot coverage. The current is 7 percent. It's a very large lot
5 with respect to the size of the existing property. We are
6 proposing a 35 percent lot occupancy, so we are in compliance
7 with lot occupancy, as well.

8 The rear yard, we have a 20 foot minimum rear yard
9 requirement, the current rear yard is 146 feet, 4 inches, and
10 we're proposing 51 feet. So we are in compliance with the rear
11 yard.

12 Further, with the side yard, we are within compliance
13 with the side yard property line, providing the minimum lot set
14 backs in the first side yard set back.

15 Green area ratio, we have a requirement of .4. We are
16 also, you know, compliant with .4.

17 With vehicle parking, we are required to provide one
18 per three units in excess of four units, or four spaces, minimum.
19 There is currently one parking space on the site. We're providing
20 five parking spaces. So we're actually exceeding the minimum
21 requirement for parking.

22 Finally, with bicycle parking, we are providing --
23 there are no facilities for bicycle parking on the current
24 property as a single family; however, with our proposal, we're
25 providing six long-term spaces for bicycle parking, as well as

1 | two short-term spaces, meeting the minimum requirements for
2 | bicycle parking.

3 | So as you can see, we are actually complying with all
4 | aspects of zoning with respect to height, scale, and massing and
5 | bicycle parking and apartment -- bicycle parking, as well as
6 | vehicle parking, as proposed.

7 | If you could go to the next slide, please.

8 | We have some contextual photographs. Our site is
9 | highlighted by the red circle. Again, within the context, there
10 | are two- and three-story apartment blocks in the surrounding
11 | area, and we are in compliance with those -- with the existing
12 | context for height, scale, and massing, as well as use.

13 | Next slide, please.

14 | Again, just more contextual photographs of other
15 | apartment blocks with apartment buildings on the street.

16 | Next slide, please.

17 | This is our typical floor plans. As this project is
18 | also including two IZ units as per IZ requirements. We are
19 | meeting the minimum square footage requirements for a two-bedroom
20 | apartment, which is a 350 square feet. Our units are 852 square
21 | feet on average, and we are, you know, providing a minimum size
22 | requirement based on those requirements.

23 | Next slide, please.

24 | This is -- sort of, you know, second and third floor,
25 | which also further reflects the layouts of these units.

1 Next slide, please.

2 It's a roof plan.

3 Next slide.

4 We worked very closely with Mr. Jesick at the Office
5 -- OP to make adjustments to the exterior of the building, and
6 I'm happy to say that we have incorporated the comments that Mr.
7 Jesick presented to us. We've added a stone base. We have added
8 a prominent front entrance to the front of the building. We've
9 provided exterior lighting that would serve to illuminate walking
10 spaces around the building. We have also provided awnings and
11 weather protection at the entrances on the exterior of the
12 building.

13 Next slide, please.

14 So this is the rear and opposing side of the structure.

15 Next slide, please.

16 And we also have worked with a landscape architect to
17 pick vegetation and site landscaping elements that would, sort
18 of, improve the, you know, aesthetics of the property for the
19 residents. We've also included a playground -- playground
20 equipment, as per a request of the ANC, as well.

21 And that, sort of, concludes our slides.

22 CHAIRPERSON HILL: Okay. Thank you, Mr. Carballo. So
23 Mr. Carballo, just to be clear, the conditions from the Office
24 of Planning, they're in Exhibit 56, and so you're fine with all
25 those conditions, correct?

1 MR. CARBALLO: Yes. From -- Mr. Jesick's conditions,
2 yes, sir, I am.

3 CHAIRPERSON HILL: Okay. Fine. All right. I don't
4 have any questions for the applicant. Mr. May, do you have any
5 questions for the applicant? Yes?

6 COMMISSIONER MAY: Yes. Yes, I do.

7 CHAIRPERSON HILL: Please go ahead.

8 COMMISSIONER MAY: Mr. Young, I think it's probably
9 easiest to talk from the civil drawing. So if you could bring
10 up Exhibit 53, and the first page of that.

11 MR. YOUNG: Is that not in the PowerPoint?

12 COMMISSIONER MAY: It's not in the PowerPoint.

13 MR. YOUNG: Then I need a minute to pull --

14 COMMISSIONER MAY: Yeah. Sorry about that.

15 (Pause.)

16 COMMISSIONER MAY: I guess I could probably talk about
17 one of my issues before we get that drawing up which is the bike
18 parking inside the building. So if I understand it correctly,
19 that is on the cellar level --

20 MR. CARBALLO: Uh-huh.

21 COMMISSIONER MAY: -- and it's provided, basically,
22 with a room that's something, like, 6 x 6 with a 5-foot ceiling,
23 right, at the bottom of the stairs?

24 MR. CARBALLO: It's not a 5-foot -- it's an 8-foot
25 ceiling.

1 COMMISSIONER MAY: Okay.

2 MR. CARBALLO: It's a real room.

3 COMMISSIONER MAY: Okay. Well, that's not what the
4 drawing said. So I'll have to find that drawing that indicated
5 that. And that's built out under the stairway?

6 MR. CARBALLO: It is. Yes.

7 COMMISSIONER MAY: Okay. So you're going to have a
8 stairway that's built out 6 feet from the face -- I mean, not a
9 stairway, a room built out 6 feet from the face --

10 MR. CARBALLO: Uh-huh.

11 COMMISSIONER MAY: -- of the building, and it's
12 completely below grade, and then you're going to have a, what, a
13 concrete stair going up to the entrance --

14 MR. CARBALLO: Correct.

15 COMMISSIONER MAY: -- on top of it?

16 MR. CARBALLO: Correct.

17 COMMISSIONER MAY: So that concrete slab on top of the
18 -- of that bike room is going to support -- for part of the --
19 for part of it's width, that stairway?

20 MR. CARBALLO: That is correct.

21 COMMISSIONER MAY: Okay. It seems like a little bit
22 of structural gymnastics that might not be necessary, but okay.
23 And then you're --

24 MR. CARBALLO: It's effectively like an underground
25 vault.

1 COMMISSIONER MAY: Right. No. I know exactly what it
2 is. It just that, you know, having a vault and then building a
3 stairway on top of the vault is constructionally complicated,
4 but, you know, you can -- it's certainly doable. It's just
5 complicated. And then you have --

6 MR. CARBALLO: I agree. We didn't want to remove any
7 square footage from the existing unit -- or from the units on
8 the cellar level.

9 COMMISSIONER MAY: No. I understand that. So the
10 other aspect of the bike parking is that the way, if I understand,
11 it will work is that anybody who has a bike is going to have to
12 carry it up that set of steps to the entrance, and there's a
13 stoop or a landing there that's three feet wide, less the space
14 needed for a rail -- a guardrail, right? And then you have to
15 open the door and bring your bike in through that, so turn the
16 bike from that 3 x 5 landing and then go inside the building,
17 and then carry it down two half-flights of stairs to get to the
18 bike room, right?

19 MR. CARBALLO: That is correct.

20 COMMISSIONER MAY: Okay. Do you own a bicycle?

21 MR. CARBALLO: I do.

22 COMMISSIONER MAY: Do you have to carry it around and
23 up and down stairs?

24 MR. CARBALLO: I actually do. I keep it in the attic
25 of my office, and I carry it down two flights of stairs.

1 COMMISSIONER MAY: Okay. Do you think every bicycle
2 user is going to do that, 'cause it's not really a great way to
3 get your bike in and out.

4 MR. CARBALLO: I do not -- I admit it's not an easy
5 way of getting it in there. It's not an ideal situation; however,
6 this is where we have room for it in the building, and we're
7 trying to, you know, maximize the interior of the units.

8 COMMISSIONER MAY: Right. Did you look at solutions
9 involving building an exterior shed? Would that have been an
10 acceptable alternative?

11 MR. CARBALLO: That was our original goal was to build
12 a bike structure -- an enclosure, if you will, on the outside of
13 the building; however, that was not accepted by OP. It had to
14 be within the building. I agree. I would far prefer to have an
15 actual lockable structure, a shed, if you will. It would be far
16 easier to get in and out of the building -- for getting in and
17 out; however, we were required to put the bicycle storage within
18 the building.

19 COMMISSIONER MAY: Yeah. Okay. No, it's clearly not
20 a practical solution for this type of building.

21 MR. CARBALLO: Yeah. I'm more than willing to increase
22 the short-term biking -- bicycle parking to a -- sort of in
23 addition so we meet the requirements of OP but also provide, I
24 think, a more practical solution with respect to the shed or a
25 bicycle --

1 COMMISSIONER MAY: Well, I mean, if it could be put
2 into a shed, I think that would be a very practical thing to do.

3 MR. CARBALLO: I agree.

4 COMMISSIONER MAY: If it's not covered and lockable,
5 then it's not really that great.

6 MR. CARBALLO: You know, it could --

7 COMMISSIONER MAY: It needs to be covered and lockable.

8 MR. CARBALLO: Yes, sir, Yes. It should absolutely
9 have a locked gate, it should be (indiscernible), you can't tell
10 what's in there. It should have a roof on it. Absolutely.

11 COMMISSIONER MAY: Right. Well, I mean, it's -- I
12 would encourage doing that regardless of whatever happens with
13 our approval.

14 Mr. Young, are you getting anywhere with bringing up
15 that drawing? There we go. Perfect.

16 All right. So can we, sort of, zoom in a bit on the
17 green roof? A little more. Okay. And if you could slide that
18 to the left a little bit that would be great. Okay. And even
19 more to the left so we can see the key notes, the numbers. There
20 we go. A little bit more. Okay.

21 So Mr. Carballo, Number 7 seems to be pointing to the
22 green roof.

23 MR. CARBALLO: Yeah, public space. Yeah, that appears
24 to be a typo. We do not have any public space on the roof.

25 COMMISSIONER MAY: Well, and I assume you don't put

1 public space bike rack on, you know, bike parking on the roof,
2 right?

3 MR. CARBALLO: No, sir. I believe that's just an
4 innocent typo on the (indiscernible).

5 COMMISSIONER MAY: Sure. So you should probably want
6 to -- you should probably correct that on the drawing --

7 MR. CARBALLO: Yes, sir.

8 COMMISSIONER MAY: -- since we won't be deciding this
9 today.

10 MR. CARBALLO: Yeah, well, I --

11 COMMISSIONER MAY: The second thing is that -- let's
12 -- can we zoom in a little bit more, Paul? Do you mind?

13 (Pause.)

14 COMMISSIONER MAY: Okay. So I'm seeing -- yes. If you
15 could slide it over to get the -- yeah. There we go. So I'm
16 seeing a walkway from the parking spaces at the back, coming
17 around the building, and then there are two rectangles -- I'm
18 sorry, two almost square shapes.

19 MR. CARBALLO: Uh-huh.

20 COMMISSIONER MAY: I assume those are window wells; is
21 that right?

22 MR. CARBALLO: Yes, they are.

23 COMMISSIONER MAY: So is the walkway going to be
24 crossing the window wells?

25 MR. CARBALLO: Yes. Yes, it will. There will be a

1 safety gate over top of the window wells --

2 COMMISSIONER MAY: Okay.

3 MR. CARBALLO: -- with the passage that could be opened
4 from the window well itself.

5 COMMISSIONER MAY: Okay. Are the windows not partially
6 above grade?

7 MR. CARBALLO: I believe they are in the back, yes. So
8 they are.

9 COMMISSIONER MAY: So I think all of the windows except
10 for the very front window is above the grade. So you might want
11 to think about that a little bit more, because I don't think it's
12 a really great solution to have a grate that everybody walks over
13 right next to the window on a bedroom or a living room. And all
14 it really needs is having the walkway come out further from the
15 building.

16 MR. CARBALLO: Sure.

17 COMMISSIONER MAY: Second thing is that when you get
18 to the sidewalk, what happens when you're walking? When you get
19 to that stairway, what happens?

20 MR. CARBALLO: You would d have to walk into the roadway
21 the way it's currently shown. We could certainly --

22 COMMISSIONER MAY: The way -- so that's actually a
23 driveway the whole way. Got it.

24 MR. CARBALLO: Correct. Yes.

25 COMMISSIONER MAY: Yeah.

1 MR. CARBALLO: Yeah. Unfortunately, the alley is
2 actually not an improved alley. It's a paper alley. So we are
3 accessing the parking from the front of the lot (indiscernible)
4 the existing curbside.

5 COMMISSIONER MAY: And what's the total width of the
6 driveway? The driveway has to be 12 feet, right?

7 MR. CARBALLO: It's 12 feet. Yes, sir.

8 COMMISSIONER MAY: Yeah. Wow. Yeah, this is a tough
9 spot. I don't know what to do about the window wells, because
10 nobody, you know -- I just -- I would not want to be living in
11 that space with people walking across a grate on a window well
12 right outside my window. And you have to walk around it into
13 the roadway? Okay.

14 MR. CARBALLO: I guess it is worth noting that the
15 parking lot is -- it has five parking spaces, so it's not a
16 heavily travelled roadway.

17 COMMISSIONER MAY: Right. But the people who are not
18 coming from the back are coming from the front, and they have
19 the same problem getting around the next set of stairways.

20 MR. CARBALLO: That is correct.

21 COMMISSIONER MAY: Yeah. All right. So looking at
22 your -- I just want to go back to the issue of the height of the
23 bike room ceiling, bike, mostly storage, room.

24 MR. CARBALLO: Uh-huh.

25 COMMISSIONER MAY: In your drawings, but not in the

1 PowerPoint, there was a note under the word "bicycle storage
2 room" that said 5 foot ceiling, which would, kind of, make sense,
3 because there's actually room for 5 feet there, but I don't see
4 how you can have a full-height ceiling there on that space and
5 still be under the stairway and landing and driveway.

6 MR. CARBALLO: I'll have to confirm; however, I -- to,
7 sort of, go back to your original comment about, you know,
8 possibly providing a separate structure that would support
9 bicycle parking --

10 COMMISSIONER MAY: Yeah.

11 MR. CARBALLO: -- via step-free access.

12 COMMISSIONER MAY: Yeah.

13 MR. CARBALLO: I would far prefer that method. I mean,
14 I've seen -- every time I access my bike, I go down two flights
15 of stairs. I get it. It's not ideal.

16 COMMISSIONER MAY: Right. Okay. All right. Well,
17 those -- I mean, very little of this goes to the specific relief
18 that you're asking for, but I think that you want to have accurate
19 plans and we don't want to be showing a less than fully functional
20 bike parking space, and if you could work something out with an
21 exterior shed or extension to the building or something like
22 that, I do think that would be preferable if the Office of
23 Planning believes that that meets the requirements.

24 MR. CARBALLO: Okay. I'm more than happy to revisit
25 that and speak to Mr. Jesick about that option.

1 COMMISSIONER MAY: Okay. I'm not sure what is entirely
2 required. Last question I have is what is the extent of the
3 fence. You have this green fence, it's a metal-mesh fence with
4 green stuff on it. Is it around the entire property?

5 MR. CARBALLO: I believe it's actually just around the
6 dumpster enclosure at the rear of the property.

7 COMMISSIONER MAY: Okay. I don't see where that's
8 indicated on the drawings. So it was really confusing.

9 MR. CARBALLO: Number 12. It's shown on the image
10 that's being presented now. Number 12 is the dumpster enclosure.
11 So it's to --

12 COMMISSIONER MAY: Okay. No, I see -- I understood
13 where the trash dumpster was. It's just the fence is, you know,
14 there was an indication that there was a fence that was going to
15 the front of the building, and it was okay so long as it didn't
16 go past the front edge of the building itself. So that implied
17 that the fence was much more extensive.

18 MR. CARBALLO: Okay. I'll have to confirm with the
19 (indiscernible) on the landscape plan.

20 COMMISSIONER MAY: Yeah. I think it would be helpful
21 just to see on the drawing exactly what the extent of the fencing
22 is there. It was, as I said, not clear at all.

23 MR. CARBALLO: Okay. We can clarify that.

24 COMMISSIONER MAY: Okay. And just one last question.
25 There's -- you know, where we have the walkway along the side of

1 the building, it's interrupted by the window wells and the
2 stairways, is that a curb that I'm seeing there, or is that just,
3 sort of, a line on the pavement?

4 MR. CARBALLO: I believe that is a curb for the
5 sidewalk; however, we would have to make adjustments to that
6 walkway based on your feedback today, possibly add some traffic
7 calming measures on the driveway if, you know, as well, you know
8 --

9 COMMISSIONER MAY: Yeah.

10 MR. CARBALLO: -- for the five-vehicle parking at the
11 rear of the property.

12 COMMISSIONER MAY: Right. Yeah.

13 (Crosstalk.)

14 COMMISSIONER MAY: I mean, the key thing is to make
15 sure that it's safe, and having people step, you know, off of
16 curbs and back on to curbs and, you know, navigating across
17 gratings -- walking across gratings, I mean, you know, that's
18 -- the City doesn't allow that in public space any more because
19 of the hazards associated with it. I think that you just want
20 to make sure that the people who are living here or visiting here
21 are safe.

22 MR. CARBALLO: So I can certainly work with a landscape
23 architect or civil to find a better solution for that.

24 COMMISSIONER MAY: Yeah. Whatever you can do, I think
25 that would help me.

1 MR. CARBALLO: Okay.

2 COMMISSIONER MAY: Okay. That's it for my questions.

3 CHAIRPERSON HILL: All right. Mr. Carballo, can you
4 summarize everything that you think you're going to provide for
5 Commissioner May.

6 MR. CARBALLO: Certainly. I will revisit the bicycle
7 parking access. We will also revisit the walkway and access from
8 the parking to the front, you know, to the front entrance of the
9 building. We will also take a look at the window well
10 configuration as it relates to the sidewalk. And I'll find out
11 -- I'll confirm the extent of the site fencing so that's

12 CHAIRPERSON HILL: Okay.

13 MR. CARBALLO: -- clear.

14 CHAIRPERSON HILL: Okay. Now, I'm not going to bother
15 writing this down, Mike, you can -- I think, unless Commissioner
16 May thinks you've missed something, I'll just go ahead and go
17 with that. And since we're coming back for a continued hearing
18 on May 5th, we'll get you a time for when you need to submit
19 that. Okay?

20 MR. CARBALLO: Sure.

21 CHAIRPERSON HILL: All right. Mr. Smith, do you have
22 any questions?

23 BOARD MEMBER SMITH: Yes. I have a few questions. Mr.
24 Carballo, on Exhibit 58, you give some examples of multi-family
25 buildings within the square, in essence. And I'm assuming those

1 are examples of multi-family housing that currently exist within
2 the neighborhood. What is the height of the building at 3074
3 30th Street, SE, which you have labeled as "Lot 54"?

4 MR. CARBALLO: Let's see. Let me take a look and see
5 which one you're referencing. So which one is it, again, sir?

6 BOARD MEMBER SMITH: 3074 30th Street, SE. It is the
7 fourth slide in Exhibit 58.

8 MR. CARBALLO: This appears to be a three-story
9 building. Again, I would imagine that -- I don't have a specific
10 answer as far as that specific height, but I would imagine, just
11 based on the requirements of the zoning codes -- the zoning rule
12 that it would be under 40 feet tall, but probably greater than
13 36.

14 BOARD MEMBER SMITH: But that may not necessarily be
15 the case, because they, like, we've had, you know, the previous
16 case where we had a non-compliant apartment building. So this
17 could very well be noncompliant to height, the existing building
18 further to the south.

19 So my other question is in relation to 3030 30th Street
20 SE, the apartment building to the northwest of your property, do
21 you know what the height is of that building is relative to the
22 proposed application?

23 MR. CARBALLO: I do not have a specific height, but it
24 also appears to be a three-story building. I would -- my
25 professional opinion, it's probably somewhere in the neighborhood

1 of between 36 and 40 feet tall. Again, our building, as proposed,
2 is 37 foot 4, so underneath the height requirement of 40 feet
3 -- height limitation of 40 feet.

4 BOARD MEMBER SMITH: Okay. So my next question is the
5 two single-family houses to the -- either side of you, what are
6 the heights of those houses relative to your property and how far
7 back -- because I haven't seen architectural plans, how far back
8 does your proposed building extend from the rear walls of those
9 single-family houses?

10 MR. CARBALLO: So those two single-family houses are
11 roughly the same height as the existing, which is 28 feet 6
12 inches, and if I'm looking at my -- we would actually extend back
13 from the -- from those approximately 50 feet.

14 BOARD MEMBER SMITH: Uh-huh.

15 MR. CARBALLO: So we are extending, you know, back
16 beyond those. You'll note that -- to the property to the
17 immediate right of our subject property, they have a fairly large
18 detached garage that is located at the rear of their property.

19 BOARD MEMBER SMITH: Yes. Yes. I see.

20 MR. CARBALLO: Yes, sir.

21 BOARD MEMBER SMITH: Okay.

22 MR. CARBALLO: We extend back in the vicinity of that
23 detached structure.

24 BOARD MEMBER SMITH: Okay. So my follow up question
25 today is given what you're saying is a 50-foot extension beyond

1 the rear walls of those houses, have you submitted -- and I
2 haven't seen -- I'm looking through the record, and I couldn't
3 see anything. Have you submitted any sun studies that show the
4 impacts of the bulk and mass of your house or of your construction
5 project on the adjacent properties?

6 MR. CARBALLO: We have not submitted any sun studies
7 to the ANC or the Office of Planning.

8 BOARD MEMBER SMITH: ANC either? Okay.

9 MR. CARBALLO: Quite honestly, we looked at this
10 internally, but it never, sort of, came up as a concern to the
11 ANC.

12 BOARD MEMBER SMITH: Well, the question is more --
13 yeah, it is a question to the ANC, but I also would think it
14 would be a question from the Office of Planning given the question
15 about adverse impacts. So, but it will be interesting -- I'll
16 have a follow up question with the Office of Planning.

17 MR. CARBALLO: Yeah, I mean, I obviously, like, you
18 know, we're allowed by matter of right to create a three-story
19 building, and that's what we're providing. We are --

20 BOARD MEMBER SMITH: I understand. There's -- and
21 there are a lot of things that are a matter of right. That's a
22 maximum of the zone, but their condition -- per the special
23 exception conditions, there may be -- you will have to play with
24 the box in order to address this adverse impact question. So I
25 just reserve any additional questions to (audio interference).

1 Thank you.

2 CHAIRPERSON HILL: Okay.

3 BOARD MEMBER SMITH: Thank you, Mr. Chair.

4 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith. Vice
5 Chair John, do you have any questions?

6 VICE CHAIR JOHN: No, Mr. Chairman.

7 CHAIRPERSON HILL: Mr. Blake, do you have any
8 questions?

9 BOARD MEMBER BLAKE: I do have one quick question about
10 what Mr. Smith's -- his question. I noticed those two single-
11 family units next door. Have you spent some time in communicating
12 with those two property owners?

13 MR. CARBALLO: Personally, I have not. I understand
14 that my client, Mr. Kunlipe, who owns other -- another property
15 on this street, actually, you know, does know those residents, I
16 believe, and has reached out to them. And we've also met with
17 the ANC four times over the course of the last nine months or
18 so. They've had, you know, lots of public discussion, you know,
19 with interested parties, and I believe my client has reached out
20 to them.

21 CHAIRPERSON HILL: Mr. Kunlipe, can you hear me?

22 MR. KUNLIPE: (No audible response.)

23 MR. CARBALLO: Looks like he's on mute.

24 CHAIRPERSON HILL: Yeah, he's still on mute.

25 MR. MOY: Mr. chairman, if Mr. Kunlipe is going to

1 testify, I may have to administer an oath to him.

2 CHAIRPERSON HILL: Actually, let's see if we can get
3 him off of mute first. No, can't hear you still, Mr. Kunlipe.
4 All right. That's all right, Mr. Kunlipe. I think -- I'd have
5 to swear you in anyway at this point. I mean, so Mr. Blake, is
6 that good enough, or would you like to talk to Mr. Kunlipe?

7 BOARD MEMBER BLAKE: It's good enough for now, but I
8 would be curious to know if there was a dialogue that existed
9 between them and the neighbors, given the next door issue.

10 CHAIRPERSON HILL: Okay. Mr. Kunlipe, can you hear me
11 now?

12 MR. KUNLIPE: Yeah. Yeah. Okay. Good morning.

13 CHAIRPERSON HILL: Mr. Kunlipe, before you say anything
14 -- Mr. Kunlipe, Mr. Moy has to swear you in. Mr. Moy can you
15 administer the oath to Mr. Kunlipe?

16 MR. MOY: Yes, sir. There you are. Do you solemnly
17 swear or affirm that the testimony that you are about to present
18 in this proceeding is the truth, the whole truth, and nothing but
19 the truth?

20 MR. KUNLIPE: I do.

21 MR. MOY: Thank you, sir.

22 CHAIRPERSON HILL: Mr. Kunlipe, could you introduce
23 yourself for the record, please?

24 MR. KUNLIPE: My name is Johnson Kunlipe, Simone
25 Management.

1 CHAIRPERSON HILL: Okay. Mr. Kunlipe (audio
2 interference) next door neighbors?

3 MR. KUNLIPE: The property on the left is currently
4 vacant, and as a matter of fact it's on the market for sale,
5 and I am in the process of acquiring that property. The one on
6 the right had no issues or concerns with the proposed development.
7 Also, the ANC, in addition to, you know, knocking on the doors,
8 reached out to everybody in the community regarding the proposed
9 development, and also placed flyers, I believe, at the Metro and,
10 I guess, all of the areas where, you know, any concerned parties
11 would, you know, go to receive any information about this project.

12 Also with regards to the properties -- the apartment
13 buildings on the street, those are all three story, multi-family
14 dwellings. I was going back to a previous question about the
15 height of the large buildings on 30th Street.

16 CHAIRPERSON HILL: Okay. Mr. Blake, do you have a
17 question?

18 BOARD MEMBER BLAKE: No, I think he answered my question
19 perfectly. Thank you.

20 CHAIRPERSON HILL: Thank you. Mr. Kunlipe, if you
21 could mute your microphone, please.

22 MR. KUNLIPE: Yes, sir.

23 CHAIRPERSON HILL: Thank you. Mr. Jesick, are you
24 there?

25 MR. JESICK: Yes, Mr. Chairman.

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

3 MR. JESICK: Yes. Thank you. My name is Matt Jesick.
4 I'm representing the Office of Planning presenting our testimony
5 for Case 20386.

6 CHAIRPERSON HILL: Okay. Mr. Jesick. I'm sorry, go
7 ahead. You were going to say something.

8 MR. JESICK: If you're ready for me to proceed, I can
9 proceed?

10 CHAIRPERSON HILL: Yes, please. Thank you, Mr. Jesick.

11 MR. JESICK: Well, thank you, Mr. Chairman and Members
12 of the Board. As the Board is aware, the Office of Planning was
13 originally unable to provide a recommendation on this case due
14 to the lack of information in the record. Since the last Board
15 meeting, we did continue to work with the applicant, and we very
16 much appreciate their -- the changes that they've made to the
17 application and the improvements made to the building, and we are
18 now able to recommend approval subject to conditions as the Board
19 noted.

20 We feel that the changes made, including the addition
21 of brick to the building, the addition of some bricked details,
22 will help it blend in with its neighborhood. This will be on
23 the site that is, you know, visible from the street, and we
24 thought that the architecture of the building should more closely
25 match the architecture of the nearby buildings.

1 So again, we are able to recommend approval. I just
2 didn't want to address a couple points that were brought up
3 earlier in regard to bike parking. We're fine with wherever the
4 bike parking is located, as long as it meets the requirements for
5 long-term bicycle parking. In regard to the landscaping fence,
6 the green screening, there was a note, Mr. May, on the first page
7 of Exhibit 53, Note Number 10, and Note Number 10 was indicating
8 near the front of the property, so that led to our condition
9 -- draft condition that the fence should not extend further than
10 the front of the building towards 30th Street.

11 But I'd be happy to take any questions. Thank you.

12 CHAIRPERSON HILL: Perfect. Does anyone have any
13 questions for the Office of Planning? Mr. May -- Commissioner
14 May?

15 COMMISSIONER MAY: Yes. Thank you, Mr. Jesick, for
16 pointing out where that note was. I know I'd seen it somewhere,
17 I just couldn't remember where. So that's -- it will be good to
18 get clarification from the applicant about exactly the extent of
19 the fencing.

20 The -- with regard to the bike parking, is it possible
21 for the requirement for bike parking to be met with a lockable
22 shed on the site somewhere as opposed to being in the building?

23 MR. JESICK: I thought it was -- I haven't been able
24 to put my finger on the exact regulation during our discussion,
25 here, but we can work with the applicant to see if that's

1 possible.

2 COMMISSIONER MAY: Okay. I appreciate that. I mean,
3 I think that, technically, their solution may work, but it's
4 really not very practical and wouldn't generally be used for
5 that. So, all right. Thank you.

6 CHAIRPERSON HILL: I can provide -- I'd be happy to
7 continue the discussion with Mr. Jesick to, one, confirm the
8 regulation, but also to provide something that's a little bit
9 more user friendly. We'd far prefer to put this as a separate,
10 lockable, weather-enclosed structure on the outside.

11 COMMISSIONER MAY: Yes. Thank you. It also would be
12 better not to have, you know, a vault that extends out under the
13 driveway, too. I think that's a problem for you.

14 MR. CARBALLO: Yeah.

15 COMMISSIONER MAY: Okay. Thank you.

16 CHAIRPERSON HILL: Okay. Mr. Smith?

17 BOARD MEMBER SMITH: Thank you, Mr. Chair. So, yeah,
18 this is a follow up to the questions that I'm posing to Carballo.
19 Was there -- did the Office of Planning conduct any block face
20 studies on the height of this proposed home relative to the
21 existing multi-family dwelling units along the block just to
22 insure that it's within character with the look.

23 MR. CARBALLO: We did not perform a formal study;
24 however --

25 CHAIRPERSON HILL: That's for Mr. Jesick --

1 BOARD MEMBER SMITH: That's for Mr. Jesick.

2 MR. CARBALLO: Okay.

3 CHAIRPERSON HILL: -- of the Office of Planning.

4 MR. CARBALLO: Okay. I apologize.

5 CHAIRPERSON HILL: That's all right.

6 MR. JESICK: Mr. Smith, we did not do a detailed study
7 of the, you know, the exact heights of the different buildings.
8 We did examine the context in the neighborhood, especially along
9 30th Street, and this building seems to be in character with the
10 height of the existing buildings, which are primarily multi-
11 family.

12 BOARD MEMBER SMITH: It looks to be more of a mix.
13 There's a lot of single-family houses along this block. Also the
14 question about, given the style -- the mass, size and bulk of
15 this building, was there a request from OP -- now I understand
16 that it's not explicitly required, but I think that it is within
17 the power of OP to request additional information in order to
18 analyze the special exception criteria. Was there a request for
19 sun studies to ensure that there wouldn't be any adverse impact
20 on the adjacent single-family homes or even the apartment
21 building?

22 MR. JESICK: No, we did not request a sun study due to
23 the fact that the building was within the matter of right
24 parameters for lot occupancies and heights and the yard
25 requirements. I also wanted to just clarify for the record,

1 | there are three single-family homes on this block, the subject
2 | property and the two homes adjacent. All of the other properties
3 | are multi-family dwellings.

4 | BOARD MEMBER SMITH: Okay. All right. That's the only
5 | question I had, Mr. Chair.

6 | CHAIRPERSON HILL: Okay. Great. Vice Chair John?

7 | VICE CHAIR JOHN: Mr. Chairman, I have one question for
8 | the applicant because of what's being discussed. I don't think
9 | the question is appropriate for the Office of Planning, but I can
10 | sort it out --

11 | CHAIRPERSON HILL: Sure.

12 | VICE CHAIR JOHN: -- in case --

13 | CHAIRPERSON HILL: Sure. Go ahead, please.

14 | VICE CHAIR JOHN: So are the -- is the elevation on the
15 | street different -- on the side of the street different from the
16 | other side with the apartment buildings? The side with the two
17 | houses seems to be at the lower elevation than the side with the
18 | multi-unit apartment buildings across the street? Did you have
19 | an opinion about that, Mr. Jesick?

20 | MR. JESICK: (No audible response.)

21 | VICE CHAIR JOHN: I'm looking at Google Maps in case
22 | you're wondering.

23 | MR. JESICK: Were you asking me, Ms. John, or the
24 | applicant?

25 | VICE CHAIR JOHN: If you have an opinion, if not, I'll

1 wait to hear from the applicant.

2 MR. JESICK: Yes. The opposite side of the street does
3 tend to have a grade up from the street to the buildings, and
4 then would be the downhill side of 30th Street. 30th Street as
5 a whole goes down from north to south, but as it does that, it
6 also goes down from west to east.

7 VICE CHAIR JOHN: Okay.

8 MR. CARBALLO: I concur with Mr. Jesick. It -- the
9 opposing side of the street is at a higher elevation. As
10 witnessed on Google Earth, the -- from the sidewalk, there are
11 -- looks like, maybe, 10 to 12 steps that you'd have to climb in
12 order to get up to the front doors of the apartment buildings
13 that are across the street.

14 VICE CHAIR JOHN: Okay. Thank you.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Ms. John.
16 Mr. Blake, do you have any questions?

17 BOARD MEMBER BLAKE: I do not.

18 CHAIRPERSON HILL: Okay. All right. Mr. Young, is
19 there anyone who wishes to testify?

20 MR. YOUNG: No, we don't.

21 CHAIRPERSON HILL: Okay. Mr. Carballo, you understand
22 everything that's being asked from you, correct?

23 MR. CARBALLO: Yes, sir, and I understand that we need
24 to return on May the 5th?

25 CHAIRPERSON HILL: Yes. And so you can talk to Mr. Moy

1 as to -- again, I'm just not clear who has to be here for that,
2 and -- I don't know yet. I haven't figured that out yet, but
3 Mr. Moy can, kind of, help with that. And then, let's see, I
4 guess, obviously, the applicant has to be here. So I mean, I
5 guess, Mr. Moy, so if we actually did have any questions. So
6 Mr. Carballo, I guess, you'll have to be here. And then Mr. Moy,
7 when would we ask for the submissions from the applicant?

8 MR. MOY: Well, I would suggest, Mr. Chairman, we're
9 coming back on this case on May the 5th. I would suggest the
10 applicant make its filings by April the 12th, and any responses
11 to the applicant's filing by parties and any supplemental from
12 the Office of Planning could be made by April 26th.

13 MR. CARBALLO: Sure.

14 BOARD MEMBER SMITH: Mr. Chairman?

15 CHAIRPERSON HILL: Sure. Mr. Smith.

16 BOARD MEMBER SMITH: Since we're speaking of
17 submissions, you know, I have been talking about this question
18 about undue adverse impact. I do believe that it would be
19 beneficial for me to evaluate this case where we can get some
20 form of sun studies to ensure that there isn't a major impact on
21 the adjacent properties. And I do recognize there's only three
22 single-family houses, but they are -- on this side of the block,
23 but they are also smaller, looks like two- or three-unit apartment
24 buildings along that block. So it would be great to have that
25 additional information.

1 And also, because you used it as examples, the heights
2 of those other apartment buildings, and because as of right now,
3 I'm struggling to get to the question of whether I am sufficiently
4 satisfied that there isn't an undue adverse impact on the adjacent
5 property owners. So given the extra time that we have, it's the
6 curse of -- it's a curse and probably a blessing at this point,
7 could the applicant provide some additional information in that
8 regard?

9 CHAIRPERSON HILL: Okay. Mr. Carballo, can you
10 generate a sun study according to what Mr. Smith is saying?

11 MR. CARBALLO: I can.

12 CHAIRPERSON HILL: Okay. And if you just clarify the
13 height of those buildings?

14 MR. CARBALLO: Okay. I can.

15 CHAIRPERSON HILL: Okay. All right. So you've got
16 your list, correct, Mr. Carballo?

17 MR. CARBALLO: I do, yes, sir.

18 CHAIRPERSON HILL: Okay. All right. And then the same
19 submission times. All right. So then we'll see you here on May
20 5th.

21 MR. CARBALLO: Okay.

22 CHAIRPERSON HILL: Okay. All right. Thank you. Mr.
23 -- I'm sorry, don't go yet, Mr. Carballo. Commissioner May?

24 COMMISSIONER MAY: All right. Actually, this is a
25 question for you, Mr. Chairman. So I -- leading into this, there

1 | were indications that we would have to defer deliberations on
2 | many cases, and I've heard you mention May 5th several times,
3 | which was not on any of the advanced information I have. Will
4 | we be doing this for all of the cases that have deferred decision
5 | making, all going to May 5th?

6 | CHAIRPERSON HILL: They're not necessarily all going
7 | to May 5th. Is something happening on May 5th?

8 | COMMISSIONER MAY: No, but if everything happens the
9 | way I was told in advance, I'm going to be here at BZA every week
10 | for the next six weeks.

11 | CHAIRPERSON HILL: Okay. All right.

12 | COMMISSIONER MAY: (Indiscernible.)

13 | CHAIRPERSON HILL: Let me have this conversation with
14 | you -- well no. For this case, will May 5th work okay for you,
15 | Mr. May?

16 | COMMISSIONER MAY: That's fine, and I would love it if
17 | we just, like, clustered them as much as possible on May 5th,
18 | because I can do May 5th. I'm also going to be here on the 12th
19 | anyway.

20 | CHAIRPERSON HILL: Okay. So some of them were going
21 | to -- all right. Let me let everybody else go. Hold on one
22 | second. Okay.

23 | COMMISSIONER MAY: That's fine.

24 | CHAIRPERSON HILL: Everybody else, you're good. Mr.
25 | Young, thank you. See you all on May 5th. Okay.

1 (Whereupon, the above-entitled matter went off the
2 record at 11:55 a.m. and reconvened at 11:58 a.m.)

3 CHAIRPERSON HILL: So to answer your question,
4 Commissioner May, some of the (audio interference) that were
5 given for me were just the next available date after there was a
6 discrepancy with notice.

7 COMMISSIONER MAY: Right. I understood that.

8 CHAIRPERSON HILL: Right. So I'm happy that we have
9 one going April 28th, which I don't think you are on, correct?

10 COMMISSIONER MAY: This is my first one of the day.

11 CHAIRPERSON HILL: Right. And believe me, this is
12 crazy. I mean, I know that Mr. Blake has watched before, but
13 this has already been a weird day. Okay. And so the fact is
14 the third case -- and I'm having this long discussion. And by
15 the way, Mr. May, my deadline that I thought you were going to
16 have is not going to happen, right? So the -- this one's going
17 to May 5th. Any date that you're on, you can go to May 5th? We
18 did it to April 28th for this one, because there were so many
19 cases on April 28th. If you are on the ones and you'd rather go
20 to May 5th, I think if we can, then we'll move them to May 5th.
21 Is that good enough for you?

22 COMMISSIONER MAY: Yeah. No, I mean, I would just
23 -- I would like to -- I can -- I'm not asking for everything to
24 be on May 12th when I'm already going to be here. So if we can
25 do 5th and 12th, that's great. I'd rather not do 14th, 28th,

1 5th and 12th --

2 CHAIRPERSON HILL: Okay.

3 COMMISSIONER MAY: -- if we could avoid that.

4 CHAIRPERSON HILL: Well, since you are, you know, such
5 a valued member of our Board, any day that is -- anything that
6 is starting to get thrown out, you let me know if there's a
7 problem. We'll stick them on May 5th as best we can.

8 COMMISSIONER MAY: I just want to have fewer number of
9 dates, that's all.

10 CHAIRPERSON HILL: You don't like being here every
11 week, Mr. May?

12 COMMISSIONER MAY: I love you guys so much, but --

13 CHAIRPERSON HILL: I mean every week -- we're here
14 every Wednesday, Commissioner.

15 COMMISSIONER MAY: I know. I do have other things to
16 do occasionally.

17 CHAIRPERSON HILL: So none of us do. We don't have any
18 other things to do either.

19 COMMISSIONER MAY: I know. Yeah. Well --

20 CHAIRPERSON HILL: I have --

21 COMMISSIONER MAY: Of course, I could be here every
22 week.

23 CHAIRPERSON HILL: Okay. All right. So we'll do that.
24 Okay.

25 COMMISSIONER MAY: Thank you.

1 CHAIRPERSON HILL: All right. So I had a breakfast.
2 So are we all good for another? We'll do another couple cases?
3 Are we good? It's noon. We'll do another couple cases? One
4 case? Okay. The Vice Chair has -- we have one. Going once,
5 going twice. All right. Mr. Moy. You can call the next case
6 and then we'll have lunch. Okay.

7 MR. MOY: All right. Thank you, Mr. Chairman. So this
8 would be Case Application No. 20431 of Patrick Basse or Basse,
9 B-A-S-S-E, and Dolie Schein, S-C-H-E-I-N. This application is
10 captioned and advertised for special exception from the side yard
11 requirements, Subtitle D, Section 206.7, and this would construct
12 a two-story rear addition to an existing two-story detached
13 principal dwelling unit in R-2 Zone. And this is at premises
14 4403 Garrison Street, NW, Square 1581, Lot 81.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
16 Mr. Basse, can you hear me?

17 MR. BASSE: Yes.

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

20 MR. BASSE: Can you hear me?

21 CHAIRPERSON HILL: Yes, I can.

22 MR. BASSE: Thank you for hearing us. I am Patrick
23 Basse, and this is my wife, Dolie Schein. We are the owner of
24 the property and applicant to the case.

25 CHAIRPERSON HILL: Okay. Great. Thank you. Mr. Basse,

1 I'm going to let you go ahead and tell us about your application
2 and why you believe you're meeting the criteria for us to grant
3 the application. I'm going to put 15 minutes on the clock, there,
4 so I know where we are, and you can begin whenever you like.

5 MR. BASSE: Yes. The house as been built in 1953 with
6 a side requirement of 3 feet, and this is how the house is now.
7 And we are proposing an extension that continues with that 3 feet
8 requirement on the side. Why the requirement became 5 foot in
9 these days.

10 So we have the approval of the ANC, and we have support
11 of the eight neighbors that are around our property. The reason
12 of the -- we asking three feet is because the yard is narrow,
13 more narrow that it should be for our neighborhood. It's a deep
14 yard, so the north occupancy we will just like to increase. The
15 north occupancy's 15, 5 percent now, and with our addition, it
16 will become 25, 15 percent, because it's deep.

17 So the yard being narrow, doesn't allow us to include
18 all the elements needed a new bathroom. And we are along the
19 alley. On two sides of our property is the alley. So we are
20 facing many neighbors that -- eight neighbors around us that have
21 all approved with regard to our -- are all supporting our
22 addition.

23 There are many other elements, but please, if you all
24 have questions, I will be glad to answer.

25 CHAIRPERSON HILL: Okay. Thank you, Mr. Basse. Mr.

1 Basse, there was one thing from the ANC, and I don't even know
2 if we would use it as a condition or not, but they said that
3 you'll install at least one rain barrel to help mitigate the loss
4 of permeable space from the addition. Are you agreeable to that?

5 MR. BASSE: Yeah, absolutely.

6 CHAIRPERSON HILL: Okay. All right. Okay. Does
7 anybody have any questions? Commissioner May, do you have any
8 questions?

9 COMMISSIONER MAY: No.

10 CHAIRPERSON HILL: Mr. Smith, do you have any
11 questions?

12 BOARD MEMBER SMITH: No.

13 CHAIRPERSON HILL: No. Ms. John, do you have any
14 questions?

15 VICE CHAIR JOHN: No.

16 CHAIRPERSON HILL: Mr. Blake, do you have any
17 questions?

18 BOARD MEMBER BLAKE: No.

19 CHAIRPERSON HILL: Now turning to the Office of
20 Planning?

21 MS. THOMAS: Good afternoon, Mr. Chair, Members of the
22 Board. Karen Thomas for the Office of Planning for Case No.
23 20431. The Office of Planning is recommending approval of the
24 applicant's request to do his addition to his home with a non-
25 conforming 3-foot wide side yard which runs along the side of the

1 16-foot wide alley.

2 We -- our report shows that we do not anticipate adverse
3 impacts to the light and air of the neighboring property, either
4 to the east or those -- of the rear yards which holds space in
5 44th Street. And we do not think the addition is out of character
6 with other types of -- similar types of rear additions in this
7 neighborhood.

8 And with that, I would be happy to answer any questions.
9 Thank you.

10 CHAIRPERSON HILL: Thank you, Ms. Thomas. Mr. May, do
11 you have any questions for the Office of Planning?

12 COMMISSIONER MAY: No.

13 CHAIRPERSON HILL: Mr. Smith, do you have any questions
14 for the Office of Planning?

15 BOARD MEMBER SMITH: No.

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

18 VICE CHAIR JOHN: No.

19 CHAIRPERSON HILL: Mr. Blake, do you have any questions
20 for the Office of Planning?

21 BOARD MEMBER BLAKE: No, I do not.

22 CHAIRPERSON HILL: Okay. Mr. Basse, do you have any
23 questions for the Office of Planning?

24 MR. BASSE: No, thank you.

25 MS. DOLIE: No, thank you.

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

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. So Mr. Base, I don't know if
5 you were listening earlier, but we had an issue with notice that
6 was on our end, but it makes it so we can't actually deliberate
7 today. And so what you'll have to do is we have to have a
8 continued hearing on May 5th. And so what you'll do is you'll
9 just come back on May 5th, and if we have any questions for you,
10 we'll ask those. I'm going to try to do everything first, so,
11 you know, on May 5th -- and all these dates that we, kind of,
12 throw things off, I'm going to try to do all those first. So if
13 you'll come back with us on May 5th, we can go ahead and have
14 any -- and deliberate. Okay?

15 MR. BASSE: Thank you. Yes.

16 MS. DOLIE: Thank you.

17 CHAIRPERSON HILL: All right. Thanks. All right. So
18 I'm going to go ahead and see you on May 5th -- continue this to
19 May 5th and excuse the applicants.

20 (Whereupon, the above-entitled matter went off the
21 record at 12:05 p.m., and reconvened at 12:06 p.m.)

22 CHAIRPERSON HILL: Okay. I'm turning back to the Board.
23 Do you want to do one more or do you want to eat? And if anybody's
24 raising their hand -- okay. How many want to go eat, raise their
25 hand? Okay. Nobody wants to go eat. All right. We'll do one

1 more. Okay.

2 All right. Let's go ahead and go, Mr. Moy, when you
3 get a chance.

4 Mr. May, when are you back with us again, you said?

5 COMMISSIONER MAY: May 12th.

6 CHAIRPERSON HILL: Okay.

7 MR. MOY: The next case is Application No. 20413 of 703
8 Randolph, LLC, captioned and advertised for a special exception
9 under the residential conversion requirements, Subtitle U,
10 Section 320.2, roof-top architectural requirements, Subtitle E,
11 Section 206.1, which would convert an existing semi-detached
12 three-story flat into a three-unit apartment house and to
13 construct a rooftop addition in the RF-1 Zone. This is at
14 premises 703 Randolph Street, NW, Square 3132, Lot 12.

15 CHAIRPERSON HILL: All right. Give me one moment,
16 please.

17 (Pause.)

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

19 MR. HEISEY: Yes. You were catching me by surprise.
20 You were messing with the agenda and the order.

21 CHAIRPERSON HILL: Yes. Sorry. Hope you didn't grab
22 a sandwich.

23 MR. HEISEY: No, I'm good. I'm ready to go.

24 CHAIRPERSON HILL: Okay. You want to introduce
25 yourself for the record, and turn on your camera, if you want

1 to. You don't have to.

2 MR. HEISEY: I'm seeing me. I'm seeing me, but I'm not
3 seeing why there's -- start my meeting. There we go. Wrong set
4 of buttons. There we go. Hi.

5 CHAIRPERSON HILL: Okay. Great. Can you introduce
6 yourself for the record, please, sir?

7 MR. HEISEY: Sure. Joel Heisey. I'm the designer and
8 representative for Mr. Sklee (phonetic), the owner of 703
9 Randolph Street, NW.

10 CHAIRPERSON HILL: Okay. Mr. Heisey, there is a notice
11 issue with yours, as well, and so I can discuss that later, but
12 let me --

13 MR. HEISEY: Yeah, I've been following that, yes.

14 CHAIRPERSON HILL: So let me go ahead and have you walk
15 through your application and why you believe you're meeting the
16 standard for us to grant the relief requested. I'm going to put
17 15 minutes on the clock there, and you can begin whenever you
18 want.

19 MR. HEISEY: Okay. Thank you. Mr. Young, I, kind of,
20 consolidated a few of the submitted exhibits into a -- just a
21 quick little PDF show just to summarize things. This is the
22 project itself. Woops. I don't know why there's a black screen
23 there. There we go. This is a semi-detached house, and the
24 property itself is the one on the left. They are identical
25 houses. The remaining houses to the left, which would be the

1 west -- or the north side on the photo are also similar detached
2 units.

3 If you could go to the next slide, please.

4 This is just looking along the side. There's a common
5 driveway between this -- 703 and 705 Randolph.

6 And the next slide, please.

7 This is just the side. And this would be the side
8 where we're requesting the side element of the dormer to be added.

9 The next slide, please.

10 And this is the rear. You're looking at the rear
11 addition proposed here, and that is by right within the 10 feet
12 allowed and within the lot occupancy permitted. The most
13 noticeable change in this is where there is the gabled roof here
14 on the right side, there will be a shed dormer that will be added
15 coming up to the rear wall at that point.

16 Mr. Young, do you have the next slide.

17 This is the existing dormer. It's not an original
18 element to the house. Just looking at it, you can tell it's a
19 different quality of the rest of the house in the detailing and
20 the materials. And what we're proposing is to extend this
21 forward. That chimney is a nonfunctional chimney, and also very
22 deteriorated. So that would be removed, and then the dormer will
23 continue through the gable, leaving the existing gables on the
24 front and the side, and extending the shed dormer to the rear of
25 the property.

1 The next slide, please.

2 This is just a slide showing the other side of the
3 semi-duplex, that there is no dormer there, that that is probably
4 more the original condition of the house. Just to, then,
5 reemphasize that this is not an original architectural element.

6 The next slide is the top of the unit. Yes. So I'd
7 like to go through -- the existing house is a two-unit flat.
8 There is a unit in the basement, and then the first, second, and
9 third floor are a unit. What is being proposed is to convert
10 this to a three-unit building, which would leave the basement as
11 a unit, the first floor as a unit, a new entry would be added
12 that would access the second and third floor as a duplexed unit
13 for the three units.

14 Looking at the plat, it also shows in the rear, there
15 is a 10-foot addition to provide another bedroom in that first-
16 floor unit, mostly, and then additional bedrooms on the third
17 floor unit, as well. The rear-yard setback is maintained.
18 Parking is -- the existing parking's maintained, and it's
19 otherwise by right.

20 The next slide, please.

21 This is just the site plan which, again, with closer-
22 up detail than the plat which shows the existing buildings on
23 either side. Both neighbors have offered letters of support for
24 this project, as well as a neighbor across the street has also
25 offered a letter of support.

1 Next slide.

2 This is the new elevation.

3 CHAIRPERSON HILL: Okay. Mr. Heisey?

4 MR. HEISEY: Yes.

5 CHAIRPERSON HILL: Mr. Heisey? The only question -- I
6 mean I did have one question, but since you're going through this
7 -- or as you go through this, the rooftop element relief, I guess
8 I was, kind of, looking through it again. I know you, kind of,
9 spoke to it. Can you just, kind of, point out what is being
10 changed when you get to whatever it is?

11 MR. HEISEY: That's exactly the slide that's up. You
12 saw the previous photograph with the existing dormer, with the
13 slide you're looking at now, the new dormer is the unshaded
14 portion. The shaded portion is the existing building, and the
15 lighter portion is the dormer and the rear addition. And on the
16 right-hand side, it's -- there is -- the label says, "Extension
17 of existing dormer." Where that -- there's the two windows, the
18 window on the left, that's about the position of the existing
19 dormer. So that would be removed, and then we're going to extend
20 it forward a little bit, and then continue it behind the existing
21 gable to the rear of the building. Does that answer your
22 question?

23 CHAIRPERSON HILL: Yes. Thank you.

24 MR. HEISEY: Okay. Great. So it's -- we're not --
25 like I say, we're not going to affect the existing side gable,

1 we're not going to affect the front facade as -- either. It will
2 be recessed taking us about 10 feet back from the front facade
3 before the dormer starts. And then there's a rear stair for
4 access to the first and second floor behind the rear addition
5 that is there.

6 The next slide's -- just to go through -- okay. These
7 are the front and rear elevations. You can see the shed dormer
8 on the left side, there, from the front and on the back elevation.

9 The next slide.

10 I believe the next slides are just plans. This is from
11 the adjoining property, it's connected that it extends the 10
12 feet beyond the other property. The dashed line along the top
13 is the existing roof deck on 701 Randolph, and the owner at 703
14 is proposing to do a similar deck on his roof, as well.

15 The next slide.

16 These are just the floor plans for information. This
17 is the problem with doing traditional drawings where you always
18 put the lower floor at the bottom and the upper floor at the top,
19 but as you go through these slides, nowadays, they are, kind of,
20 reversed. So the basement's on the bottom here with the colored
21 portion, the new addition, and then this first floor is the
22 proposed new unit. You'll notice on the upper right portion,
23 there's a new stairway coming off the porch. That is what leads
24 to the third unit on the second and third floor. Otherwise, that
25 unit stays pretty much the same.

1 Next slide.

2 This is the second and third floor unit as a duplex.

3 And the next slide. I believe that's probably --

4 This is the rooftop. That -- there is discussions
5 about this may be reconfigured a little bit depending on some of
6 the by-right zoning issues, but if it's not this specific layout,
7 it will certainly be a by-right layout on the rooftop.

8 And I think that's the last slide. If it is, Mr. young,
9 if you could take that down so we can just see each other as --

10 The other thing is I, you know, just going quickly
11 through the justification of the points that we meet the standards
12 required. And this is, again, in the -- was submitted in the
13 record under the justifications. For the three-unit apartment
14 building about -- the majority has to be converted, it is already
15 permitted as a residential flat. So no relief is required for
16 that portion of it.

17 The fourth dwelling unit becoming, the inclusionary
18 zoning will not apply also, because it's a three-unit building,
19 and the 900 square feet, we do have the 900 square feet with the
20 existing (indiscernible) being 2700 square feet.

21 As far as the light and air, it's not going to be
22 affected. This is a rooftop dormer that will shed minimal shadows
23 on any other property. The adjoining neighbor did have a question
24 about privacy looking over, but these windows are above any of
25 his windows, and it would be very difficult to actually stand and

1 | look into any of the second-floor windows any more so than what
2 | a normal window on the second floor would see.

3 | And again, the same kind of thing for the privacy and
4 | use of the adjoining properties. It's a rooftop addition. The
5 | third floor units -- or the third unit makes no difference,
6 | because the second floor and the third floor are, already,
7 | currently occupied, as well. So there's really no substantive
8 | change in the privacy of the building.

9 | And as far as the construction will not substantially
10 | impact the visual appearance from the street. Like I said, it
11 | -- since it's set back about 10 feet from the front facade and
12 | it's on the side, you will only see it if you look up. And we
13 | believe the design is compatible with, you know, a typical shed
14 | dormer addition to a property.

15 | Plans and elements have been -- the drawings have been
16 | submitted. I'd also like to note that in the past year, the BZA
17 | has approved third-unit apartment buildings in the 600- and 500-
18 | block of Randolph Street at 618 Randolph in August of last year,
19 | at 612 Randolph in June of last year, and at 539 Randolph in June
20 | of 2019. So we believe this development is compatible with
21 | development in the neighborhood, and we meet all the required
22 | zoning regulations, and we are requesting the alteration to the
23 | dormer because of zoning administration requirement that all of
24 | them that will request for a special exception.

25 | We have support from both adjoining neighbors and the

1 neighbor across the street. ANC was in unanimous support of this
2 project, and the Office of Planning is also supporting this
3 project.

4 So with that, I will turn it back to you, and if you
5 have any questions, I'll be pleased.

6 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Heisey.
7 Does the Board have any questions? Commissioner May, do you
8 have questions?

9 COMMISSIONER MAY: Nope.

10 CHAIRPERSON HILL: Okay. Mr. Smith?

11 BOARD MEMBER SMITH: No questions.

12 CHAIRPERSON HILL: Vice Chair John?

13 VICE CHAIR JOHN: No questions.

14 CHAIRPERSON HILL: Mr. Blake?

15 BOARD MEMBER BLAKE: I have no questions.

16 CHAIRPERSON HILL: I'm going to turn --

17 MR. HEISEY: I like you guys.

18 CHAIRPERSON HILL: Mr. Heisey. I'm going to turn to
19 the Office of Planning.

20 MS. FOTHERGILL: Good afternoon, Chairman Hill and
21 Members of the Board. I'm Anne Fothergill for the Office of
22 Planning for BZA Case 20413. And the Office of Planning has
23 recommended approval and finds that this application meets the
24 specific special exception criteria, Subtitle E 206.4 and 5207.1,
25 as well as the general special exception criteria, Subtitle X,

1 Chapter 9. And I am happy to rest on the record in support of
2 the application and take any questions.

3 CHAIRPERSON HILL: Okay. Thank you. Does the Board
4 have any questions for the Office of Planning? Commissioner
5 May?

6 COMMISSIONER MAY: No.

7 CHAIRPERSON HILL: Mr. Smith?

8 BOARD MEMBER SMITH: No.

9 CHAIRPERSON HILL: Vice Chair John, any questions?

10 VICE CHAIR JOHN: No.

11 CHAIRPERSON HILL: Mr. Blake, do you have any
12 questions?

13 BOARD MEMBER BLAKE: No.

14 CHAIRPERSON HILL: Is there anyone here wishing to
15 testify, Mr. Young?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. All right. So Mr. Heisey,
18 as I mentioned before, there's been some issues with notice that
19 I have to, kind of, deal with that I can't help, and so I think
20 the earliest we'd be able to bring you back here is on April
21 21st. And so if you can come back here on April 21st, we can go
22 ahead. We're not asking anything of you, but I think, you know,
23 you could call in and then, you know, if there was -- because it
24 is going to be a continued hearing. Does April 21st work for
25 you, Mr. Heisey?

1 MR. HEISEY: It should. Yes.

2 CHAIRPERSON HILL: Okay. All right. And as I
3 mentioned, I'm going to try to do all these first, and then --
4 okay. Hold on. Mr. Moy has a question for me. Mr. Moy.

5 MR. MOY: (No audible response.)

6 CHAIRPERSON HILL: You got a lot of stuff on the 21st?

7 MR. MOY: Well, I'm looking at it. This is the Randolph
8 Street case.

9 CHAIRPERSON HILL: And the reason I --

10 MR. MOY: So I -- so what was that you said?
11 (Indiscernible.)

12 CHAIRPERSON HILL: I'm, kind of, putting a wrench in
13 this. Mr. May, I think, is going to back with us for a continued
14 hearing on April 21st, and so that's why I think this will work.

15 MR. MOY: Okay.

16 CHAIRPERSON HILL: And it's after the date that you all
17 gave me, so I think it will still work.

18 MR. MOY: Okay. April 21, yes?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Okay. Got it, sir.

21 CHAIRPERSON HILL: Okay. Okay. All right. So Mr.
22 Heisey, we'll see you on April 21st.

23 MR. HEISEY: Just one minor technical question, will I
24 have to submit another notification of the topic posting, or is
25 everything else -- is all that taken care of?

1 CHAIRPERSON HILL: Yeah. We're not asking you anything
2 of you.

3 MR. HEISEY: Okay. That sounds good.

4 CHAIRPERSON HILL: Okay.

5 MR. HEISEY: Thank you very much.

6 CHAIRPERSON HILL: We'll see you on April 21st.

7 MR. HEISEY: Thank you, sir.

8 CHAIRPERSON HILL: Yes.

9 MR. HEISEY: Goodbye.

10 CHAIRPERSON HILL: All right. I'm turning to my fellow
11 Board members again, and I'll let everybody leave first. Okay.
12 So there are two options on the table. Either we break for lunch
13 or I know somebody wants to have a cup of coffee. So we either
14 break for a cup of coffee, take a case, and then have lunch, or
15 we break for lunch. So two options. Cup of coffee, coffee break,
16 come back, take a case, break for lunch? All those in favor
17 raise your hand.

18 COMMISSIONER MAY: Lunch.

19 BOARD MEMBER SMITH: Lunch.

20 CHAIRPERSON HILL: Okay. There you go. All right.
21 Okay. Well, then, there you go. Okay. All right. So we're
22 going to take lunch. It is now 12:30. I want to say we'll try
23 for 1:15. Okay. All right. Okay. All right. Thank you
24 everybody. See you at 1:15. Bye-bye.

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

1 record at 12:30 p.m., and reconvened at 1:22 p.m.)

2 CHAIRPERSON HILL: Mr. Moy, you can call us back in and
3 call the first case, please.

4 MR. MOY: Thank you, Mr. Chairman. Okay. The Board
5 is back in it hearing session after a lunch recess, and the time
6 is at or about 1:22 p.m.

7 The next case before the Board is Case Application No.
8 20406 of 1208 M, LLC. This is captioned and advertised for a
9 special exception from the rear yard requirements, Subtitle I,
10 Section 205.1, which would raze, R-A-Z-E, the existing building
11 and construct a new, attached, seven-story, 14-unit residential
12 building with cellar and penthouse in the D-1-R Zone. This is
13 at 1208 M. Street, NW, Square 282, Lot 31.

14 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
15 Mr. Sullivan, could you introduce yourself for the record?

16 MR. SULLIVAN: Yes. Thank you, Mr. Chair and Members
17 of the Board. My name is Marty Sullivan on behalf of the
18 applicant.

19 CHAIRPERSON HILL: Great. Mr. Sullivan who is with you
20 here today?

21 MR. SULLIVAN: The architect, Matt Lee is with us, and
22 the property owner, Michael Taylor is available, as well.

23 CHAIRPERSON HILL: Okay. Let me see. Is Mr. Lee going
24 to be presenting, as well, at some point?

25 MR. LEE: I will be.

1 CHAIRPERSON HILL: Okay. Mr. Lee, you want to introduce
2 yourself for the record, please.

3 MR. LEE: Good afternoon, my name is Matt Lee. I'm the
4 architect on behalf of the applicant.

5 CHAIRPERSON HILL: Okay. And Mr. Sullivan, we'll see
6 if we have any questions for Mr. Taylor, then. Okay.

7 Mr. Sullivan, I see that you have a PowerPoint.

8 Mr. Young, if you could bring that up.

9 And Mr. Sullivan, again, if you can just tell us about
10 your project and how you believe it's meeting the standard for
11 which we can grant the relief requested. You have 15 minutes
12 there on the clock, and you can begin whenever you like.

13 MR. SULLIVAN: Thank you, Mr. Chair, Members of the
14 Board. Again, Marty Sullivan with Sullivan and Barros on behalf
15 of the applicant, 1208 M, LLC. This is 1208 M. Street, NW.

16 And if you could go to the second slide, please, Mr.
17 Young.

18 So this is the D-1-R Zone. The proposal is for rear
19 yard relief. It's a special exception. The request amounts to
20 5.2 feet of relief, and that relief is -- it's only necessary
21 for a point that's above the first two stories, 22 or 23, 25 feet
22 -- above the height of 25 feet. We do have the Office of Planning
23 in support. We have unanimous ANC support. And I will turn it
24 over to Mr. Lee to present the project. Thank you.

25 Next slide, please.

1 MR. LEE: Thanks, Marty. We prepared a series of
2 diagrams to show the requested relief in red. Blue is by-right
3 mapping of the site that's in D-1-R. These are helping to, kind
4 if, identify the only areas that are requesting relief. And what
5 we're looking at is the rear of the building, here on the right,
6 and then M Street is shown in the background.

7 Next slide, please.

8 These are the adjacent areas and the existing
9 buildings. You'll see there's a lot to our right, and then just
10 below here, the Boyd, here on the left, 1212 M. Street, and then
11 the subject property is here in the middle.

12 Next slide, please.

13 This is an overlay of that blue massing over top of the
14 existing building, and you, again, you can see the rear lot relief
15 we're requesting.

16 Next slide, please.

17 These are renderings of the proposed building from M
18 Street on the front.

19 And next slide.

20 The rear of the building here, as well.

21 And next slide. I didn't shift one. I should have one
22 more. Okay. Never mind.

23 So this is a -- yeah. This is a -- Marty.

24 MR. SULLIVAN: Thanks. Next slide, please.

25 And next slide, please.

1 So the application meets the general requirements for
2 special exception relief. The purpose of the B-1-R Zone is to
3 require the provision of high density housing with maximizing the
4 building footprint in order to provide 14 residential units on a
5 relatively small lot. The Zoning Regulations do permit 100
6 percent lot occupancy in this zone, subject, of course, to the
7 rear yard requirement for which we're asking relief. And this
8 will not tend to affect adversely. The use of neighboring
9 properties the rear of the building faces the intersection of two
10 alleys, and the proposed usage is consistent with surrounding
11 uses. The proposal should not adversely affect the use of
12 neighboring properties. The building to the east is
13 significantly separated from the proposed building, and the
14 building to the west extends to its rear lot line, as well. And
15 this building will extend just slightly past it.

16 I'll note in the ANC letter, the ANC noted that the
17 single-member district representative commended the efforts of
18 the applicant to engage with the community and confirms community
19 support for the project.

20 Next slide, please.

21 The specific requirements for special exception relief
22 in this zone is, first, that no apartment window shall be located
23 within 40 feet directly in front of another building, and there
24 are no such windows. And no office window located within 30
25 feet, there is no office use here, so that doesn't apply. And

1 buildings that are not parallel to the adjacent buildings, the
2 angle of sight lines and the distance of penetration of sight
3 lines into habitable rooms shall be considered in determining
4 distances between windows and appropriate yards. And we'll get
5 to that one when we get to the next slide. And regarding parking
6 and loading, those are not required for a building with just 14
7 units.

8 So in buildings that are not parallel to the adjacent
9 buildings, the angle of sight lines and the distance of
10 penetration sight lines into habitable rooms shall be considered
11 in determining distances between windows and appropriate yards.
12 There's just one non-parallel residence we're building in the
13 square, and that's the large apartment building at 1221 Mass, and
14 the rear windows are at an angle where none of those windows will
15 directly face each other. So -- and the windows are significantly
16 separated. The closes building that could be said to face the
17 rear facade would be about 60 feet away.

18 And again, the request is just for an additional five
19 feet of rear yard, which wouldn't materially change any of these
20 sight lines or increase the penetration of those sight lines.

21 Next slide, please.

22 And that's it for our presentation, if the Board has
23 any questions. Thank you.

24 CHAIRPERSON HILL: All right. Thank you, Mr. Sullivan.
25 Does the Board have any questions for the applicant? Mr. May?

1 COMMISSIONER MAY: No.

2 CHAIRPERSON HILL: Mr. Smith?

3 BOARD MEMBER SMITH: (No audible response.)

4 CHAIRPERSON HILL: Vice Chair John?

5 VICE CHAIR JOHN: (No audible response.)

6 CHAIRPERSON HILL: Mr. Blake?

7 BOARD MEMBER BLAKE: No, I don't.

8 CHAIRPERSON HILL: And going to the Office of Planning,
9 Mr. Jesick.

10 MR. JESICK: Thank you, Mr. Chairman and Members of the
11 Board. My name is Matt Jesick providing open testimony on this
12 case, and the Office of Planning is happy to rest on the record
13 in support of the application. And I'd be happy to take any
14 questions. Thank you.

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

17 COMMISSIONER MAY: (No audible response.)

18 CHAIRPERSON HILL: Mr. Smith?

19 BOARD MEMBER SMITH: No.

20 CHAIRPERSON HILL: Vice Chair John?

21 VICE CHAIR JOHN: No.

22 CHAIRPERSON HILL: Mr. Blake?

23 BOARD MEMBER BLAKE: No, no questions.

24 CHAIRPERSON HILL: All right. I'm going to -- Mr.
25 Young, do you have anyone here wishing to testify?

1 MR. YOUNG: Yes, we have one witness signed up.

2 CHAIRPERSON HILL: Okay. Could you bring that person
3 in, please?

4 Is it Ms. Themak?

5 MS. THEMAK: Yes.

6 CHAIRPERSON HILL: Can you please introduce yourself
7 for the record.

8 MS. THEMAK: Tracy Themak with Donohue & Stearns, and
9 we represent the Boyd which is the adjoining property owner. And
10 I had signed up to speak, but the applicant has answered all of
11 our questions. So I have no further comment at this time. Thank
12 you.

13 CHAIRPERSON HILL: Okay. All right. Okay. Thanks.
14 All right. Well, Ms. Themak -- Mr. Sullivan, do you have any
15 questions for Ms. Themak?

16 MR. SULLIVAN: No, thank you.

17 CHAIRPERSON HILL: Okay. Unless somebody raises their
18 hand, I'm going to assume the Board doesn't have any questions
19 for the witness. All right.

20 Ms. Themak, I'm going to let you go.

21 MS. THEMAK: Thank you.

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

24 MR. SULLIVAN: No, I don't. Thank you.

25 CHAIRPERSON HILL: Okay.

1 MR. SULLIVAN: Sure.

2 CHAIRPERSON HILL: Okay. Mr. Sullivan have you been
3 watching today at all?

4 MR. SULLIVAN: I'm sorry. I didn't --

5 CHAIRPERSON HILL: Have you been watching today at all?

6 MR. SULLIVAN: Yes, I have. And last week.

7 CHAIRPERSON HILL: Okay. So there has been -- okay.
8 So there has been -- I wasn't here last week, so, but I have --
9 so you know what's happening.

10 MR. SULLIVAN: Yes, I do.

11 CHAIRPERSON HILL: So there has been a posting
12 situation, and so we're going to have to come back and see you
13 again for a continued hearing on May 12th.

14 MR. SULLIVAN: Okay.

15 CHAIRPERSON HILL: That is when Commissioner May will
16 be back with us. All right. So we're going to go ahead and then
17 put this off, now, until May 12th. And so Mr. Sullivan, have a
18 nice day.

19 MR. SULLIVAN: You, too. Thank you.

20 CHAIRPERSON HILL: All right.

21 MR. SULLIVAN: Thank you.

22 (Whereupon, the above-entitled matter went off the
23 record at 1:33 p.m., to reconvene at 1:34 p.m.)

24 CHAIRPERSON HILL: All right. Mr. Moy, you can call
25 our next case when you have an opportunity.

1 MR. MOY: Thank you, Mr. Chairman. So this would be
2 Case Application No. 20427 of Parcel 47E, LLC, captioned and
3 advertised for special exception from the penthouse use
4 restrictions of Subtitle C, Section 1500.3, and this would permit
5 a restaurant use within the penthouse to proposed 13-story, 353-
6 unit mixed-use apartment building in the D-5 Zone. And this is
7 located at Maryland Avenue, SW, bounded by 12th Street, SW; D
8 Street, SW; 14th Street, SW; and Maryland Avenue, SW, in Square
9 267, Lots 804 and 807.

10 Preliminary matter, there's a request for a waiver of
11 the 21 filing deadline to submit into the record, which, I
12 believe, is attendant to a request for design flexibility because
13 of CFA, and as you know, Mr. Chairman, the -- there's a proffer
14 for expert witnesses of Mr. George Dove and Shane Bettman. Shane
15 Bettman has been granted expert status. And I know Mr. George
16 Dove has, as well. So if it's not in the witness book, I know
17 he has been, but there's no harm in reaffirming his expert status,
18 if you like.

19 CHAIRPERSON HILL: Okay. And Ms. Bloomfield, can you
20 hear me?

21 (No audible response.)

22 CHAIRPERSON HILL: Your muted, I think.

23 MS. BLOOMFIELD: Can you hear me now?

24 CHAIRPERSON HILL: Yes, I can. Thank you. Mr. Moy, I
25 think you might want to mute your line. And then, Ms. Bloomfield,

1 | could you please introduce yourself for the record?

2 | MS. BLOOMFIELD: Can you hear me now?

3 | CHAIRPERSON HILL: Yes.

4 | MS. BLOOMFIELD: Okay. I'm so sorry about that. This
5 | is Jessica Bloomfield with Holland & Knight. George Dove has
6 | previously been qualified as an expert, and we have a couple of
7 | cases, if that's helpful for you.

8 | CHAIRPERSON HILL: Okay. Then I guess, if he's been
9 | qualified before, that's okay, unless the Board has some issues.
10 | I'm trying to -- I don't see Mr. Gutman.

11 | MS. BLOOMFIELD: He's -- we're -- Mr. Gutman is not
12 | here. We decided we didn't need to call him in tonight.

13 | CHAIRPERSON HILL: Okay.

14 | MS. BLOOMFIELD: But thank you for checking.

15 | CHAIRPERSON HILL: Sure. Who do you have with you
16 | today?

17 | MS. BLOOMFIELD: We have a whole team with us, but for
18 | the time being, it's going to be George Dove and either -- I'm
19 | not sure, Holly Hull or Steven Grigg. One of them will be
20 | presenting from the applicant, and George is our architect.

21 | CHAIRPERSON HILL: Okay. I don't see Mr. Dove.

22 | MS. BLOOMFIELD: We are trying to call him.

23 | CHAIRPERSON HILL: Got you.

24 | MS. BLOOMFIELD: But we can --

25 | CHAIRPERSON HILL: Okay.

1 MS. BLOOMFIELD: -- get started in the meantime.

2 CHAIRPERSON HILL: Okay. That's fine. Let me just go
3 around the table real quick. Mr. Grigg, could you introduce
4 yourself for the record?

5 MR. GRIGG: My name is Steven Grigg. I'm president of
6 Republic Properties Corporation.

7 CHAIRPERSON HILL: Okay. Thank you. Ms. Hull, could
8 you introduce yourself for the record, please.

9 MS. HULL: Sure, sir. I'm Holly Hull, and I'm also
10 with Republic Properties and project manager for this project.

11 CHAIRPERSON HILL: Okay. If you guys could both just
12 mute your lines, that would be helpful. So I -- Ms. Bloomfield,
13 I see, like, Mr. Gonzales, Salisbury, Sigte (phonetic) --

14 MS. BLOOMFIELD: They are all from our architectural
15 team just in case there are detailed questions --

16 CHAIRPERSON HILL: Okay.

17 MS. BLOOMFIELD: -- but they won't be planning on
18 speaking unless they need to answer a question.

19 CHAIRPERSON HILL: Okay. So you're asking for a 21-
20 day waiver so that you can ask for design flexibility; is that
21 correct?

22 MS. BLOOMFIELD: Yes. It was filed in response to a
23 specific request from OAG. They asked us about it, because we
24 had made the request in our application and in our pre-hearing
25 submission, and they said, "Can you please file something to the

1 record to clarify the flexibility that you're requesting?"

2 And so when you look at the letter that we filed in
3 response to their request, it, sort of, drafts up the flexibility
4 language that we would propose, and it's all based on whether or
5 not we get additional feedback from the CFA, which, by the way
6 --

7 CHAIRPERSON HILL: Is that going to --

8 MS. BLOOMFIELD: -- we've already -- that's at Exhibit
9 --

10 CHAIRPERSON HILL: Is that at Exhibit 48?

11 MS. BLOOMFIELD: That's at Exhibit 48, yes.

12 CHAIRPERSON HILL: Okay.

13 MS. BLOOMFIELD: We've already met with CFA, and
14 they've given us concept approval, but we need to meet with them
15 one more time. So on the chance that they provide more feedback,
16 we needed -- we were hoping to get relief -- sorry. We're hoping
17 to get flexibility --

18 CHAIRPERSON HILL: Okay.

19 MS. BLOOMFIELD: -- in order to address their final
20 comments.

21 CHAIRPERSON HILL: Okay. And is that what's specified
22 on page 2, 1 a, b, and c?

23 MS. BLOOMFIELD: Just give me one sec. Yes, that's
24 exactly right.

25 CHAIRPERSON HILL: Okay. I don't have any problem

1 allowing this into the record unless one of my fellow Board
2 Members does, and if so, please raise your hand. All right. I
3 don't see anybody raising their hand. So we're going to go ahead
4 and allow this into the record.

5 I guess, Ms. Bloomfield, I'm going to go ahead and let
6 you, please, present to us on how you believe you're meeting the
7 standard for us to grant the relief requested. I'm going to put
8 15 minutes on the clock just so I know where we are. And as you
9 go through this, if you could -- I mean, we always have a little
10 bit of difficulty with, like, minor flexibility, because, like,
11 it's just, kind of, a touchy issue for us, obviously. And so if
12 you want to, kind of, clarify where this flexibility is as you're
13 going through your presentation, that could be helpful. And you
14 can begin whenever you like.

15 MS. BLOOMFIELD: Great. I'm going to do -- I'm going
16 to ask one more preliminary question before I start, if that's
17 okay.

18 CHAIRPERSON HILL: Sure.

19 MS. BLOOMFIELD: We've been listening all day about
20 this notice issue that you've raised. This case was originally
21 scheduled for last week, and at the request of Office of Zoning,
22 we postponed a week. By staff, they actually told us we didn't
23 have to do anything, but we did, we approached the property as
24 soon as we found out. And I also submitted a memo to the case
25 record. So I'm just wondering what exactly your notice issue was

1 and would that apply to us or can we take a vote today if we get
2 to that point?

3 CHAIRPERSON HILL: Unfortunately, what I understand
4 about it -- it's not anything on your side, it's something that
5 --

6 MS. BLOOMFIELD: Absolutely. I understand that, and
7 that's why I'm saying we weren't originally scheduled for today,
8 so maybe it doesn't apply to us.

9 CHAIRPERSON HILL: Well, I don't know. That's an
10 interesting question, I suppose. And I'll let Mr. Moy, kind of,
11 noodle that while this is going on, and I guess, Mr. Moy, if you
12 want to, kind of, see, you know, if the fact that they were
13 actually supposed to be here last week -- and I do appreciate,
14 Ms. Bloomfield, that you guys did move it to this week, 'cause
15 we had a lot of things going on, and unfortunately, whatever is
16 going on right now is outside of my control; however, you're
17 asking a good question. And if you somehow catch a loophole
18 here, good for you. So go ahead and give your presentation.
19 And, Mr. Moy, at the end of this, you can let us know what's
20 going on. Okay. Okay. Great. All right. Ms. Bloomfield.

21 MS. BLOOMFIELD: Thank you. And I think we have a
22 PowerPoint presentation, which, if you don't mind just pulling
23 up the first slide of it. While -- so I'm just going to do a
24 brief summary of the zoning relief being requested, and then I'm
25 going turn it over to representatives from the owner and the

1 architect to go through a short presentation.

2 The application requests a special exception to permit
3 bar and restaurant use in the penthouse of the proposed multi-
4 family residential building located within the overall portals
5 of the redevelopment site. The proposed bar and restaurant use
6 is permitted as a matter of right in the site's underlying zone,
7 but as you know, bar and restaurant use in the penthouse within
8 any zone is permitted only by special exception.

9 The documents that we have already filed in the case
10 record provides evidence as to how the application meets the
11 special exception standard of review, and that the proposed use
12 will be in harmony with the general purpose and intent of the
13 zoning regulations and zoning maps and that the use will not tend
14 to affect, adversely, the use of neighboring properties. For
15 example, as I just mentioned, the use is permitted in the
16 underlying zone and is appropriate for the site's mixed use and
17 high-density neighborhood.

18 The bar and restaurant use is envisioned as an
19 intimate, small space with occupancy for a maximum of 25 people.
20 The bar will be carefully managed so that there are no impacts
21 on the residents of the building itself or on the residents of
22 Portals V, which is the only adjacent residential building, and
23 is also owned the applicant and the development company.

24 CHAIRPERSON HILL: Ms. Bloomfield?

25 MS. BLOOMFIELD: Yes.

1 CHAIRPERSON HILL: Just -- I know that DDOT had some
2 things, like PDM plan again?

3 MS. BLOOMFIELD: I'm getting to it right now,
4 Commissioner --

5 CHAIRPERSON HILL: So --

6 MS. BLOOMFIELD: -- Chairman Hill.

7 CHAIRPERSON HILL: So if you could speak to it, that's
8 all. Thanks.

9 MS. BLOOMFIELD: I was just going to say we're pleased
10 to have support from the Office of Planning. We also have support
11 from DDOT, who recommended a TDM plan, and the applicant agreed
12 to every single one of those items in the TDM plan.

13 CHAIRPERSON HILL: And that's the one in 29 B?

14 MS. BLOOMFIELD: That one -- no. So they actually
15 resubmitted their report. They had some -- they were referencing
16 a different case in the first paragraph which was
17 (indiscernible).

18 CHAIRPERSON HILL: Got it. It's in 47 now?

19 MS. BLOOMFIELD: 47, yes.

20 CHAIRPERSON HILL: Okay. Thank you.

21 MS. BLOOMFIELD: We also have -- in addition to OP and
22 DDOT, we have support from -- concept support from the CFA who
23 voted in February to support the case, and they were very pleased
24 with our design. And that letter is at Exhibit 29 C.

25 We don't have a letter from the ANC. The affected ANC

1 in this case is 6D. That said, we met with the ANC on many
2 occasions, including in December, right after we filed the case,
3 and in January. We met with the single-member district
4 representative. And then in February, we met with the ANC's
5 executive committee twice, and then in March, we presented at the
6 full ANC public meeting. So we did have a good amount of
7 engagement with the ANC, they just have not submitted a letter,
8 and I would leave it, you know, I don't know if they're here
9 today or not, but I would leave it to them to testify on it if
10 they have any issues.

11 With that, I would reiterate our unanimous support from
12 OP, DDOT, and CFA and others. There is evidence in the record
13 that we meet the special exception standard of review. And with
14 that I will turn it over to, I believe, Holly will be giving the
15 presentation.

16 MS. HULL: Thank you. So I'm Holly Hull with Republic
17 Properties on behalf of Parcel 47E, LLC. Just to give you some
18 background, Portal IV is located on a vacant property lot in the
19 northwest portion of the Portal site, and is the final phase of
20 the Portals development. It contains three office buildings, the
21 Mandarin Oriental Hotel, and one other residential building of
22 similar size to what is being proposed.

23 The proposed project is principally a residential
24 building, (indiscernible) rentals, with a programmed rooftop that
25 includes an intimate rooftop bar/lounge offering a unique

1 perspective of our Nation's capital. It would have indoor and
2 outdoor seating and up to 25 seats in total, attracting customers
3 within the Portals complex, including employees of the office
4 buildings, hotel patrons, and residents living in this new
5 Portals IV building, as well as next door at 1331.

6 This lounge is a positive contribution to the Portals
7 community as a desirable amenity for the office, hotel, and
8 residential occupants, and as such, we request approval from this
9 Board for the zoning relief being requesting.

10 And I will turn this over -- I see George has joined
11 us, so I will turn it over to our architect, George Dove. Thank
12 you.

13 MR. DOVE: Thank you. I apologize for the delay. I
14 thought what we'd do -- you're all familiar with where this is.
15 It's the last parcel in the Portals IV development, and it will
16 be a residential building containing about 358 people -- or units.

17 I think we can go from here to the next slide.

18 This is a roof plan looking down on the building. And
19 of course, the main subject of our discussion today is shown --
20 I don't have a pointer, I apologize, but it's the rooftop
21 restaurant/bar on the north leg facing north.

22 Next slide.

23 This is the lowest level of the project at 14th Street.
24 There are two partial levels of residential below the Maryland
25 Avenue Circle, and then 11 stories above that, plus the penthouse,

1 | and the subject restaurant and bar is located in that penthouse
2 | area.

3 | Next slide.

4 | This is the first level below grade, which is at D
5 | Street level, and it contains a small lobby which will serve
6 | access to the bar and restaurant on the penthouse level. You
7 | will be able to enter here and take one of the elevators up to
8 | the rooftop and enjoy the restaurant and bar without limitation.
9 | On this level, of course, is more residential units and some
10 | amenity area.

11 | Next slide.

12 | This is the main level, and at the -- this is at the
13 | Maryland Avenue Circle level, and as you can see, this has our
14 | main lobby area, some residential units and it'd the access to
15 | the rest of the building above grade.

16 | Next slide.

17 | This is a typical floor, it's actually the second
18 | floor. We can run through these quickly.

19 | Next slide.

20 | This is the typical floor -- residential configuration.
21 | There are two courtyards plus the courtyard between this
22 | building, this is Building 4, and the building on the bottom of
23 | the screen, which is Building 5, which was completed about a year
24 | and a half ago.

25 | Next slide.

1 As you see, these levels are relatively similar.

2 Next slide. Next slide. Next slide.

3 Now we're at the main roof. This is the location within
4 the penthouse component of the project that's shown in color
5 (audio interference) square foot bar and restaurant. It has
6 indoor and outdoor seating with a maximum capacity of 25, and
7 it's a 3,500 square foot facility. The rest of that level will
8 be a residential amenity area which is in development at this
9 time.

10 Next slide.

11 This is simply the roof again showing the setbacks, et
12 cetera. Everything that we're doing in the project is in
13 accordance with all zoning ordinances, laws, and zoning setbacks,
14 et cetera.

15 Next slide.

16 And then the bottom is two levels of parking.

17 Next slide. Next slide.

18 Okay. These are just sections that confirm what I've
19 said. Just for your information, the building is exactly the
20 same height as (audio interference) 5 or very close in all
21 instances on purpose. We've tried to treat this building as a
22 sister building to the building 5 building.

23 I will add at this point that we have been to the
24 Commission of Fine Arts and have received, unanimously, the
25 conception design approval, and so we're working towards getting

1 back to them at the appropriate time for final approvals.

2 Next slide, next slide, and next slide.

3 Okay. Just visually, this is the south face of the
4 building. You can see the materiality rise, and at least in
5 tonality and window shapes, et cetera, are very similar to
6 Building 5. We tried to do that on purpose to make these
7 buildings coexistent with the environment.

8 Next slide.

9 This is the north face, and the lighter component
10 that's jutting out there is the base for the subject of this
11 hearing, it's the restaurant, which is shown at the top with the
12 dark windows across that lighter colored projection. And then
13 at the bottom of that tower is the lobby entrance, which is the
14 main access point to that restaurant on D Street. Also -- yeah.
15 That's where the restaurant is.

16 Next slide.

17 This is just the east elevation, which faces the
18 Maryland Avenue Circle.

19 And the last slide, which -- the one on the right is
20 the 14th Street elevation, which, as you see, is very narrow as
21 it approaches 14th Street. The site is a narrow sliver at this
22 point between Building 5 and D Street.

23 Next slide.

24 This is going to give you some three-dimensional views
25 of it. The building in the center is Building 4, and you can

1 see that -- 11 straight stories from the plaza, and then the
2 development of the penthouse is above that. Great views toward
3 downtown, the mall, et cetera. In between the two buildings, as
4 I said before, is a courtyard which has access to 14th Street,
5 as well as the upper levels to the Maryland Avenue Circle.

6 Next slide.

7 And once again, this is the 14th Street view looking
8 to the east, and you can see, about in the middle of the picture,
9 is the bar and restaurant location set on the main roof.

10 Next slide.

11 And this is a ground-level view in that same direction.

12 Next slide.

13 And I think we're finishing up here with the last view
14 of Maryland Avenue looking at Building 3 in the center of your
15 picture. We've taken great care to have this building blend
16 architecturally with Building 3, which is the existing office
17 building to the right, and to relate strongly to Building 5 on
18 the left.

19 Next slide. Actually, I think that's it.

20 No. This is the D Street elevation once again with the
21 lobby at the bottom and the restaurant, you actually can't see
22 because it's set back, at the top.

23 I think that's it. Is there any questions, because I
24 have an answer.

25 MS. BLOOMFIELD: Board Members, that concludes our

1 direct presentation, and our entire team is here to take any
2 questions.

3 CHAIRPERSON HILL: Yes. Ms. Bloomfield, can you hear
4 me?

5 MS. BLOOMFIELD: Yes.

6 CHAIRPERSON HILL: The flexibility in design, where is
7 that or what do you want flexibility for?

8 MS. BLOOMFIELD: It's in Exhibit 48, the (audio
9 interference) that was classified before, which is No. -- on page
10 2, 1 a-c.

11 CHAIRPERSON HILL: Right. But I mean, there's nothing
12 that, kind of, you can point to, right, in the presentation?

13 MS. BLOOMFIELD: Sure. So I can ask George to please
14 point out on the plans, sort of, where the CFA was asking specific
15 items. We also, sort of, described the items that they may be
16 looking for updates in their CFA letter, which is at Exhibit 29
17 C, but George, do you mind just --

18 CHAIRPERSON HILL: That's --

19 MS. BLOOMFIELD: -- pointing it out?

20 CHAIRPERSON HILL: Okay.

21 MR. DOVE: It's primarily with the exact location of
22 the main lobby entrance at the Maryland Avenue Plaza. The
23 Commission had some suggestions on, perhaps, a relocation of that
24 main entrance, and we are looking into that, and we'll be going
25 back to the Commission shortly to see if there's -- they agree

1 with how (indiscernible). But the other changes would be
2 absolutely normal as the design develops (audio interference).

3 MS. BLOOMFIELD: Chairman Hill, if it's helpful, the
4 BZA recently approved very similar flexibility in two cases for
5 CFA review after BZA approval.

6 CHAIRPERSON HILL: That's okay. That's all right. I
7 mean, I'm a little -- and this may be just me, I mean, like, your
8 TDM plan and the things that you're (indiscernible) for CFA, it
9 seems like, you know, it's not necessarily speaking to that
10 penthouse. And the bar you're here for is 25 people, correct?

11 MS. BLOOMFIELD: Correct. Yes.

12 CHAIRPERSON HILL: right.

13 MS. BLOOMFIELD: Everybody wants to weigh in on a
14 project, even though it's unrelated to the relief we're
15 requesting.

16 CHAIRPERSON HILL: That's why it's rare that this has
17 happened where I'm just, like, going, wow, everybody wants a
18 piece of you guys. So --

19 MS. BLOOMFIELD: That's right.

20 CHAIRPERSON HILL: Right. So like, I don't know how
21 you're going to limit it to 25 people. I mean, that's going to
22 be -- what I think's going to be your most interesting trick.

23 So all right. I'm going to let my fellow Board Members
24 ask any particular questions they might have. Commissioner May?

25 COMMISSIONER MAY: Yes. I mean, first of all, when it

1 comes to the flexibility, I don't see any problem with pretty
2 broad flexibility to modify the design in response to CFA, because
3 none of their comments go to the things that are of concern to
4 us when evaluating a rooftop restaurant use. So, you know,
5 whatever is needed there, you know, I think that it can be defined
6 sufficiently broadly to allow that.

7 I think the things that require our consideration when
8 it comes to this kind of use go to, you know, the placement of
9 the restaurant use on the rooftop in relationship to other
10 surrounding uses. And it's pretty clear that what, you know,
11 where you've placed it is where it needs to be. It's away from
12 any of the residences. I can't imagine that anybody over in the
13 Bureau of Engraving and Printing is going to be upset about the
14 restaurant use that's across the street from them. It's just,
15 you know, it's not a concern. Right. So as long as it doesn't
16 move, I think it's okay.

17 The other concern I would have is, you know, the --
18 where the direct entrance is, and as I understand it, there's a
19 direct entrance that allows one to go all the way to the roof
20 from the D Street side? Right?

21 MR. DOVE: Yes, sir.

22 COMMISSIONER MAY: Okay. So -- I, you know, as long
23 as that's still there, I don't see any issues for us.

24 The thing that I find really puzzling about this, and
25 it's -- maybe I don't need to make noise about this, but it seems

1 | like an overreach, but why is DDOT insisting on TDM plan that
2 | has nothing to do with the relief you're asking? And why did
3 | you agree to it because of that? I mean, I think you should have
4 | one as a matter of principle, but why?

5 | MS. BLOOMFIELD: It's a very good question, and we
6 | weren't particularly surprised that they asked for one just
7 | because they like to weigh in on cases even if it's unrelated to
8 | DDOT's purview, specifically in this case. We're providing
9 | enough parking. We're providing some on-street parking --
10 | loading zone -- I mean, there's really no issue.

11 | COMMISSIONER MAY: Right.

12 | MS. BLOOMFIELD: They asked for it, and we said, Let's
13 | agree to it," because we -- honestly, we wanted to get their
14 | support for the application, and by agreeing to it, we could do
15 | that. That's why.

16 | COMMISSIONER MAY: Okay. Well, I think it's a complete
17 | overreach on their part, and I'm not particularly supportive of
18 | including a TDM as a condition on this, because it is not related
19 | to the relief that you're seeking --

20 | MS. BLOOMFIELD: We agree with you.

21 | COMMISSIONER MAY: -- just as a matter of principle.
22 | Yeah. Okay. But we're not in deliberation, so we'll take it up
23 | another time whenever we're going to get to deliberation. Thank
24 | you.

25 | CHAIRPERSON HILL: All right, Commissioner May. Mr.

1 Smith, do you have any questions?

2 BOARD MEMBER SMITH: I don't have any questions.

3 CHAIRPERSON HILL: Vice Chair John, do you have any
4 questions?

5 VICE CHAIR JOHN: No, I have no questions. I believe
6 that my questions were covered in the discussion of the minor
7 flexibility in addition.

8 CHAIRPERSON HILL: Mr. Blake, do you have any
9 questions?

10 BOARD MEMBER BLAKE: I do not, thank you.

11 CHAIRPERSON HILL: Can I turn to the Office of Planning,
12 please.

13 MR. KIRSCHENBAUM: Good afternoon, Chair Hill, Members
14 of -- and Members of the Board of Zoning Adjustment. Jonathan
15 Kirschenbaum with the Office of Planning. We recommend approval
16 of the special exception to permit the penthouse rooftop bar and
17 restaurant. We rest on the record. Thank you.

18 CHAIRPERSON HILL: Okay. Mr. May do you have any
19 questions for the Office of Planning?

20 COMMISSIONER MAY: No.

21 CHAIRPERSON HILL: Mr. Smith, do you have any questions
22 for the Office of Planning?

23 BOARD MEMBER SMITH: No.

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

1 VICE CHAIR JOHN: No questions.

2 CHAIRPERSON HILL: Mr. Blake?

3 BOARD MEMBER BLAKE: No.

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

6 MS. BLOOMFIELD: No, thank you.

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

9 MR. YOUNG: We do not.

10 CHAIRPERSON HILL: Okay. Let me see here where we are.
11 Okay. Mr. Moy, are you there?

12 MR. MOY: I'm here.

13 CHAIRPERSON HILL: Did you find out anything about
14 whether we have to now -- the notice requirements and that they're
15 on our side and that we're going to have to move this to a further
16 date?

17 MR. MOY: Yeah. My quick answer to Ms. Bloomfield's
18 question is that I cannot schedule the next day any earlier than
19 May 12th because of the time requirements provision for a public
20 notice in the ANC Act. And as she knows, as a statute, the Board
21 doesn't have the authority to waive those time requirements. If
22 she chooses to have more of a conversation, I'm more than willing
23 to discuss that with her after this hearing rather than taking
24 up the time -- the Board's time.

25 CHAIRPERSON HILL: Okay. Well, Ms. Bloomfield. I'm

1 | sorry. I wish I could change that, but I haven't been able to
2 | do it yet, and this has been a long discussion that we've had
3 | over the past couple weeks. So you're welcome to go ahead and
4 | reach out to Mr. Moy if you'd like further clarification, but
5 | there's nothing I can do. I'd love to be able to deliberate on
6 | this now, but I'm unable to do so.

7 | The only question I have, because I was curious of it,
8 | is that plaza right now from Maryland Avenue out to 14th Street?
9 | That's not open now, right? It's just a parking lot.

10 | Mr. Dove, you're trying to speak. You're on mute.

11 | (No audible response.)

12 | CHAIRPERSON HILL: That's all right. Ms. Bloomfield,
13 | do you know, 'cause I --

14 | MR. GRIGG: This is Steve Grigg. It is just a parking
15 | lot, and there is a 20-some foot difference between Maryland
16 | Avenue Circle and the 14th Street and D intersection.

17 | CHAIRPERSON HILL: Yes. Because the Mandarin Oriental
18 | is just going to love you guys when it finally happens, I'm sure,
19 | meaning in a good way.

20 | So alright. Ms. Bloomfield, do you have anything you'd
21 | like to add at the end?

22 | MS. BLOOMFIELD: No. We would just thank the Board for
23 | their consideration, and it's too bad that we can't get a vote
24 | today. I just want to just state it one more time. We weren't
25 | originally scheduled for today, so the notice may be different.

1 I just wanted to make sure that Mr. Moy checked on that -- that
2 specific item.

3 CHAIRPERSON HILL: I appreciate that. I understand.
4 And I'll ask Mr. Moy -- I'll follow up after this to make sure
5 that there's not a little glitch in some capacity to deal with
6 it.

7 MS. BLOOMFIELD: Yes.

8 CHAIRPERSON HILL: And if so, we'll get you on sooner,
9 but if not, we'll see you, then, on May 12th for a continued
10 hearing. Right. You still have to show up. Okay.

11 MS. BLOOMFIELD: Thank you.

12 CHAIRPERSON HILL: All right. But just you have to
13 show up. I don't think I need your whole team or anything like
14 that. Right. All right. Mr. Moy, you got anything else for
15 me?

16 MR. MOY: Not on this case, sir.

17 CHAIRPERSON HILL: Okay. All right. We're going to
18 excuse everybody and see you on May 12th.

19 (Whereupon, the above-entitled matter went off the
20 record at 2:01 p.m., and reconvened at 2:04 p.m.)

21 CHAIRPERSON HILL: Okay. Give me one moment, please.

22 (Pause.)

23 CHAIRPERSON HILL: Okay. Right. I have to take my
24 notes at the end. You guys get to, kind of, take your notes as
25 you're going along, but I won't remember what's going on May

1 12th. Although, Mr. May, I'll let you go ahead and take on the
2 DDOT discussion if you want to remember that when we're having
3 that. You're on mute, Mr. May.

4 COMMISSIONER MAY: You know, I should have probably
5 said this, but I wouldn't mind actually hearing from DDOT about
6 why they think it's necessary, because I think it's an overreach,
7 and I don't get it.

8 CHAIRPERSON HILL: Okay. So you want to hear from
9 DDOT?

10 COMMISSIONER MAY: Yes. I would like to hear from
11 DDOT.

12 CHAIRPERSON HILL: Okay. Mr. Moy, can you do that?

13 COMMISSIONER MAY: (Audio interference.)

14 CHAIRPERSON HILL: He's putting his thumb up.

15 COMMISSIONER MAY: (Audio interference.)

16 CHAIRPERSON HILL: He's putting his thumb up, and I'm
17 sure the applicant is still listening. So Mr. Moy, if you could
18 just ask DDOT -- I guess Mr. -- Commissioner May is asking what,
19 Commissioner?

20 COMMISSIONER MAY: Why is a TDM Plan relevant to this
21 rooftop use? That's the only thing that we're granting the
22 special exception for. I don't see anything in the conditions
23 for granting that special exception that relate to travel demand
24 management, and it's just -- you know, the fact that they need a
25 special exception doesn't open the door for DDOT to throw

1 everything that they want at a project. That's just not the way
2 it works.

3 CHAIRPERSON HILL: Okay. All right. So --

4 COMMISSIONER MAY: Again, I'm for TDM plans. I love
5 TDM plans. So --

6 CHAIRPERSON HILL: Okay.

7 COMMISSIONER MAY: But --

8 CHAIRPERSON HILL: So Mr. Moy, you ask DDOT for
9 something, and then please let the applicant know that they will
10 have an opportunity to respond before that date, whatever those
11 dates are. Okay.

12 MR. MOY: Yes, sir, I'll take care of it.

13 CHAIRPERSON HILL: Okay. All right. Okay. So you can
14 call our next one when you get a chance, Mr. Moy.

15 MR. MOY: all right. The next case before the Board
16 is Application No. 20429 of -- I was going to say "madman," but
17 it's actually MADM Development, LLC. This is captioned and
18 advertised -- this is amended from special exception from the
19 penthouse setback requirements, Subtitle C, Section 1502, rear
20 addition requirements, Subtitle E, Section 205.4, height
21 restrictions, Subtitle E, Section 503.2. Originally, there was
22 area variance from the rear yard, but that has been dropped or
23 eliminated by the applicant, and we ask the applicant to confirm
24 that for us. This would construct a new three-story flat in the
25 RF-3/PDR-5 Zone. Yes. And this is located at premises 411 New

1 Jersey Avenue, SE, Square 693, Lot 96.

2 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
3 Mr. Sullivan, could you please introduce yourself?

4 MR. SULLIVAN: Yes, thank you, Mr. Chair and Members
5 of the Board. My name is Mary Sullivan with Sullivan and Barros
6 on behalf of the applicant.

7 CHAIRPERSON HILL: Okay. Mr. Sullivan, can you clarify
8 the relief that you're dropping, and then also what you're
9 requesting, and is what Mr. Moy read correct?

10 MR. SULLIVAN: Yes. So we're dropping the variance
11 relief for the rear yard setback.

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: So it's all special exception.

14 CHAIRPERSON HILL: Got it. So -- okay. I'll go ahead
15 and let you give your presentation, Mr. Sullivan, and speak,
16 again, to how you're meeting the standard and criteria for us to
17 grant the relief requested. I've got 15 minutes on the clock,
18 there, and you can begin whenever you like.

19 MR. SULLIVAN: Thank you, Mr. Chair. And also we have
20 the architect with us. So I will start the presentation, and
21 turn it over to the architect.

22 CHAIRPERSON HILL: Great. When the architect starts
23 speaking, because I've just lost you on the screen, could you
24 just please introduce yourself for the record. Thank you.

25 All right, Mr. Sullivan. Whenever you're ready.

1 MR. SULLIVAN: Thank you, Mr. Chair, Members of the
2 Board. Again, Marty Sullivan with Sullivan and Barros on behalf
3 of the applicant. This is 411 New Jersey Avenue, SE. This is
4 new construction on a vacant lot. It's going to be two single-
5 families on a single record lot, so it's technically a flat. And
6 it -- so each building cannot be converted to flats themselves.
7 They will remain as single-family dwellings, so -- on separate
8 tax log.

9 Next slide, please.

10 The relief, the current relief, again, the variance was
11 removed when the plans were amended. And that was filed two days
12 ago. The property is -- it's split zone, but there's only a
13 small portion that's in the PDR-5 and --

14 CHAIRPERSON HILL: And Mr. Sullivan?

15 MR. SULLIVAN: -- and the (audio interference) in the
16 RF-3. Yes.

17 CHAIRPERSON HILL: Mr. Sullivan? If you wouldn't mind,
18 if you can, kind of, just show how you -- when you're going
19 through this, how you went from the variance to the special
20 exception. I mean, I reviewed this when it was more, kind of, a
21 variance stuff. So if you could point that out, that would be
22 helpful. Thank you.

23 MR. SULLIVAN: Sure. And it didn't -- we didn't change
24 to a special exception. We need the special exception for the
25 10-foot rule, and that itself has not changed, but we also -- we

1 | were violating the rear yard setback, and so the plans we've
2 | submitted now assume that we would receive a minor deviation
3 | determination from the Zoning Administrator, which we have
4 | requested. And so it would be --

5 | CHAIRPERSON HILL: Is that for the one and a half --

6 | MR. SULLIVAN: -- similar to that.

7 | CHAIRPERSON HILL: Is that for the one and a half feet,
8 | or whatever it is?

9 | MR. SULLIVAN: Yeah. So now it's just -- we're just
10 | asking for one foot from the Zoning Administrator. So we're not
11 | asking for the variance. So we just --

12 | CHAIRPERSON HILL: Thank you.

13 | MR. SULLIVAN: We removed the variance and didn't --
14 | it didn't change to anything else.

15 | CHAIRPERSON HILL: It didn't change the design, though?

16 | MR. SULLIVAN: Yeah. No, it -- we had to shrink the
17 | building, I think, about a foot --

18 | CHAIRPERSON HILL: Right. Okay.

19 | MR. SULLIVAN: -- because the variance request wasn't
20 | much to begin with.

21 | CHAIRPERSON HILL: That's what I wanted to know.

22 | MR. SULLIVAN: The architect, you know, the architect
23 | will go through all that.

24 | CHAIRPERSON HILL: Okay. That would be great. Perfect.
25 | Thank you.

1 MR. SULLIVAN: Okay. Thank you. So we do have support
2 from the ANC, unanimous support. And from -- now we have the
3 support of the Office of Planning. They were recommending denial
4 for the variance but supporting the special exception request.
5 The Architect of the Capitol submitted a report with no
6 objections, and we also have in the file reports -- positive
7 reports from Commission of Fine Arts and from HPRB, as well as
8 from DDOT.

9 I'll note there is a letter in the file from Capitol
10 Hill Restoration Society. It's noted as a letter in opposition,
11 but if you look at the text, they voted in support of the special
12 exception. Their problem was with the variance request.

13 Next slide, please.

14 And I will turn it over to the architect.

15 MR. DZIERZANOWSKI: Good afternoon, Members of the
16 Board. My name is Mateusz Dzierzanowski. I work at DZ
17 Architecture for the architectural team on behalf of the
18 applicant, and I will, kind of, just take you through the full
19 scope of the project.

20 So next slide, please.

21 So this is an existing vacant lot. It's a corner lot
22 condition, and adjacent to us, you can see in the picture in the
23 top left, here, we have the existing street scape, which was a
24 big part in the overall design of the project. As you can see,
25 we are dealing with both the CFA and HPRB on this project. This

1 had started, you know, almost, like, two years ago. It's been a
2 year and a half that we've really worked through a very
3 challenging and scrutinized design process.

4 Next slide, please.

5 There's some additional photographs here. Again, these
6 just speak to the overall character, which varies quite a bit
7 from the actual street scape along New Jersey Ave versus the
8 alley that the property itself backs up along. Again, some of
9 the pictures in the body of this page highlight some of the
10 challenges, again, being adjacent to, like, commercial loading
11 docks, some unique alley lot structures, as well as the railroad
12 tracks that we sit adjacent to.

13 Next slide, please.

14 And this is just some additional photographs of the
15 neighborhood.

16 Next slide, please.

17 And some details of the characteristics of that
18 neighborhood.

19 So next slide, please.

20 So what's dashed out in red here is the overall lot.
21 The main thing I want to point out here is we are dealing with
22 very unique lot circumstances, not to mention the fact that there
23 was a split among zone districts. Most of the zone for PDR-5 is
24 to the rear of the property and not actually impacted or affecting
25 any of the proposed physical parts of the design.

1 Next slide, please.

2 So the area in blue, again, re-highlights the lot with
3 an overlay of what the existing conditions currently are, and
4 again, just some of the challenges that had to be dealt with,
5 the unique shape to the actual lot itself, some of the changes
6 in grade and existing landscape that's all to be modified. And
7 all done with the thought in mind that when we approached this
8 project, there was, kind of, a previous attempt at getting
9 something approved by -- another proposal getting approved, which
10 never really made its way out of the Commission of Fine Arts. So
11 we had some the questions about certain things that were and were
12 not successful, but were also a strong driver in so many decisions
13 that had to be made which do lead to some of the reliefs we are
14 requesting.

15 Next slide, please.

16 So this is just, again, a high level look at the
17 streetscape and an outline of what became the overall proposal,
18 giving you a quick sense of the, kind of, high level massing that
19 was proposed.

20 Next slide, please.

21 In addition to this, many different diagrams and
22 approaches were taken to the scale, massing rhythm, and some of
23 those other elements that play more to the requirements of, again,
24 the CFA and HPRB.

25 Next slide, please.

1 And here's an overall look at the site. So again, the
2 proposal for a two-family flat, the line, kind of, bisecting the
3 overall footprint that's shown there is showing the separation
4 of the intended flats. This site plan and sitework here shown
5 is, again, how we intend to provide landscape, hardscape
6 patterning, and then accommodate just some of the additional
7 functional program that's needed at the back of the site, such
8 as parking, patio areas, and accommodating the adjacent,
9 neighboring building.

10 Next slide, please.

11 And this is, kind of, the overall proposal. And the
12 big interpretation about this was to really match the
13 characteristics of the street. And then the diagram to the upper
14 right suggests how we looked at the overall massing along the
15 street block, which really represented the historical character.
16 And then everything at the rear of the property that was
17 representative of a harsher, more industrial landscape, we
18 interpreted to a more modern interpretation, with, again, the
19 continuation of that residential proposal.

20 Next slide, please.

21 So again, this is an overall front elevation of the
22 streetscape and what we're proposing.

23 Next slide.

24 Both front and rear elevations being shown again. The
25 property drops in grade as we make our way along to the rear.

1 You can, again, just see how we're doing what we can to match
2 the majority of those characteristics coming down the street.

3 Next slide, please.

4 And the overall side elevation. And this really gives
5 a firm breakdown of where the more traditional and Victorianist
6 aspect architect starts and stops, and then where the modern
7 interpretation of the rest of the residence continues.

8 Next slide, please.

9 And so we'll, kind of, just quickly go through these,
10 but what we have here are all the proposed floor plans that,
11 again, they relate to the residential program. This, again,
12 being the cellar plan.

13 But I'll have to go the next slide, please.

14 In the first-floor plan, you can see to the, again, the
15 right of the plan the individual entry points to both of the
16 flats. Again, the array of residential programs throughout the
17 building, locations, virtual -- excuse me, vertical circulation,
18 as well as other residential programs.

19 Next slide, please.

20 The proposed second-floor plan.

21 Next slide, please.

22 And the proposed third-floor plan.

23 And if you can go to the next slide, please.

24 It's just going to overlook the roof plan. So I'm just
25 going to look at a high level on the roof plan. One thing that,

1 kind of -- just to note is we've taken a very rigorous effort to
2 providing something that's more retro-linear, again, along the
3 front portion, or the right portion of the plan. That really
4 helps to address and cater to a lot of the requests and the style,
5 again, something more traditional. I think we went back and
6 forth with both historic agencies.

7 And then as you go to the back, again, the angled
8 approach and the cantering of the design, it really continues to
9 cater to the overall parameters of this site. Again, we have
10 these sharp corners that we did our best, again, to make sure we
11 can properly allocate square footage to both flats while taking
12 advantage of what it was that the site was offering.

13 Next slide, please.

14 So again, these would be a couple of views -- street
15 views of the overall proposal.

16 Next slide, please.

17 And again, you could see a front elevation matching
18 most of the characteristics found along the street. We have an
19 aerial view kind of highlighting the overall massing of the
20 structure.

21 Next slide, please.

22 And then, again, some side views and rear-view
23 renderings of the overall proposal.

24 Next slide, please.

25 And this is just equipment (indiscernible).

1 Next slide, please.

2 So the first form of relief that relates to building
3 height, again, the largest driver of this was CFA and HPRB. We're
4 doing everything we can to match what we believe the adjacent
5 roof heights are, again, more from the historical precedent that
6 we're given along the streetscape. So this was the main driver
7 and requirement for the relief from building height -- maximum
8 building height. And what's highlighted in pink just shows you
9 the minimal variation that is that we are requesting and seeking.

10 Next slide, please.

11 This, again, the relief here going back from the 10-
12 foot rule with regards to rear-yard setback. So one thing I want
13 to speak to a little bit about this, again, the area highlighted
14 in pink shows the extent of the property -- or the proposal that
15 goes beyond that 10-foot mark. But just to be clear, you can
16 see how much more -- in the plan how much more of our building,
17 that's highlighted in blue, actually approaches the property
18 line. So one thing we were really, really mindful of was trying
19 to maintain almost a 1:1 angled point of encroachment from the
20 outer flat versus the (indiscernible) flat away from our
21 neighboring property. Again, this just helped to, kind of,
22 justify that we would really be unimpactful to our neighbors.
23 Again, the neighboring building here is the Congressional Black
24 Caucus Institute. So we've been in conversation with them
25 constantly throughout the project. They've been in support of

1 our efforts, and we've been, kind of, transparent about the full
2 scope of the work. So again, this -- that area highlighting and
3 showing the extent of that relief. And again, none of that is
4 going beyond the overall allowed lot coverage to the overall
5 site. So we've done everything we could to manage that envelope.

6 Next slide, please.

7 And then this last one with relief, again, the area
8 highlighted in pink just shows the relief that we're seeking in
9 relation to the 1:1 setback rule. This, kind of, came in a
10 directive, again, from CFA and HPRB where if we were to build a
11 perimeter of this to extend those walls as parapet walls, it
12 would make the overall rear massing feel a lot taller and heavier
13 than it needed to be, especially since grade slopes downward to
14 the back of the property. So by, again, providing railings, it
15 allows us to shorten the overall appearance of the building,
16 provide a little bit more transparency at that upper level, and
17 then actually provide and give back usable space along that area
18 which is intended to be, kind of, a roof deck, roof garden program
19 for that residential flat.

20 Next slide, please.

21 And then, so it was asked, again, and we just went
22 ahead and made sure we provided shadow studies that would really
23 highlight and make clear of any potential impact on the site.

24 And if you go to the next slide, please.

25 Based on the orientation of the site, you know, it's

1 pretty clear that all the shade and shadowing is going to occur
2 or extend beyond, like, the railroad tracks and the portions of
3 the lot sitting north of us, which are, again, all vacant. Areas
4 and items that are highlighted here or outlined, they just show
5 the difference in shading/shadowing that would occur if we were
6 to build within the allowances of that 10-foot rear yard setback
7 rule or to the full extent that we are proposing. So again, no
8 impact on our immediate adjacent neighbor to the south of us.

9 Next slide, please.

10 And again, this is just the same analysis where you can
11 see the areas highlighted in red not being, again, accompanied
12 with shade and shadow and, again, not providing any additional
13 impact to the neighboring project.

14 Next slide. That might be it.

15 Marty, I'll kick it back to you.

16 MR. SULLIVAN: Thank you, Mateusz. I'll take the Board
17 though the special exception criteria, the general special
18 exception criteria for all three areas of relief. Granting the
19 relief will be in harmony with the purpose and intent of the
20 zoning regulations and zoning maps.

21 The use, itself, of course, if permitted as a matter
22 right. It's a two-unit dwelling. The requested relief was
23 contemplated, of course, by the Zoning Commission and enumerated
24 in the 2016 Zoning Regulations, and the degree of relief for each
25 item is relatively small, and the relief is related to design

1 considerations which will keep the proposed building in character
2 with the surrounding buildings. As noted, we have the support
3 of the various design review agencies.

4 Granting the relief will not tend to affect, adversely,
5 the use of neighboring property. The rear addition is designed
6 to mitigate any potential undue impacts on light and air.

7 Shadow studies show and demonstrate no impact on the
8 adjoining property to the south, which is, I believe, used as an
9 office space. And the relief for the height being requested to
10 match the height of the adjacent building.

11 Next slide, please.

12 So the specific criteria for 10-foot rule relief, light
13 and air available to neighborhood properties shall not be unduly
14 affected. You saw from the shadow studies that this building and
15 the addition is to the north of the only adjacent building, there
16 are no south-facing windows, so privacy is not impaired, and the
17 proposed addition and accessory structure, as viewed from the
18 street, alley, and other public way, does not substantially
19 visually intrude upon character, scale, and pattern.

20 The design, of course, is agreed and conceptually
21 approved by both HPRB and CFA and the Office of the Architect of
22 the Capitol, as well. And the additional building length will
23 not impact the view from New Jersey Avenue, nor will it
24 substantially visually intrude upon the character, scale, and
25 pattern of houses along New Jersey Avenue.

1 Next slide, please.

2 Regarding the height, the criteria are the same. It's
3 an additional six inches of height, and for that reason it also
4 does not impact negatively on light and air, privacy or character,
5 scale, and pattern.

6 Next slide, please.

7 Regarding the railing setbacks, this is a function of
8 design requirements. The second story deck -- not requirements,
9 but preferences -- is only 240 square feet and requiring a 1:1
10 setback for all railings would have reduced this area to 100
11 square feet. And with regard to the choice for railings versus
12 a parapet, the railings were the preferred option for both CFA
13 and HPRB, and the architect can answer any questions about that.
14 And this was also driven by trying to remove the appearance of a
15 taller proposed mass or structure, which would be the case with
16 a parapet.

17 And then the intent and purpose of the chapter and
18 title shall be not be materially impaired by the structure, light
19 and air, and everything you've heard so far bears that out, as
20 well.

21 Next slide, please.

22 And that's it for our presentation. So any questions?
23 Thank you.

24 CHAIRPERSON HILL: I said thank you, Mr. Sullivan.
25 Does the Board have any questions for the applicant? Mr. May?

1 COMMISSIONER MAY: Yes. Just quick. I mean, first of
2 all, I'm glad that rear-yard relief is no longer needed, because
3 that would have been a hard case to make. But the CFA review
4 that was completed, that was done-- that's just a concept
5 approval, and it was done February of last year; is that right,
6 of has there be something subsequent?

7 MR. DZIERZANOWSKI: So we have also received CFA permit
8 approval. The project itself has also started the permit filing
9 process. The final remaining comments that we're currently in
10 the dealings with the CFA are just being handled in correspondence
11 directly with the CFA. So there have been comment requests for
12 aesthetic details and things to that scale and nature, and then
13 obviously, any of the changes that are a part of the ripple effect
14 of removing that requested variance have been coordinated with
15 them, as well.

16 COMMISSIONER MAY: Okay. And so when you say, "With
17 CFA," I assume you're meaning with the CFA staff, as opposed to
18 further Commission involvement?

19 MR. DZIERZANOWSKI: Correct. Correct. CFA staff.
20 Right.

21 COMMISSIONER MAY: So does that mean you actually did
22 get a final approval letter from them?

23 MR. DZIERZANOWSKI: Yes, we have a final approval
24 letter. We went back and received our approval from, again,
25 their permit approval. We've already had a hearing. And then

1 | they still defer to staff on any final lingering comments through
2 | the permit review process.

3 | COMMISSIONER MAY: Okay. And when was that permit --
4 | when was that permit approval, as you call it -- I don't -- I
5 | deal with the CFA all the time.

6 | MR. SZIERANOWSKI: Sure.

7 | COMMISSIONER MAY: So I've never heard of them issuing
8 | a permit approval, but I don't -- I deal with a different process.

9 | MR. DZIERZANOWSKI: Sure. And let me -- if you bear
10 | with me one moment, I'll just pull up that date.

11 | COMMISSIONER MAY: Well, maybe -- I mean, is this
12 | something you already submitted in the record and I missed it,
13 | because I thought I saw something. I thought it was just a
14 | concept approval.

15 | MR. DZIERZANOWSKI: So we've got -- it was definitely
16 | submitted a concept approval to the record. Sorry. Bear with
17 | me here.

18 | MR. SULLIVAN: I don't think -- we don't have a hard
19 | copy of that approval. So we haven't submitted that. I think
20 | what we submitted was the -- was just that Exhibit 12 or 13.

21 | COMMISSIONER MAY: Okay. So if there was a Commission
22 | meeting at which they granted a final approval and delegated the
23 | details to staff, then there would be a record of that, and you
24 | can download it off of their website. And I think it's probably
25 | good to have that in our record, as well.

1 MR. DZIERZANOWSKI: Understood.

2 COMMISSIONER MAY: So -- and I think, you know, since
3 we won't be -- are we going to be deliberating on this one, Mr.
4 Chairman?

5 CHAIRPERSON HILL: (Shakes head negatively.)

6 COMMISSIONER MAY: No. We're not going to deliberate
7 on this one, either. So there will be time for you to submit
8 that to the record before we deliberate, whenever that is, and
9 that's just cleaning it up. If you do not have that approval,
10 then I would be very concerned about the changes that could come,
11 because the makeup of the Commission of Fine Arts has changed
12 significantly since last February, and it may be you'd wind up
13 with making a lot of changes.

14 MR. DZIERZANOWSKI: So even -- and again, we've had a
15 track record, now, in correspondence with them. We definitely
16 want to avoid significant changes or trigger any re-review.

17 COMMISSIONER MAY: Yes.

18 MR. DZIERZANOWSKI: So this has come up, and I think,
19 everything has a solution for it, but we will get the additional
20 correspondence and documents for the record.

21 COMMISSIONER MAY: Yes. If it's -- yes. Whatever you
22 can -- you know, their final approval letter, I think, for the
23 record, would be sufficient. Thank you.

24 MR. DZIERZANOWSKI: Excellent. Thank you.

25 COMMISSIONER MAY: I think that's -- I don't think I

1 have any other questions. So thank you.

2 CHAIRPERSON HILL: Mr. Smith? Do you have any
3 questions?

4 BOARD MEMBER SMITH: I don't have any questions.

5 CHAIRPERSON HILL: Vice Chair John, do you have
6 questions?

7 VICE CHAIR JOHN: Yes. My question is about the length
8 of the rear addition, and did I understand that that was
9 shortened, because in the record, it seems that the original
10 length was 11.8 inches, and it still says 11.8 inches. So in
11 effect, you'd be asking for 1.8 foot relief?

12 MR. DZIERZANOWSKI: No. So, it was --

13 VICE CHAIR JOHN: That's for the (indiscernible).
14 Sorry. Sorry.

15 MR. DZIERZANOWSKI: Sorry. Yeah. So it was shortened,
16 and we made sure that with the respective, like a diagramming and
17 the deviation from the 10-foot rule was adjusted accordingly. So
18 previously, the proposal overall when we had the rear yard
19 variance that we were seeking, we were seeking that, again, 1
20 feet, 10 inches in relief. Now we are just pursuing, again, a
21 deviation of 1 foot back. So the updated amount that's shown in
22 the diagram, as well as the updated documents for what the
23 deviation is from the 10-foot rule is current and accurate.

24 VICE CHAIR JOHN: Okay. And what is it -- does that
25 end look like --

1 MR. DZIERANOWSKI: Sure.

2 VICE CHAIR JOHN: -- just to keep the record clear?

3 MR. DZIERANOWSKI: Sure. Absolutely. It would be --
4 I just want to make sure that we get the slide right here.

5 MR. SULLIVAN: It should be in Exhibit 42, 42 A was a
6 plat, and then 42 B are the updated plans.

7 COMMISSIONER MAY: 42 B, page 25.

8 VICE CHAIR JOHN: Thank you.

9 CHAIRPERSON HILL: Okay. Mr. Blake, do you have any
10 questions?

11 BOARD MEMBER BLAKE: I do not have any questions.

12 CHAIRPERSON HILL: Okay. Can I turn to the Office of
13 Planning, please.

14 MS. MYERS: Hello. Crystal Myers with the Office of
15 Planning. The Office of Planning is in approval of this project
16 now. It was originally, when we split it out of court, we also
17 included that we were in -- recommended denial of the variance
18 relief for the rear yard, but that is no longer part of the
19 project. So we have always been in support of the special
20 exception relief. We did issue a second report -- a supplemental
21 report as a correction of the rear extension. So to be fair, we
22 are in support of the 21-foot, 8 inch rear extension, but I
23 understand that since that report was issued, it has been reduced
24 further, so down to 21 feet, and of course, we're in support of
25 that. So, you know, Office of Planning can stand on the record

1 that we're in support of the project.

2 CHAIRPERSON HILL: Okay. Does anybody have any
3 questions for the Office of Planning? Commissioner May?

4 (No audible response.)

5 CHAIRPERSON HILL: No. Mr. Smith?

6 (No audible response.)

7 CHAIRPERSON HILL: No. Vice Chair John?

8 (No audible response.)

9 CHAIRPERSON HILL: No. Mr. Blake?

10 (No audible response.)

11 CHAIRPERSON HILL: No. Does the applicant have any
12 questions for the Office of Planning?

13 (No audible response.)

14 CHAIRPERSON HILL: Okay. Hey, Mr. Sullivan, can you
15 explain that thing that you were telling me? You're going to
16 ask the ZA for what, again?

17 MR. SULLIVAN: Minor deviation request for rear yard.
18 We can ask for up to a foot, and there are certain standards for
19 that that are included in the zoning regulations. And so he does
20 an analysis according to those criteria in the zoning regulations
21 that allow him to grant that relief, which is up to 10 percent
22 but no more than one foot.

23 CHAIRPERSON HILL: Right. So --

24 MR. SULLIVAN: So it would be a 19-foot roof.

25 CHAIRPERSON HILL: -- (audio interference) roof. It's

1 up to a foot?

2 MR. SULLIVAN: Right.

3 CHAIRPERSON HILL: It's not a foot, there's a
4 percentage in there.

5 MR. SULLIVAN: Well, yeah. Well, the percentage would
6 be 2 feet, in this case, because it's a 20-foot rear yard. So
7 we get 5 percent, essentially, effectively, because it's capped
8 at the one foot regardless of the percentage, yeah.

9 CHAIRPERSON HILL: Got it. Okay. Okay. That's
10 interesting. Thank you. All right. Mr. Young, is there anyone
11 here wishing to testify?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. All right. So Mr. Sullivan,
14 I guess if you could go ahead and get that CFA final approval
15 letter put into the file. When do you think you could do that?

16 MR. DZIEAZNOWSKI: We'll look for it today and try to
17 get it uploaded today.

18 CHAIRPERSON HILL: Okay. Then I'm not going to bother
19 giving you a deadline for it, Mr. Sullivan. That's what I'm
20 trying to say. And then we will be back before you -- again, I
21 just can't do anything about this, on May 12th. And so, you
22 know, everybody's here on May 12th. What I told everyone, Mr.
23 Sullivan, is I'm going to try to do them first. So, you know,
24 anything that we have this discrepancy with, I'm going to do it
25 at the beginning. Okay. Okay.

1 MR. SULLIVAN: Great. I don't mean to be flippant, but
2 we can't all go first.

3 CHAIRPERSON HILL: Right. That's right. Believe me,
4 "first" means, you know, you guys are ahead of all the other
5 business. Right. That's what I mean by "first." All right.
6 Okay. All right.

7 Let's see. Then we'll see you all on May 12th. Thank
8 you. And actually, before you go, Mr. Sullivan, Mr. Moy, if we
9 can and when we try to do this, let's try to at least group people
10 together if they actually are together, right. So if Mr. Sullivan
11 has a bunch of cases, let's do that, et cetera, so forth, and so
12 -- okay. All right.

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON HILL: Okay. Thank you all very much.
15 Bye-bye.

16 (Whereupon, the above-entitled matter went off the
17 record at 2:31 p.m., and reconvened at 2:32 p.m.)

18 Okay. All right. Now, we've got one more, and give
19 me one second, please.

20 All right, Mr. Moy, you can call us whenever you want,
21 the last one.

22 MR. MOY: All right. Thank you, Mr. Chairman. Okay.
23 This one is -- has had -- this application has had some recent
24 movement. It was originally filed as a modification of
25 consequence, shifted to modification of significance, and now the

1 applicant has amended the application for a special exception.

2 So what is before the Board is Case Application No.
3 18238A, as "alpha," of the Eighth Street LLC, and this application
4 was amended for special exception from the use restriction to
5 Subtitle U, Section 513.1(d). And this would continue a fast
6 food establishment use whose term limit will expire on August the
7 1st, 2021. And this -- if I haven't said so, this is in the MU-
8 25 Zone. And let's see. This is premises 413 8th Street, SE,
9 Square 902, Lot 828.

10 And the preliminary matters, Mr. Chairman, is that
11 there are three persons requesting party status, and one person
12 asking for party status is also asking to waive the 14-day filing
13 requirement to include her PowerPoint if her party status is
14 granted.

15 CHAIRPERSON HILL: Okay. Okay. Give me one moment,
16 please.

17 (Pause.)

18 Okay. Let's see what I got. So I'm looking for the
19 applicant. Okay. Mr. Porter --

20 MR. PORTER: Yes, sir.

21 CHAIRPERSON HILL: -- could you introduce yourself for
22 the record, please.

23 MR. PORTER: Yes, sir. Sam Porter from the law firm
24 of Ice Miller on behalf of the applicant.

25 CHAIRPERSON HILL: Okay. And Mr. Porter, who is with

1 | you today?

2 | MR. PORTER: Yes, sir. We have -- I'm not sure if he's
3 | on the line right now, but Guy Silverman, who is the owner of
4 | the property of Eighth Street, LLC. I believe he's trying to
5 | dial in. We have Matt France, who is the Director of Development
6 | in NE, of Chipotle on the line, who is the tenant, and Daniel
7 | Morris of Red Architecture and Planning.

8 | CHAIRPERSON HILL: Okay. Okay. Great. All right.
9 | Let's see now. So first I got, I guess in terms of there are
10 | people who wanted party status in opposition. The first is Ms.
11 | Young. Can you hear me?

12 | MS. YOUNG: Yes, I can.

13 | CHAIRPERSON HILL: Okay. Ms. Young, could you please
14 | introduce yourself for the record?

15 | MS. YOUNG: I'm Linda Young. I reside at 706 E Street,
16 | SE, which is in the block of Chipotle.

17 | CHAIRPERSON HILL: Okay. Ms. Young, can you tell us
18 | why you think you qualify as someone who should get party status?

19 | MS. YOUNG: I live within the 250 feet of Chipotle, and
20 | the rats who eat at Chipotle disperse from that point across all
21 | the block. And so I'm directly impacted by the action here.

22 | CHAIRPERSON HILL: Okay. All right. Let's see then,
23 | that's Ms. Young. And is it Ms. -- and I apologize, I don't know
24 | how to pronounce it -- Szafran?

25 | MS. SZAFRAN: Szafran.

1 CHAIRPERSON HILL: Szafran. Okay. Ms. Szafran, could
2 you introduce yourself for the record, please.

3 MS. SZAFRAN: My name Katherine Szafran. I reside at
4 704 E Street, SE, and I am also located in the same square as
5 the applicant.

6 CHAIRPERSON HILL: Okay. And what are your issues, Ms.
7 Szafran?

8 MS. SZAFRAN: This block has had a history of rodents
9 eating at the restaurants which has had a significant impact on
10 neighboring properties, including mine.

11 CHAIRPERSON HILL: Okay. All right. All right. And
12 then there's Mr. -- or Ms. West, is that person here?

13 MS. ELLIOTT: Yes. Yes. There is John West, who is
14 my husband. I'm Linda Elliott. Can you hear me?

15 CHAIRPERSON HILL: I can. I can't see you. Okay. I
16 got you.

17 MS. ELLIOTT: Right. So this -- we have both applied
18 for party status --

19 CHAIRPERSON HILL: Got it.

20 MS. ELLIOTT: -- and he's on, I'm on.

21 CHAIRPERSON HILL: Okay. And you're applying for party
22 status as a proponent, correct?

23 MS. ELLIOTT: I am, but let me explain that, in fact
24 -- and I'm sure Katherine Szafran and Linda Young will agree with
25 this. We also have two community members who've asked to testify

1 | who should be on and able to hear at this point, Kirk Beatley
2 | and Ritu Upadhyay. We are all -- it's a little confusing, but
3 | we are all in support of the applicant's amended request -- his
4 | first request, which is for a 10-year extension on the condition
5 | of certain -- 8 conditions and -- which (audio interference)
6 | conceptual drawing, that those be incorporated in the Board
7 | order. If that's the case, we are all supporting their
8 | application; however, if it's not the case, then we think this
9 | will have a very adverse affect on our property, as it's had for
10 | the last decade, the operation of the fast food. And so because
11 | there was no way for us to sign up, one of us signed up in support
12 | -- two of us signed up in support, and two of us signed up
13 | opposed. We're really supporting in a very qualified way. But
14 | if --

15 | CHAIRPERSON HILL: Okay.

16 | MS. ELLIOTT: -- the applicant entirely agrees to do
17 | that and is happy to do, which we think is wonderful.

18 | CHAIRPERSON HILL: Okay. Okay. All right. So --
19 | well, this is very interesting. So --

20 | MS. ELLIOTT: Yes.

21 | CHAIRPERSON HILL: -- Ms. Elliott, I got you. So Ms.
22 | Elliott, first of all, you're requesting party status. Can you
23 | tell us why you think you qualify for party status?

24 | MS. ELLIOTT: Yes. My husband and I are both requesting
25 | party status, because our property, which is our only -- our

1 largest asset and the only property we own, touches the property
2 at 415 (audio interference) Chipotle is operating.

3 CHAIRPERSON HILL: Right. Right. Okay. So I got it.

4 MS. ELLIOTT: 413, I'm sorry.

5 CHAIRPERSON HILL: I got it. So okay. So just so you
6 guys know what happens now, you all have asked for party status,
7 and so there is a -- there's a standard in the regulation that
8 we look at as to whether or not we can grant party status, and
9 that is why are you uniquely qualified and why is this affecting
10 you in a different manner than the rest of the people in the area
11 or your ANC. And it doesn't matter, necessarily, whether you are
12 or not within the 200 feet.

13 And if everybody could just mute their line unless
14 you're speaking. I'm sorry.

15 And then -- so that's why we're here at this point.
16 Ms. Elliott, to your talking about the conditions, I guess a lot
17 of the things that happen during the hearing -- and I know you
18 guys don't do this every day -- is that we, the Board, are able
19 to accept and determine conditions on the applicant, again, based
20 on the standards and the regulations, if we think it is going
21 to, you know, affect, adversely, the neighborhood or different
22 things that we might look at. So we can't, necessarily, accept
23 all conditions that people want to accept. I'm just, kind of,
24 throwing that out.

25 So I'm going to turn to my Board Members. Okay. And

1 we're going to deliberate the party status real quick. All right.
2 So if you all could just bear with me and mute your lines, because
3 I'm not taking any testimony right now. I can't see any of your
4 faces. So just bear with me. I'm trying to talk to my fellow
5 Board Members.

6 So I've looked at the request for party status. To me,
7 I think that Ms. Elliott and Mr. West, being abutting property
8 owners, have shown a significant -- I believe they should get
9 party status, okay, because I think they are uniquely affected.
10 I think Ms. Young and Ms. Szafran, they're not -- I wouldn't be
11 in favor of them obtaining party status, because I think just
12 because you're in the block, doesn't necessarily mean that you
13 should get party status, and also, you know, the things that
14 they're, like, I don't know for sure that it's Chipotle's rats
15 that are the problem. I mean, there's all kinds of food up and
16 down that block. But I'm giving you my impression. You all can
17 just say it. So I guess it actually still seems okay, because
18 this group is going to be represented by Ms. Elliott, and we can
19 see what happens with what they're talking about. So that's my
20 thoughts.

21 I'm going to go around the table again. So my thoughts
22 would be to deny Ms. Young and Ms. Szafran and to approve Ms.
23 Elliott and Mr. West.

24 I'm going to turn the Commissioner May.

25 COMMISSIONER MAY: So I had the impression that Ms.

1 Szafran and Ms. Young were actually very close, not necessarily
2 just on the block, but that they were in immediate proximity.
3 And maybe if we could get a little bit more clarity. I mean,
4 within 250 feet, which is what she said, even 200 feet, that's
5 not an automatic qualifier in my mind, but it's not a huge block.
6 I don't know how far away they actually are. So if I could get
7 clarity about how, you know, how many properties away they are.

8 CHAIRPERSON HILL: Okay. Ms. Young, can you hear me,
9 please?

10 MS. YOUNG: Yes, I can.

11 CHAIRPERSON HILL: How many properties away are you
12 from the Chipotle?

13 MS. YOUNG: I would say three, but any neighbor, if you
14 think that's wrong, please speak up. I think I'm three properties
15 away.

16 CHAIRPERSON HILL: Okay.

17 COMMISSIONER MAY: Thank you.

18 CHAIRPERSON HILL: Ms. Szafran, I apologize if I'm not
19 pronouncing your name correctly.

20 MS. SZAFRAN: That's quite all right. So I count also
21 three, though I am, technically, one property further than Linda
22 Young. She is next to a property that is next to the property
23 that abuts Chipotle. It is, as was noted, a very small square,
24 and it's sort of unique in that it doesn't have an alley. So
25 we're all clustered together, the backs of our properties quite

1 | closely.

2 | CHAIRPERSON HILL: Okay. How do you pronounce your
3 | name, then?

4 | MS. SZAFRAN: It's Szafran, as if the "Z" was and "H."

5 | CHAIRPERSON HILL: As if the what?

6 | MS. SZAFRAN: If the "Z" were an "H," then it would
7 | make a lot more sense.

8 | CHAIRPERSON HILL: Szafran. Okay.

9 | MS. SZAFRAN: Yes.

10 | CHAIRPERSON HILL: Great. Thank you.

11 | MS. ELLIOTT: Commissioner Hill?

12 | CHAIRPERSON HILL: Yes, Ms. Elliott.

13 | MS. ELLIOTT: Yeah. I'm sorry to do this, because I
14 | know I don't have a picture yet, so I can't raise my hand. The
15 | one thing I forgot is we worked on these rat issues for almost
16 | 18 years, and I've spent a lot of time with Gerard Brown, who's
17 | the head of rodent control for the Department of Health, and also
18 | Dr. Lewis, who's the head of the Department of Health, and Robert
19 | Corrigan who's their specialist. And it's pretty well known that
20 | rats will nest over 200 feet from where they eat. And so that's
21 | why, on this block, this square -- no, I'm serious.

22 | CHAIRPERSON HILL: Well, that's not fair. You can see
23 | me smiling, but I can't see you smiling, Ms. Elliott?

24 | MS. ELLIOTT: Right. You can't see me smiling back.
25 | That's --

1 CHAIRPERSON HILL: Just give me a second. I got it.
2 I got it. Let me --

3 MS. ELLIOTT: Okay.

4 CHAIRPERSON HILL: I'll get back to you. All right.
5 I think is all going to work --

6 MS. ELLIOTT: Okay.

7 CHAIRPERSON HILL: I think this is all going to work
8 out.

9 MS. ELLIOTT: Okay.

10 CHAIRPERSON HILL: Just let me get through this part
11 of this, okay. So Mr. May, did you get your questions answered?

12 COMMISSIONER MAY: Well, sort of. I think I pieced it
13 together. It, yeah. And again, it is odd that there's no alley
14 there. Yeah. I mean, 704 is almost as far away from Chipotle
15 as you can get within that block, but it's still pretty close.
16 So -- and it's the sort of thing where, you know, if we were
17 talking about, you know, impacts of light and air and things like
18 that, it would be one thing, or impacts associated with parking
19 or something like that which affects people broadly, but I have
20 to believe that everybody on this square is potential affected
21 by a rat problem within the square. So I'm leaning in favor of
22 party status for the two parties in opposition. Leaning --

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER MAY: I haven't decided, but leaning.

25 CHAIRPERSON HILL: Okay. That's fine. So you're -- I

1 know where you are now. Okay. So then Mr. Smith, do you have
2 any questions or where are you?

3 BOARD MEMBER SMITH: I don't have any questions. So
4 the purpose of -- well, one of the measurements that we use in
5 granting party status, as Mr. May stated, is to determine if a
6 requestor is more significantly, distinctly, or uniquely affected
7 in character or common by the proposed relief than those of the
8 public.

9 So I do agree that Ms. Young, you know she is directly
10 abutting the rear of the Chipotle, is directly affected. I'm
11 with you, Mr. -- with you Chairman Hill in that I think, and I
12 understand your concerns of the community. I do believe that we
13 can't pinpoint where the rats are coming from, if they're directly
14 as a result of the Chipotle being there, there's a Popeye's on
15 this street, there's an A&P also on this street, and by my
16 measurement, it looks like -- let's see the Popeye's is about 200
17 feet -- no, let's see, 170 feet away from the back of our -- of
18 the Chipotle. So I don't believe that -- I do believe that this
19 question about rats is a little bit more general to the entire
20 public in that square. So I wouldn't be in favor of party status
21 for Ms. Szafran and Elliot and West.

22 CHAIRPERSON HILL: Okay. All right. So then Ms. John,
23 where are you?

24 VICE CHAIR JOHN: Thanks, Mr. Chairman. I'm with Mr.
25 Smith, because just looking at the building maps myself and being

1 somewhat of a rodent expert, there's construction right next to
2 the Chipotle. And as many of us know, construction, you know,
3 does have an impact on the rats trying to find a new habitat.
4 And there's also, I believe, a Ted's Bulletin somewhere there and
5 a Yes! Market. So who knows where these rats are coming from.

6 So -- but as to who is more uniquely affected, I would
7 -- I think that the two abutting -- not abutting, but two
8 neighbors in the closest proximity, semi-abutting, at 414 7th
9 Street, SE, could adequately represent the rodent issue that's
10 affecting the neighbors in this court.

11 CHAIRPERSON HILL: Okay.

12 VICE CHAIR JOHN: I would grant them status.

13 CHAIRPERSON HILL: Okay. I got you. Mr. Blake, do you
14 have an opinion?

15 BOARD MEMBER BLAKE: Yes. I'll agree with what you,
16 Chairman, you outlined, as well as Mr. Smith and Ms. John.

17 CHAIRPERSON HILL: Okay. So I'm going to make a motion
18 to deny party status of Ms. Young and Ms. Szafran, although they
19 can testify during the public portion of the hearing, and then
20 approve party status for Ms. Elliott and Mr. West and ask for a
21 second, Ms. John.

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Mr. Moy, the motion is made and
24 seconded. Please take a roll call.

25 (No audible response.)

1 CHAIRPERSON HILL: Mr. Moy, you're on mute. You're not
2 there.

3 MR. MOY: Yeah, I'm here. Sorry. I have to fumble
4 with my fingers over the keys. Okay. So when I call your name,
5 if you would please respond with a yes, no, or abstain to the
6 motion made by Chairman Hill to grant party status to Ms. Elliott
7 and --

8 CHAIRPERSON HILL: Mr. West.

9 MR. MOY: -- Mr. West and to deny party status to Linda
10 Young and Katherine Szafran. Okay. A motion --

11 (Crosstalk.)

12 CHAIRPERSON HILL: Somebody's raising their hand.
13 First of all, Mr. Moy -- I'm sorry, Mr. -- Ms. John had a hand
14 up also as -- I thought she had her hand up. Okay. Commissioner
15 May, you have your hand up?

16 COMMISSIONER MAY: Sorry. I should have done this
17 earlier, but I would like to suggest that we vote separately on
18 the party in support and the party in opposition, because I'm in
19 support of the one party who is a proponent, and I -- well, I'm
20 actually in support of all of them, but I'm going to vote against
21 the motion --

22 CHAIRPERSON HILL: I got you. I got you, Commissioner.
23 I know, you want to get your no vote in. Okay. I'm with you.

24 COMMISSIONER MAY: Yes.

25 CHAIRPERSON HILL: So do you want to go ahead and make

1 | it -- do you want to make -- no. You won't have a second. So
2 | I'm going to --

3 | COMMISSIONER MAY: You need to withdraw your motion.

4 | CHAIRPERSON HILL: Okay. Sorry. I now, technically,
5 | withdraw my motion. I'd like to make a new motion, and that
6 | motion would be to deny party status to Ms. Young and Ms. Szafran,
7 | although they can participate in the public hearing section of
8 | the hearing, and ask for a second, Ms. John.

9 | VICE CHAIR JOHN: Second.

10 | CHAIRPERSON HILL: That motion, Mr. Moy, has been made
11 | and seconded. Could you please take a roll call vote?

12 | MR. MOY: Okay. Just a second, Mr. Chairman. Okay.

13 | When I call your name, if you would please respond with
14 | a yes, no, or abstain from the motion made by Chairman Hill to
15 | deny the request for party status of Linda Young and Katherine
16 | Szafran. The motion was seconded by Vice Chair John.

17 | Mr. Smith?

18 | BOARD MEMBER SMITH: Yes to the motion.

19 | MR. MOY: All right. Mr. Blake?

20 | BOARD MEMBER BLAKE: Yes, (audio interference).

21 | MR. MOY: Vice Chair John?

22 | VICE CHAIR JOHN: Yes, and yes to seconding, because I
23 | don't believe I did second it. I seconded the first one, but to
24 | keep the record clear, I did, constructively, second the second
25 | motion.

1 MR. MOY: Yeah, I got it. Thank you. Chairman Hill?

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: Zoning Commissioner Peter May?

4 COMMISSIONER MAY: No.

5 CHAIRPERSON HILL: All right. So now I'm going to make
6 a motion to -- I'm sorry.

7 MR. MOY: Staff --

8 CHAIRPERSON HILL: Go ahead, Mr. Moy.

9 MR. MOY: Staff would record the vote as 4-1-0, and
10 this is on the motion of Chairman Hill to deny request for party
11 status to Ms. Young and Ms. Szafran. The motion carries to deny.

12 CHAIRPERSON HILL: Okay. So Ms. Szafran and Ms. Young,
13 we'll see you later at the public hearing testimony portion, but
14 I'm going to excuse you for now. Thank you very much.

15 I'm going to make another motion now to approve the
16 party status of Ms. Elliott and Mr. West and ask for a second,
17 Ms. John.

18 VICE CHAIR JOHN: Second.

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

21 MR. MOY: All right. If -- well, we're already there.

22 When I call your name, if you would please respond with
23 a yes, no, or abstain for the motion made by Chairman Hill to
24 grant the request for party status to Elliott and West. It says,
25 "Szafran," and the motion was seconded by Vice Chair John.

1 The Zoning Commissioner Peter May?

2 COMMISSIONER MAY: Yes.

3 MR. MOY: Mr. Blake?

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Mr. Smith?

6 BOARD MEMBER SMITH: Yes.

7 MR. MOY: Vice Chair John?

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: Staff would record the vote as 5-0-0, and
12 this is on the motion of Chairman Hill to grant, seconded by Vice
13 Chair John. Also in support of that motion is Mr. Smith, Mr.
14 Blake, and Zoning Commissioner Peter May. The motion carries 5-
15 0-0.

16 CHAIRPERSON HILL: Okay. Great. Perfect. All right.
17 Ms. Elliott fantastic. I can see you. How are you doing?

18 MS. ELLIOTT: Fine.

19 CHAIRPERSON HILL: You had something you'd like to ask?

20 MS. ELLIOTT: Yeah. I would -- is it possible to allow
21 my husband, one of the people you just granted party status, on
22 to the meeting? He can't -- okay. Thank you. Great.

23 CHAIRPERSON HILL: I can see him. Mr. West, can you
24 hear me?

25 MR. WEST: I can hear you. I've heard you all along,

1 but I haven't been able to get my picture up there until now.

2 CHAIRPERSON HILL: I'm sorry. Can you -- if you can
3 turn on your camera, it's helpful, but if you can't, that's fine.

4 MR. WEST: Yes. Okay. I'll work on that.

5 CHAIRPERSON HILL: Okay. Can you introduce yourself
6 for the record, please.

7 MR. WEST: Yes. I'm John West, and I live at 414 7th
8 Street, SE.

9 CHAIRPERSON HILL: Okay. Great. We see you now. Thank
10 you.

11 Let's see. So Mr. West, would you mind muting your
12 line for a second, because I'm just getting, kind of, a feedback
13 there.

14 And Ms. Elliott, since I had talked to you earlier, you
15 said there was a list of conditions that you guys had, kind of,
16 talked about; is that correct?

17 (No audible response.)

18 CHAIRPERSON HILL: You're on mute, Ms. Elliott.

19 MS. ELLIOTT: There we go. Let me explain a little
20 bit. We have worked through this situation before the BZA
21 previously, and (audio interference) historic different places.
22 We have (audio interference) worked very closely with the
23 applicant and with the tenant, and the neighbors included every
24 single residential neighbor on the block and seven commercial
25 property owners represented by Ms. Young, Ms. Szafran, myself,

1 my husband, and then various other neighbors who came to various
2 meetings. We worked with the applicant to come up with a set of
3 conditions that would mitigate the ongoing rodent issues at 413
4 and 415 over the past eight and a half years that Chipotle's been
5 in operation. And those --

6 CHAIRPERSON HILL: Okay. Do us a --

7 MS. ELLIOTT: Let me just tell you where the conditions
8 -- okay.

9 CHAIRPERSON HILL: Thank you. Do you have a list of
10 them somewhere? Is that what you were trying to get on the
11 record?

12 MS. ELLIOTT: No. It's in the record already. It's
13 -- they are in the record in several places. They are attached
14 to the applicant's (audio interference) Exhibit 25, as well as
15 attached to the memorandum from the (audio interference)
16 neighbors which was BZA Exhibit 36. They are attached both --
17 to both --

18 CHAIRPERSON HILL: Okay.

19 MS. ELLIOTT: -- of those documents as Exhibits 1 and
20 Exhibits 2.

21 CHAIRPERSON HILL: Okay. Great. Perfect. Thank you.
22 So Ms. Elliott, how this is going to work now -- I'm just trying
23 to find out whether or not you have these things somewhere we
24 can look at. So how this is going to work now, the applicant
25 will get to present their case as to why they believe they have

1 met the standard and we should be granting the relief. Right.
2 And you will have an opportunity to ask questions of the applicant
3 now that you have been the party status person -- you've been
4 granted party status. Okay.

5 Normally, you guys would be one person. You're not
6 supposed to have -- there's not supposed to be two individuals.
7 Right. You could be one applicant, and you'd be sitting next to
8 each other and asking questions. I can't do that, because you're
9 found in two places. So I'll try to work through that. Right.
10 But you have an opportunity -- and you might not have any
11 questions, because it sounds like what you're trying to get (audio
12 interference) conditions. Right. But you have a chance to --

13 If everybody could mute. Can we mute everybody? Just
14 mute yourselves.

15 Thanks, Ms. Elliot. And I want you to have a chance
16 to respond. So you will have an opportunity to ask questions of
17 the applicant. You might not have any questions, because your
18 presentation will come after they give their presentation.
19 That's when you might talk about all these conditions and
20 everything you have going on, and we would have an opportunity
21 to hear about those conditions and whether we think they are
22 something that we also agree with. Right. So I'm just, kind
23 of, giving you the steps. Right.

24 Then the applicant will be able to ask you questions,
25 okay, based on your testimony. But it sounds like there's not

1 going to be a lot of questions. It sounds like everybody's, kind
2 of, on the same page already. That's why I'm trying work through
3 this, and that's why I thought that Ms. Young and Ms. Szafran
4 were actually okay with how this was all going to shake out.

5 So then the Office of Planning is going to speak.
6 You'll get to ask questions of the Office of Planning. The
7 applicant asks questions. Testimony -- public testimony.
8 Everybody gets to talk to everybody. Then the applicant will get
9 any rebuttal, and they'll get the last conclusion. Okay. So
10 that's how this all happens. I'm just explaining everything.

11 All right. So now, Mr. Porter -- okay.

12 Ms. Elliott? Do you have a question?

13 (No audible response.)

14 CHAIRPERSON HILL: You're still on mute again, Ms.
15 Elliott.

16 MS. ELLIOT: All right. Here we go. I have one
17 question, and I'm sorry it's the way the procedural stuff has
18 sorted out. Ms. Young, who we assumed, given the way the affect
19 rats have and how -- you know, all that stuff. We thought that
20 there would not be too much problem with party status, especially
21 since she's worked closely with Chipotle. She had a set of slides
22 that are largely pictures I have taken over the last decade, just
23 a sampling, like a handful, that she was going to show. We
24 understand -- we've worked closely with Chipotle. They preferred
25 that we not show the slides since they've agreed to fix the

1 | problem, but I would like to have them available in case the
2 | Board feels like it needs independent justification for what
3 | Chipotle's agreed to do.

4 | CHAIRPERSON HILL: Okay.

5 | MS. ELLIOTT: So --

6 | CHAIRPERSON HILL: Okay. Let's do this. Let's get
7 | through this, and if we need pictures of rats, we'll get a call.
8 | Okay.

9 | MS. ELLIOTT: Okay. Great.

10 | CHAIRPERSON HILL: Okay. I'm going to put you on mute,
11 | and almost to, kind of, being a little fun, because I live in as
12 | -- I live above retail. I live above a pizza place. And my
13 | backyard is just full of all kinds of fun things. So, you know,
14 | I understand everything that's going on. Okay.

15 | All right. Mr. Porter, are you there?

16 | MR. PORTER: Yes, sir. Can you hear me?

17 | CHAIRPERSON HILL: Okay. Yes. All right. So Mr.
18 | Porter, you're representing this applicant, correct?

19 | MR. PORTER: That's correct, sir.

20 | CHAIRPERSON HILL: Okay. So if you could walk us
21 | through the application and speak to the standard as to how you
22 | believe we should grant the relief requested. I'm going to put
23 | 15 minutes on the clock, there, just so I know where I am, and
24 | you can begin whenever you like.

25 | MR. PORTER: Sure. Thank you. Members of the Board,

1 Chairperson Hill, thank you for your time today to present on
2 behalf of the applicant, 8th Street, LLC, and the tenant, Chipotle
3 Mexican Grill. Chipotle's been in operation at this location for
4 almost nine years. The lease between the applicant and Chipotle
5 is set to expire soon, and the applicant is requesting a renewal
6 of the previously approved special exception for a fast-food
7 restaurant that was granted about 10 years ago. With your
8 approval, Chipotle and the applicant will then seek to extend
9 their lease at this location.

10 Chipotle is proud to be a good steward of this
11 community, and they've been fortunate to be able to stay open
12 during the pandemic in a safe and responsible way, and they've
13 been able to provide steady employment to its employees and
14 additional healthy food options to those who live in the area.

15 Sir and Member of the Board, this application meets the
16 elements of renewed standards for a special exception specified
17 in Subtitle 10, Section 901, and Subtitle 10, Section 1002, for
18 a fast-food restaurant at this location.

19 Each element of these ordinances are addressed in
20 Exhibit 43 in the BZA record. For the sake of brevity of today,
21 I will let the record speak to each of those elements that are
22 addressed, unless the Board would like me to walk through each
23 one of them.

24 CHAIRPERSON HILL: Mr. Porter, you can go ahead and
25 just be brief about it, if you wouldn't mind.

1 MR. PORTER: Sure. Thank you, sir. As -- relief may
2 be granted as a special exception by the Board of Zoning
3 Adjustment to the development standards and regulations where,
4 in the judgment of the Board, the special exception will be in
5 harmony with the general purpose and intent of the MU Zone, the
6 zoning regulations and zoning maps, under Section G 1200.4 and X
7 10 -- or 901.2. Here the applicant, Chipotle, will adhere to
8 the provisions being in harmony with the general purposes and
9 intent of MU Zone and the zoning regulations and zoning maps.

10 Under sub-paragraph B, the special exception will not
11 tend to adversely affect the use of the neighboring property in
12 accordance with the zoning regulations and zoning maps. Here the
13 applicant and the tenant, Chipotle Mexican Grill, will give its
14 vision. The applicant and the tenant have diligently worked with
15 ANC and members of the neighborhood to resolve -- to address and
16 resolve concerns related to rodent control and sound mitigation
17 for the property.

18 Under sub-paragraph C, is subject in each case to any
19 applicable special conditions specified in that chapter. And
20 sir, and Members of the Board, compliance for this section and
21 applicable special conditions is further demonstrated under
22 Section U 513.1 for this special exception. Under this section,
23 it requires that the following uses are permitted as a special
24 exception if approved by the BZA under Subtitle 10, Chapter 9,
25 subject to the provisions of Section -- Subsection D. This is

1 for a fast-food restaurant.

2 Under D-1, if the use is a single tenant as a detached
3 building, here the tenant, Chipotle Mexican Grill is a single
4 tenant at this location, although the building is not detached

5 Under D-1(a), no part of the lot which the use is
6 located shall be within 25 feet of an R, RF, or RA Zone. Here
7 no part of the lot in which the tenant occupies is located within
8 25 feet of an R, an RF, or an RA Zone.

9 Under Sub-paragraph B, if any lot -- if the lot line
10 abuts and alley containing the Zoning District boundary line for
11 the residential zone district, a brick wall, I believe six feet,
12 12 foot-inches thick, shall be constructed. Here the site does
13 not fully abut an alley of any sort. The rear yard is fence
14 enclosed and abuts other rear yards.

15 B-2, any refuse dumpster used by the establishment
16 should be housed in a three-sided enclosure, equal height to the
17 dumpster, which is greater. Here the tenant is requesting to
18 replace the existing outdoor trash and recycling shed with a
19 dedicated trash recycling walk-in cooler. It will --

20 CHAIRPERSON HILL: Mr. Porter? Mr. Porter?

21 MR. PORTER: Yes, sir,

22 CHAIRPERSON HILL: I am not thinking about -- I'm sorry,
23 because I do want to get to some other things. I see in the
24 record all of the regulations that you're speaking to, and so I'm
25 --

1 MR. PORTER: Yes, sir.

2 CHAIRPERSON HILL: -- comfortable with what you're
3 resting on. In terms of the ANC conditions, did your client
4 agree to those conditions?

5 MR. PORTER: Yes, sir, they did. We worked closely
6 with ANC and the neighbors of the community to address their
7 concerns that they had related to rodent control and noise
8 mitigation. At this particular location, there is no alley.
9 There is a presence of rodents to not only the neighbors, but to
10 Chipotle, as well. And so it's a definite (audio interference).

11 CHAIRPERSON HILL: Mr. Portman, I'm sorry. Mr.
12 Portman, there's a lot of -- I don't even know, necessarily, if
13 I agree with all of the conditions are in the Board's purview,
14 but you -- your applicant has agreed with all of the conditions
15 from the ANC in Exhibit 31; is that correct?

16 MR. PORTER: Yes, sir.

17 CHAIRPERSON HILL: Okay, because they got, like, you
18 know, one through eight, it looks like, and they're pretty
19 detailed. So -- but again, the applicant has agreed to all of
20 these, correct?

21 MR. PORTER: That is correct.

22 CHAIRPERSON HILL: Okay. All right. Like, I didn't
23 even know what a rat run is. Okay. So I'm going to -- these
24 are very interesting conditions that I'm going to look up later.
25 So alright. Let's see. All right. That was that one. Then

1 | the -- these neighbors' conditions, do you know -- can you speak
2 | to those a little bit?

3 | MR. PORTER: Can you be more specific in your question.
4 | I apologize.

5 | CHAIRPERSON HILL: That's all right. And we'll get to
6 | it, I guess, from Ms. Porter -- I'm sorry, Ms. Elliott. And then
7 | that's okay. I don't have any questions for you. I'm just trying
8 | to run through this a little bit. Are you pretty much done, sir?

9 | MR. PORTER: I am. And at the Board's pleasure, we
10 | have designs if you want to see what this new trash enclosure
11 | looks like. We have our architect on the line. But that's only
12 | if you -- the designs --

13 | CHAIRPERSON HILL: Okay.

14 | MR. PORTER: -- are in the record, but it's only if you
15 | have questions and want to see it.

16 | CHAIRPERSON HILL: I got you. Okay. All right.
17 | Commissioner May, do you have any questions for Mr. Porter?

18 | COMMISSIONER MAY: No.

19 | CHAIRPERSON HILL: All right.

20 | COMMISSIONER MAY: No, I do not.

21 | CHAIRPERSON HILL: Mr. Smith, do you have any
22 | questioned for Mr. Porter?

23 | BOARD MEMBER SMITH: No questions.

24 | CHAIRPERSON HILL: Vice Chair John, do you have any
25 | questions for Mr. Porter?

1 VICE CHAIR JOHN: No questions.

2 CHAIRPERSON HILL: Mr. Blake, do you have any questions
3 for Mr. Porter?

4 BOARD MEMBER BLAKE: No, I don't.

5 CHAIRPERSON HILL: Ms. Elliott, do you have any
6 questions for Mr. Porter?

7 (No audible response.)

8 CHAIRPERSON HILL: No. You're shaking your head no.
9 Mr. West, do you have any questions for Mr. Porter?

10 (No audible response.)

11 CHAIRPERSON HILL: You can shake your head no. Shaking
12 your head no. Okay.

13 Mr. France, could you introduce yourself for the
14 record, please.

15 (No audible response.)

16 CHAIRPERSON HILL: You're on mute, Mr. France.

17 (No audible response.)

18 CHAIRPERSON HILL: You're still on mute.

19 MR. FRANCE: That better?

20 CHAIRPERSON HILL: Yes. Go ahead, sir.

21 MR. FRANCE: Okay.

22 CHAIRPERSON HILL: Okay.

23 MR. FRANCE: Sorry. I had two phones going. My name's
24 Matthew France. I am the Director of Development for Chipotle
25 Mexican Grill. For this reason, I was actually part of the

1 original approval where we went through this about eight and a
2 half years ago.

3 CHAIRPERSON HILL: I was not here, right, Mr. France?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. That's okay. All right. So
6 -- okay. Thank you, Mr. France. So Ms. Elliott --

7 Mr. France, if you could mute your line, please for me,
8 thank you.

9 Ms. Elliot, you can -- just a second. Mr. Porter?

10 MR. FRANCE: I have lost -- I can't hear you.

11 CHAIRPERSON HILL: All right. Can you hear us? Can
12 you hear us now?

13 MR. FRANCE: Let me try to dial in again.

14 CHAIRPERSON HILL: Try to mute your line if you can't
15 hear us. I can write it -- mute. You have to (audio
16 interference).

17 Okay. Ms. Elliott, can you hear me?

18 MS. ELLIOT: I can.

19 CHAIRPERSON HILL: Okay. Sorry. Hold on. Mr. Porter
20 has (audio interference). Mr. Porter, what was your question?

21 MR. PORTER: Yes, sir. I'm sorry. There was something
22 that I wanted to add with regards to the length of an extension
23 here. Is now an appropriate time for me to share that with the
24 Board?

25 CHAIRPERSON HILL: Sure, go ahead.

1 MR. PORTER: Okay. Thank you. I apologize. So the
2 applicant and the tenant are asking for this special exception
3 for a fast-food restaurant to be extended for 12 years instead
4 of 10 years. The reason being is the applicant seeks an
5 additional two years in order for the tenant to realize the full
6 use of the initial BZA special exception to its location. Here
7 the tenant moved into the location about a year and a half after
8 the special exception was granted in July of 2011. So the
9 additional two years will allow the tenant's lease, which is 10
10 years, to run with the end of the current special exception.

11 CHAIRPERSON HILL: Okay. Mr. Porter. I got you.
12 You're trying to match up the leases.

13 MR. PORTER: Yes, sir.

14 CHAIRPERSON HILL: All right.

15 MR. PORTER: And one other thing, sir, if I may, another
16 thing that we're asking for which we understand is unique, and
17 it's more of a contract law we're asking this Board to apply,
18 but we're asking for an option within one of your orders for an
19 extension of 10 years after the expiration of the 12.

20 CHAIRPERSON HILL: Okay. That's okay. Yes. That's
21 okay. We can get to that. I've never done that before. So Mr.
22 France, if you could mute your line for me.

23 MR. FRANCE: I'm sorry. I got disconnected, and I
24 wasn't sure if you were asking me additional questions, because
25 of my (indiscernible).

1 CHAIRPERSON HILL: No. Just go ahead and mute your
2 line. Okay. Thank you. All right.

3 Ms. Elliott, can you hear me?

4 MS. ELLIOTT: I can.

5 CHAIRPERSON HILL: Okay. Why don't you go ahead and
6 give us your presentation, and, you know, speak to the conditions
7 that you're speaking of. Okay.

8 MS. ELLIOTT: Yes. First of all, let me clarify, and
9 Matt France can speak to this, as well. The conditions that
10 Chipotle is asking for are the same conditions that the neighbors
11 are asking for are the same conditions that the BZA said they
12 would vote for approval if those conditions were met. The --
13 and those conditions -- there are eight conditions. They are
14 detailed, but they are with -- not without precedent for the BZA
15 to grant. They were modeled on conditions that the BZA granted
16 in the *Ann Pizza* case, which is No. 18770. It is a case that
17 the Board granted the full conditions. They were, actually, more
18 detailed than in this case. Those were conditions which Allison
19 Cruz (phonetic) from Ballston (phonetic) Store, who appears in
20 front of the Board regularly, helped word in a way that the Board
21 would find acceptable. Those conditions were granted in an order
22 in 2014 in part in response to the ongoing problems the neighbors
23 were experiencing at Chipotle. And that is not to say that
24 Chipotle was ever (audio interference) bad, or uninterested
25 actor.

1 Chipotle, when they first came in and first sought an
2 exception -- a fast-food exception in 2011, the neighbors who had
3 been on this block, my husband and I for almost 30 years, one of
4 the people who would testify since the -- since our houses were
5 built in 1890, some of the more recent ones were also involved,
6 we knew that this was a complicated block, because it's mixed use
7 with real residential, meaning, you know, separate homes with
8 yards, with children, with old people, and we had an ongoing rat
9 issue on this block for a while.

10 So we knew that in order to correct that, we at least
11 suspected how to work with the Department of Health on this issue
12 for eight years preceding 2011, that we probably needed indoor
13 trash for every restaurant. Unfortunately, it's hard to get
14 restaurants to do that. Some have. Chipotle, understandably at
15 the time, said before we -- these are small buildings we're coming
16 into. We need to put a walkout cooler to put our food in it.
17 With respect to our trash, we don't see how we can get it in the
18 building, but we're happy to build a shed. Let's see if a shed
19 will work -- an outdoor shed.

20 And so the neighbors thought it wouldn't work but were
21 willing to along with it. Chipotle built the gold-standard shed
22 for rats, which was terrific. But what happened is over the
23 four -- the intervening years before Ann Pizza applied for their
24 fast-food exception, the neighbors understood -- came to
25 understand that outdoor trash storage -- any trash storage where

1 the workers had to come out into the outside to deal with the
2 trash, you end up with trash dribble, you end up with shed doors
3 being left open, you end up with rats in the shed and rats around
4 the shed waiting for food.

5 We have photographs of the rat feces. We have videos
6 of the rats. Unfortunately, the BZA can't play videos, so we
7 know we can't do that.

8 The neighbors were in constant -- or at least very
9 regular communication with corporate Chipotle, Dan Maccabee
10 (phonetic) out in Denver, and the -- someone who Matt France
11 knows well, Dale Moore, who handles property in the Northeast
12 area. So we're trying (audio interference) to correct the
13 conditions. We're also in constant contact providing pictures
14 and videos to Chipotle and emails documenting the problems.

15 That lesson when Ann Pizza came up for their exception,
16 over 100 people -- and this is in the BZA order, over 100 people
17 signed the petition to not allow them to come in. The block was
18 overloaded with food.

19 We worked -- I worked and several other neighbors
20 worked with Ann Pizza to come up with an alternative to outdoor
21 trash, even in a shed, and that is indoor trash. That -- the
22 board, the ANC got behind it, the Board incorporated into its
23 order a condition similar to what we have here, and as a result,
24 Ann Pizza has been a great success. There are -- and so -- let
25 me just get in a couple more things. The Department of Health,

1 Rodent Control, who has invested a huge amount of time on this
2 block, was very (audio interference) with what Ann Pizza did.
3 They think it is a huge help in the rat problem on this block.

4 The applicant's property at 415, which is next door to
5 the Chipotle, that -- in that property, the previous restaurant
6 also included indoor trash, and the Director of the Department
7 of Health, Dr. Lewis, and the Director of Rodent Control, Gerrard
8 Brown, both think that is very successful and helpful, and they
9 are endorsing -- they would like to see Chipotle now do the same
10 thing and leave their trash inside as has been proposed in the
11 conceptual drawing, which is Exhibit 2, incorporated within
12 Exhibit 1, which is the conditions.

13 Chipotle has spent a substantial amount of time working
14 with the neighbors and coming up with a conceptual drawing done
15 by their architect to -- who is very familiar with all the codes
16 in DC, to create an indoor trash space. This will also -- one
17 of the reasons that the Department of Health is interested in
18 this solution is because absent indoor trash storage, Chipotle
19 has to take its trash, which is put outside -- it's not outside,
20 per se, it's in a shed, but as our pictures will demonstrate, if
21 they're necessary, but I think Matt France will endorse me on
22 this, the shed door is often open, there is -- the lids on the
23 trash cans are rarely shut, we have rat feces all around the
24 back. And so those trash totes are dragged through rat feces on
25 the ground. Sometimes rats will get in the barrels, and they go

1 through the kitchen. So that's another reason that they (audio
2 interference). Yes. Sorry.

3 CHAIRPERSON HILL: That's okay. That's all right. I
4 just want to interrupt you. So --

5 MS. ELLIOTT: Sure.

6 CHAIRPERSON HILL: So your conditions that I've seen
7 in Exhibit 36, right, or one of the places, they --

8 MS. ELLIOTT: Yes.

9 CHAIRPERSON HILL: They match the ANC's conditions; is
10 that correct?

11 MS. ELLIOTT: They match them all -- let me -- they
12 match the conditions that Chipotle has asked to have imposed.
13 That's the critical thing, and the ANC, they match identically
14 except for Condition 8, which we (audio interference).

15 CHAIRPERSON HILL: I lost you, Ms. Elliott. Ms.
16 Elliott, you went on mute when you said, "Condition 8."

17 MS. ELLIOTT: Okay. So let me start again. The
18 conditions their talking about, 1 through 7, including 2, which
19 is incorporated into these conditions (audio interference) to
20 what ANC voted on, and they are identical to what the applicant
21 has submitted, attached to Exhibit (audio interference).

22 CHAIRPERSON HILL: Okay. So 1 through 8 are all of the
23 conditions everyone has agreed to, including the ANC?

24 MS. ELLIOTT: Yes. The ANC, and also including the
25 Capitol Hill Restoration Society.

1 CHAIRPERSON HILL: Okay. Why did you start to say
2 something about Condition 8?

3 MS. ELLIOTT: Because I was functioning at too detailed
4 a level, as lawyers sometimes do. Condition 8 is, as I just
5 explained, Condition 8 is where -- I'll bound to be very truthful.
6 Condition 8 is in the -- where you're looking at it on Exhibit
7 -- it's attached (audio interference) and attached to Exhibit 25.
8 So Chipotle's and ours -- the neighbors' is somewhere simplified
9 from what the ANC had, because we were -- it's about trying to
10 get rid of the ran run, that you're interested in knowing about,
11 and we simplified it a bit just to make it easier to include it
12 in an order. But it is, in essence, the same Condition 8 that
13 the ANC voted on.

14 CHAIRPERSON HILL: Okay. So Condition 8 on the ANC
15 -- in the ANC document is also --

16 MS. ELLIOTT: Yes.

17 CHAIRPERSON HILL: -- fine with you guys?

18 MS. ELLIOTT: Yes. So it's more -- it reads more --
19 in a more complicated way.

20 CHAIRPERSON HILL: I -- the ANC one does. I understand.
21 But still, the ANC one's easier for me to tackle. And also my
22 -- the attorney -- the OAG, they'll be writing the -- anyway, I
23 know where we're going to get -- I now have clarification. So
24 okay.

25 And then secondly, I guess -- let's see. Right. So

1 Ms. Elliott, you should run for ANC. That's what you should do.
2 Or you should run for ward council (audio interference).

3 MS. ELLIOTT: I'm just trying a little experiment on
4 my block to see if we can't get it together.

5 CHAIRPERSON HILL: You've been there for 30 years, and
6 I've been in DC for also a pretty long time, but -- so okay.
7 Let's see. All right.

8 Mr. Porter, do you have any questions for Ms. Elliott?

9 MR. PORTER: No, I don't. Thank you.

10 CHAIRPERSON HILL: Okay. All right. All right. Let
11 me mute -- does the Board have any questions for anybody, and if
12 so, raise your hand.

13 (No hands raised.)

14 CHAIRPERSON HILL: Okay. All right. Mr. Smith, you
15 have a question?

16 BOARD MEMBER SMITH: Yes. I have a question. Ms.
17 Elliott.

18 MS. ELLIOTT: Yes.

19 BOARD MEMBER SMITH: In this case, Exhibit 36, these
20 conditions you submit on page (audio interference), I think it's
21 three conditions, are they also included as part of your request?

22 MS. ELLIOTT: No, let -- no. Let me explain this. So
23 if you go -- I would suggest that the best place for the Board
24 to start is Exhibit 25. It's a (audio interference) by the
25 applicant. It's a submission by the applicant that the neighbors

1 are very familiar with. It includes the eight conditions, which
2 are labeled Exhibit 1, and are attached to DZA Exhibit 25. So
3 we have two (audio interference), okay. And then they also
4 include Exhibit 2, and this is, again, attached to BZA Exhibit
5 25.

6 Those are the conditions that -- Exhibit 1 and Exhibit
7 2, Exhibit 1 being eight conditions that incorporate Exhibit 2,
8 which are the conceptual drawings of the indoor trash storage
9 (audio interference). Those are the conditions that the ANC
10 voted on and agreed should apply, that the neighbors support, and
11 that Chipotle is quite willing and ready to implement.

12 In addition, Chipotle, as they made clear in BZA
13 Exhibit 25, is asking for three things. They're asking for three
14 alternative things. They're asking for tenure exception,
15 assuming -- on the condition that these eight conditions, plus
16 their conceptual drawings are incorporated in the order, the
17 neighbors fully support them on that 10-year exception. We
18 welcome them coming back for 10 years with what they're willing
19 to now do.

20 They're also asking for a 12-year exception,
21 conditioned on the conditions being incorporated in the order,
22 and the neighbors take no position on that.

23 Then they are -- the third thing they're asking for -
24 - what Mr. Porter referred to as an "option," and that is the
25 option to somehow create a 10-year extension after whatever order

1 | you may grant to them that can be renewed without going to a full
2 | application process. The neighbors and the ANC took no position
3 | on that, provided, if you grant it, and Mr. Porter (audio
4 | interference) it is a unique thing, and, you know, but if you
5 | grant it that you include -- there's a paragraph designed to
6 | protect future (audio interference) and the ANC to be able to
7 | somehow -- if they're not going to have a say in whether there's
8 | an extension, then (audio interference) a requirement that
9 | Chipotle and the applicant say they would meet, and if they don't
10 | meet those requirements, then it would revert to the normal notice
11 | and due process-type situation where neighbors and the ANC can
12 | have some input.

13 | So that's -- those three - I think those are the three
14 | that you just identified, Mr. Smith. And you identified them in
15 | our -- the neighbors' submission, because we were trying to be
16 | quite up front about everything. And so -- all of us were. We
17 | were completely transparent, all the people in this situation
18 | now. And so we were just making clear that we took no position,
19 | and you were referring to page 1 and page 2, I believe, of these
20 | -- Exhibit 36, which is the (audio interference) from the Square
21 | 902 Neighbors. And we are saying we take no position on the 12
22 | years or the option, other than if you grant the option, please
23 | include that paragraph that would protect current and future
24 | homeowners and ANC. And we were saying that with respect to
25 | Condition 1, the ten-year exception, we fully support it if,

1 consistent with Chipotle's request and ANC's vote, you see the
2 need for and would be willing to incorporate the conditions which
3 are similar to the ones that were ordered for Ann Pizza and have
4 proved to be really helpful in our fight to make this a safe
5 neighborhood for kids, old people, all of us who are raising our
6 families (audio interference) that block -- this block. And
7 it's, you know, it's 11 -- 7 residential neighbors, or something
8 like that.

9 BOARD MEMBER SMITH: Okay. Thank you. I --

10 MS. ELLIOTT: Sorry -- does that help? That's a very
11 long explanation. I realize that.

12 BOARD MEMBER SMITH: Yes, it was very helpful. The
13 main thing I wanted to really figure out -- and you explained it
14 eloquently, I wanted to figure out your -- ANC's position and the
15 neighbors' position on that third hybrid option, because I
16 honestly do not think that that is within our power to do. If
17 there's a special exception, they will have to come back for a
18 clean provision to a special exception. We cannot
19 administratively remove a term limit. So I just wanted -- I
20 wanted just to say that's probably off the table, and I just
21 wanted to see you're comfortability with the first two.

22 MS. ELLIOTT: Yeah. And let me just say, I want to
23 -- again, I want to be completely transparent, because this has
24 been a tough problem at Chipotle. There have been rat burrows,
25 there's lots of evidence of rats. There's lots of evidence of

1 outdoor storage of garbage tales. We (audio interference) where
2 that's happening. But Chipotle has come in -- once Matt France
3 got involved and once their design people at the corporate level
4 got involved, they know the problems, they've seen all the
5 documentation. They agreed to fix it, and they incorporated the
6 rodentologists, all that.

7 So I want to be very clear. The neighbors took no
8 position on the 12-year extension, but the ANC voted to support
9 the 12-year extension provided, again, all the conditions were
10 met, because it's a big investment for Chipotle. And that's
11 understandable. So we take no position, but the ANC did support
12 that 12 years if all of these things are done.

13 But again, the ANC has watched our effort to try and
14 take this block back and make is successfully mixed use, including
15 fast food and residential all at once, even though we have no
16 alley and even though it's small block.

17 BOARD MEMBER SMITH: Thank you. Okay. Thank you so
18 much for that.

19 MS. ELLIOTT: Sure.

20 CHAIRPERSON HILL: Okay. Thank you. And I think I
21 learned a new word, "rodentologist."

22 MS. ELLIOTT: Yes.

23 CHAIRPERSON HILL: Let's see --

24 MS. ELLIOTT: It's a PhD in rodentology.

25 CHAIRPERSON HILL: Okay. I'm going to turn to the

1 Office of Planning.

2 MS. ELLIOTT: Can I -- before Mr. Mordfin starts, can
3 I add one thing. I'm so sorry.

4 CHAIRPERSON HILL: Okay, Ms. Elliott.

5 MS. ELLIOTT: Thank you. And that is that I think, Mr.
6 Mordfin will be able to be speak more directly to this, but
7 looking at the Office of Planning's report, I'm a little afraid
8 that -- and I feel somehow responsible for this, that Mr. Mordfin
9 wasn't fully brought in (audio interference) understand the whole
10 long history of what we were trying to do here, because Office
11 of Planning very much supported what did at Ann Pizza and the
12 conditions there. But this got a little disjointed, because
13 somehow the neighbors were left out when the application was
14 first filed in October, the neighbors were left out. That's why
15 we had to get all these delays.

16 So I just want to say that looking at the report that
17 was written, it looks like it never quite had -- Mr. Mordfin
18 didn't have the (audio interference) of getting fully caught up
19 to the negotiations that happened starting in December.

20 CHAIRPERSON HILL: Okay. Okay. Okay. All right. Mr.
21 Mordfin?

22 MR. MORDFIN: Yes. Good afternoon. I'm Stephen Mordfin
23 with the Office of Planning. And, yeah, it's true that the report
24 reflects when the applicant was requesting a modification. I was
25 not made aware of all of these changes that were being made by

1 the applicant and the neighbors. Actually, until, what, last
2 Friday, I think, I did not know that this was going on. And
3 that's when I was made aware that the application had changed and
4 that there were all these things.

5 However, that being said, I do think that the Office
6 of Planning can support this application with the way the
7 applicant has proposed to address the issues. I think -- with the
8 rodents, and, you know, the same conditions that are also
9 supported by the neighbors as you just heard. But I can go
10 through those, if you would like, and explain why -- no. Okay.

11 But I do think that all of the different things that
12 are being done for addressing the rodents -- I know there was
13 some talk, you know, whether or not it was all under the purview
14 of the BZA, but there is that one condition where it talks about
15 other things. It talks about noise and odors and sounds or other
16 conditions. And I think that, kind of, other conditions, I think
17 that this issue with the rat problem, I think that is an issue
18 that the Board could use to adopt these conditions as have been
19 proposed by the applicant and by the neighbors. I think they
20 all fit into that. It also contains the three conditions that
21 were addressed before, not including the part about should it be
22 10 years or 12 years, but the other two conditions are there.

23 So based on that, the Office of Planning does support
24 this idea, you know, even with the new criteria that were added
25 in there that took effect last October. Those new criteria that

1 | were added actually don't apply to the site, because (audio
2 | interference). And so the other criteria that are in there, the
3 | applicant continues to be in conformance with, you know, the
4 | physical structure is still there, the lot -- the square is still
5 | laid out the same way.

6 | So at this time the Office of Planning supports the
7 | application subject to the conditions that have been proposed by
8 | the neighbors and the applicant to address what I think falls
9 | under other conditions which goes -- is the rat issue.

10 | CHAIRPERSON HILL: Okay. And Mr. Mordfin, you just
11 | mentioned the 10-year. You don't have an issue with the 12-year?

12 | MR. MORDFIN: No, I do not.

13 | CHAIRPERSON HILL: Okay. All right. Does the Board
14 | have any questions for the Office of Planning, and please just
15 | raise your hand. I don't see Commissioner May, but does anybody
16 | -- okay. Ms. -- Vice Chair John, you have a question for the
17 | Office of Planning?

18 | VICE CHAIR JOHN: Yes. Mr. Mordfin, were you planning
19 | to update or provide a supplemental report, because your report
20 | still addresses the modification of significance. And since the
21 | application has been amended, would you normally update your
22 | report?

23 | MR. MORDFIN: I have discussed the (indiscernible) with
24 | the Office of the Attorney General who said that, you know, we
25 | did not need to update the report if I spoke to this issue at

1 the hearing.

2 VICE CHAIR JOHN: Okay. All right. Thank you.

3 CHAIRPERSON HILL: Anyone else have a question for the
4 Office of Planning, and, if so, raise your hand? Okay. Don't
5 see anybody raising their hand.

6 Ms. Elliot and Mr. West, do you have any questions for
7 the Office of Planning, and if so, raise your hand.

8 No? Okay.

9 Mr. Porter, do you have any questions for the Office
10 of Planning?

11 MR. PORTER: I do not. Thank you.

12 CHAIRPERSON HILL: Okay. There are people here wishing
13 to testify, Mr. Young?

14 MR. YOUNG: Yes, there are.

15 CHAIRPERSON HILL: Could you please allow them into the
16 room.

17 MR. YOUNG: Yes.

18 CHAIRPERSON HILL: Let's see, is it -- Ms. Szafran, are
19 you there?

20 MS. SZAFRAN: I am, if you can hear me.

21 CHAIRPERSON HILL: I can hear you.

22 MS. SZAFRAN: Great. Let me just get my video going.

23 CHAIRPERSON HILL: Sure.

24 MS. SZAFRAN: I actually -- I think that I can --

25 CHAIRPERSON HILL: Ms. Szafran? Sorry. Before you

1 begin, if you could just first introduce yourself for the record.

2 MS. SZAFRAN: I'm actually going to pass to Ritu, who's
3 another participant here, because I just got back online (audio
4 interference) I mute again. I had to excuse myself for a minute,
5 so I need to reorganize myself.

6 CHAIRPERSON HILL: Okay. Then I'll come back to you,
7 okay.

8 MS. SZAFRAN: Thank you.

9 CHAIRPERSON HILL: Okay. Let's see. Who do I got
10 here. Is it Ms. Upadhyay?

11 (No audible response.)

12 CHAIRPERSON HILL: If you could turn your microphone
13 on.

14 MS. UPADHYAY: Sorry. I think you can get me now?

15 CHAIRPERSON HILL: Yes.

16 MS. UPADHYAY: Hi. Hi. Thank you for having me.

17 CHAIRPERSON HILL: If you could just --

18 MS. UPADHYAY: My name is Ritu Upadhyay. I'm the owner
19 of 424 7th Street, SE, and 422 7th Street, SE.

20 CHAIRPERSON HILL: Okay.

21 MS. UPADHYAY: So my husband and I --

22 CHAIRPERSON HILL: You have -- (audio interference)
23 you'll have three minutes to give your testimony.

24 MS. UPADHYAY: Okay.

25 CHAIRPERSON HILL: And the clock is right there. Can

1 | you see the clock?

2 | MS. UPADHYAY: I can see it, yes.

3 | CHAIRPERSON HILL: Okay. You can begin whenever you
4 | like.

5 | MS. UPADHYAY: Okay. I'll begin. My husband and I own
6 | two properties that are one property away from Chipotle, 422 and
7 | 424 7th Street, SE. They are our life savings put into them. We
8 | currently rent the properties, but we plan to move back into one
9 | of them in July. We are -- I'm actually speaking to you from
10 | Dubai where I am based at the moment, but we'll be back in DC
11 | shortly.

12 | And I live in the home with my two toddlers. And so
13 | the rat issue has affected us, and it's affected us as a young
14 | couple when we bought the first house, and as our family has
15 | expanded. We -- you know, as the other neighbors have said, and
16 | Linda has said very clearly, we've spent a lot of time working
17 | with different restaurants and looking very specifically at what
18 | it is from each restaurant that causes the rat issue.

19 | You know, it's not something I ever expected to spend
20 | so much of my time focusing on and researching and understanding,
21 | but we happily do it, because it affects us and it affects the
22 | community around us and on our square. We very much appreciate
23 | how Chipotle has worked with us on this, because a lot of
24 | different things have been tried and tested and did not work.

25 | So speaking as a neighbor, a very close neighbor, a

1 member of the public, a member of the community, I just wanted
2 to be supportive of the process that has gone on so far. And we
3 are very happy with these outcomes if everything goes as planned
4 and our -- and everything is passed as we have discussed and
5 worked with Chipotle on.

6 I'm not going to speak for very long. I just wanted
7 to speak in support of everything that's happened and the process
8 that Chipotle has gone through to work with the neighbors on
9 this.

10 CHAIRPERSON HILL: Okay. Great.

11 MS. UPADHYAY: Thank you.

12 CHAIRPERSON HILL: Okay. Thank you. What time is it
13 there?

14 MS. UPADHYAY: It's 11:41 p.m.

15 CHAIRPERSON HILL: Not bad. Okay. All right. Okay.
16 Does that do, everybody? Does anyone have any questions for the
17 witness, and if so, please raise your hand.

18 (No hands raised.)

19 CHAIRPERSON HILL: Okay. Great. Okay. Ms. Upadhyay,
20 and I'm probably not doing that very well, thank you for your
21 testimony.

22 Let's see. I see, is it Mr. Beatley?

23 MR. BEATLEY: Yes. How are you?

24 CHAIRPERSON HILL: Good. Can you hear me?

25 MR. BEATLEY: I can hear you.

1 CHAIRPERSON HILL: Okay.

2 MR. BEATLEY: I'm not showing -- there we go. Okay.

3 CHAIRPERSON HILL: Okay. Perfect. All right. Sir,
4 if you could first introduce yourself for the record.

5 MR. BEATLEY: Certainly. My name is Kirk Beatley. I
6 own the property at 416 7th Street, which directly abuts the rear
7 of the Chipotle Restaurant.

8 CHAIRPERSON HILL: Okay. Mr. Beatley. You'll have
9 three minutes to give your testimony, and you can begin whenever
10 you like.

11 MR. BEATLEY: Well, based on what I have witnessed here
12 so far, I don't know how much more I can add. I think that
13 everyone is in agreement with how things are coming together, and
14 as a consequence, I don't want to take up more time than necessary
15 to say that I am happy to see that Chipotle is working with the
16 neighbors, and we're going to be working together to clean up
17 this situation.

18 As Linda says, she's been there 30 years. I bought the
19 house from an elderly relative about 12 years ago, and we've been
20 dealing with this situation for the entire length of time that
21 I've been here. So we are pleased to see that we're moving in
22 the right direction and everyone seems to be in agreement and how
23 it's come together.

24 CHAIRPERSON HILL: Okay. Great. Thank you. One
25 second, Ms. Elliott. Okay.

1 Thank you, Mr. Beatley.

2 Does the Board have any questions for Mr. Beatley --
3 I'm sorry, for Mr. Beatley?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. Ms. Elliott, do you have a
6 question?

7 MS. ELLIOTT: Yes, I would -- Mr. Beatley is my
8 immediate neighbor, and I, frankly, suggested that he not tell
9 some of the vignettes of what he's been through, because I know
10 the Board is trying to save some time. But I think it is worth,
11 if you want to hear -- if he has another minute left on his time,
12 he has dealt with serious burrowing at the back of his garden,
13 which is right -- he shares the --

14 CHAIRPERSON HILL: Ms. Elliott. Ms. Elliott.

15 MS. ELLIOTT: Okay.

16 CHAIRPERSON HILL: I'm just cutting you off, because
17 you're actually my last one today.

18 MS. ELLIOTT: Okay.

19 CHAIRPERSON HILL: And I'm, kind of like, you know, get
20 to a glass of wine or something.

21 MS. ELLIOTT: Okay.

22 CHAIRPERSON HILL: You know, everybody seems to be good
23 to go.

24 MS. ELLIOTT: That's good.

25 CHAIRPERSON HILL: And I know all the rats, believe me,

1 I'm telling you, we all live in DC. We all know rats.

2 MS. ELLIOTT: Okay.

3 CHAIRPERSON HILL: And I know where you all live. I
4 haven't eaten at the Chipotle, but I know where you all live. So
5 --

6 MS. ELLIOTT: Okay.

7 CHAIRPERSON HILL: Okay.

8 MS. ELLIOTT: I just wanted to make sure that I hadn't
9 cut off.

10 CHAIRPERSON HILL: Got you. Okay. All right. Ms.
11 Szafran, you there?

12 MS. SZAFRAN: (Audio interference.)

13 CHAIRPERSON HILL: Okay. Can you go ahead and give
14 your testimony, please.

15 MS. SZAFRAN: Absolutely. This is Katherine Szafran.
16 I live at 704 E Street, SE. I'll keep it short so you can get
17 to that glass of wine.

18 Again, I am very grateful for the work that we have
19 done with Chipotle here. It is a real challenge in this block,
20 and I really think that this agreement that we've come to with
21 them is going to go a long way in addressing some of these issues.

22 It's been a challenge. I've been here for over 20
23 years, now, and so I worked with Chipotle the first time around.
24 I think that this agreement and this set of additions to their
25 exception solves a lot of what we've been dealing with over the

1 last decade.

2 Beyond that, I don't really have a lot to add.

3 CHAIRPERSON HILL: Okay. All right, Ms. Szafran. Thank
4 you so much, and yeah, you guys have been there, like I said,
5 it's a nice neighborhood, and you guys have been there a long
6 time. You've seen just crazy changes over the past 20 or 30
7 years, I know.

8 So let's see. Okay. The next one is Ms. Young? Ms.
9 Young, can you hear me?

10 (No audible response.)

11 CHAIRPERSON HILL: I think you're on mute, Ms. Young.

12 (No audible response.)

13 CHAIRPERSON HILL: Ms. Young? Okay. Can you guys hear
14 me? Okay. You all can hear me. Okay. Ms. Young, I'll come
15 back in a second. Is there a Mr. Morris there?

16 (No audible response.)

17 MR. PORTER: Chairman Hill, he is an architect with Red
18 Architecture. If you had questions --

19 CHAIRPERSON HILL: Okay. Perfect. All right. Thanks.
20 Ms. Young, can you hear me? Ms. Elliott.

21 MS. ELLIOTT: Not to create problems by speaking out
22 of turn, but she just texted me and said she can't unmute.

23 MS. YOUNG: I did get unmuted.

24 (Audio interference.)

25 CHAIRPERSON HILL: Thank you. We can hear you, Ms.

1 Young. Ms. Young --

2 MS. YOUNG: I can't -- this is Linda Young at 706 E
3 Street, SE, and I just want to thank everyone from Chipotle to
4 the Board to the neighbors for the collaborative effort that
5 we've taken place here. Thank you.

6 CHAIRPERSON HILL: Thank you, Ms. Young. Okay. All
7 right.

8 Mr. Young, could you excuse everybody except for the
9 parties?

10 (Pause.)

11 CHAIRPERSON HILL: Okay. So this is what I just need
12 to understand a little bit, Mr. Porter. And so this is where
13 -- the conditions that you all have agreed to, whether or not
14 they're more complicated or not, they're all in Exhibit 31, which
15 is the ANC's report, correct?

16 MR. PORTER: (No audible response.)

17 CHAIRPERSON HILL: All right. Somebody's shaking their
18 head. That's okay. Let me ask Mr. Porter first.

19 MR. PORTER: So basically, yes. I think that what
20 we've done is just put that exhibit -- condition 8, that Ms.
21 Young spoke of is just cleaner in the -- I'm trying to pull it
22 up right now, I apologize -- in the exhibit -- in Chipotle's
23 Exhibit that was submitted.

24 CHAIRPERSON HILL: Right. And that's the one in 25
25 (audio interference).

1 MR. PORTER: And --

2 CHAIRPERSON HILL: 25.

3 MR. PORTER: 25.

4 CHAIRPERSON HILL: I can -- right. I can actually read
5 mouths. Okay. 25, right. That's the one that's you all's
6 exhibit. And so -- and now I can ask you, Ms. Elliott, so you're
7 -- right. Exhibit 25, at the bottom where all of those conditions
8 are in a more concise manner, is what your testimony is, correct,
9 Ms. Elliott?

10 MS. ELLIOTT: That is correct.

11 CHAIRPERSON HILL: Okay.

12 MS. ELLIOTT: I think I can add one thing. Do you want
13 me to or not? Or do you want to ask a question?

14 CHAIRPERSON HILL: I was just a little confused,
15 because, like again, in -- and maybe this is what you were about
16 to add, No. 8 doesn't say anything about a rat run or whatever.

17 MS. ELLIOTT: We -- well, one of the reasons that we
18 simplified it was we were afraid someone on the Board might not
19 be familiar with the term "rat run." So you proved our point
20 for us.

21 CHAIRPERSON HILL: Okay. Well, okay.

22 (Audio interference.)

23 MS. ELLIOTT: So I think --

24 CHAIRPERSON HILL: That's all right. So you guys
25 removed it, because Condition No. 8 in Exhibit 25 still holds the

1 same value, No. 8, correct?

2 MS. ELLIOTT: Exactly. Correct. (Audio interference.)

3 CHAIRPERSON HILL: As what the ANC said?

4 MS. ELLIOTT: Yes.

5 CHAIRPERSON HILL: Now, I don't need to get too
6 confusing --

7 MS. ELLIOTT: Okay.

8 CHAIRPERSON HILL: -- but then if we adopted the ANC's
9 conditions, they're still the same, correct?

10 MS. ELLIOTT: Yes. Here's my concern about that. The
11 ANC copied over our conditions, and there were some -- it looked
12 to me like there was just, potentially, some -- I was concerned
13 about mistakes in the copying over. So I would be happy to look
14 and be sure that all the other conditions they copied over
15 correctly, and then if you wanted to put 8, I'd just confirm that
16 for you, you know, within the 20 minutes or 10 minutes or
17 something. But if you want to put 8 as it is in the ANC, you
18 can put it, and we all know -- the neighbors and the applicant,
19 what it means. It just means take down part of the fence so that
20 rats don't run between the boards.

21 CHAIRPERSON HILL: Okay. Okay.

22 MS. ELLIOTT: It's complicated of what we're doing.

23 CHAIRPERSON HILL: All right. I got you.

24 MS. ELLIOTT: Then the one other condition is the ANC
25 does not include the actual conceptualls, which are very

1 | important. And BZA did this for the Ann Pizza situation, they
2 | wanted the drawings to be part of the order, because they contain
3 | some of the very important details. But the ANC document doesn't
4 | contain those. The conditions reference them, as Exhibit 2, but
5 | it's not there in the document. It was given --

6 | CHAIRPERSON HILL: I got you. I got you. I got you.

7 | MS. ELLIOTT: Okay.

8 | CHAIRPERSON HILL: So Mr. Porter, so you're fine with
9 | those diagrams being included as part of the conditions, correct?

10 | MR. PORTER: That's fine. And just with the
11 | understanding, they're conceptuais, they're not building plans.

12 | CHAIRPERSON HILL: Okay.

13 | MR. PORTER: They're not --

14 | CHAIRPERSON HILL: Okay, got it.

15 | MR. PORTER: They're fine.

16 | CHAIRPERSON HILL: That's fine. So then -- and Ms.
17 | Elliott, now, I'm a little bit -- that Ann Pizza thing, how long
18 | ago was that?

19 | MS. ELLIOTT: That was in 2014. It was renewed -- or
20 | it was modified slightly in 2016, and renewed in 2019 for an
21 | extension.

22 | CHAIRPERSON HILL: So I was here then.

23 | MS. ELLIOTT: In 2019?

24 | CHAIRPERSON HILL: Right. I'm not asking you. I think
25 | I'm asking you, because I don't remember putting the plans in

1 | there, that's why I'm trying to, you know --

2 | MS. ELLIOTT: I can explain. Unless you were there in
3 | 2014, what happened is -- okay. So that in 2019, the plans that
4 | they built to worked so well, that when they wanted to renew and
5 | extend from their five years, they were given -- let me back up.
6 | I'll make this very easy.

7 | 2014 (audio interference) incorporated into the order,
8 | and the plans were incorporated into the order. They then built
9 | inconsistent with the conditions they were ordered to follow.
10 | DCRA had to shut them down. We had a renegotiation, and they
11 | -- we did a correction that everyone agreed to, and in 2016,
12 | there was a new order issued. That order dropped their extension
13 | from seven years to five, because they had ignored the rules of
14 | the City and not followed the BZA order. And they knew they
15 | weren't. They were building without a permit. And so they went
16 | to -- they built according to what they were supposed to do, went
17 | 'til 2019, when you heard it, and there were no objections, so
18 | it was extended for 10 years, because the conditions which they
19 | built to, correctly, worked so well.

20 | CHAIRPERSON HILL: Okay. (Indiscernible) I just don't
21 | remember putting plans in there. Right.

22 | MS. ELLIOTT: You didn't in 2019, because it was built.

23 | CHAIRPERSON HILL: I know. I got you now, but thank
24 | you.

25 | MS. ELLIOTT: Exactly.

1 CHAIRPERSON HILL: Okay. I appreciate that.

2 All right. So okay. All right. Does anybody have any
3 more questions for anybody from my Board, and if so, raise your
4 hand.

5 (No hands raised.)

6 CHAIRPERSON HILL: Okay. All right. Ms. Elliott, you
7 had your hand up for a second.

8 MS. ELLIOTT: Yeah. I just -- but I understand what I
9 think your problem is. It would be easier to know that you're
10 in compliance with what the BZA approved -- I mean what the ANC
11 approved if you could use the conditions attached to their letter.
12 But I can tell you from working with the ANC for 10 years on
13 these issues, that they will be happy if you incorporate the
14 versions the applicant gave you and that we gave you.

15 CHAIRPERSON HILL: I understand, but unfortunately, you
16 can't represent the ANC.

17 MS. ELLIOTT: I know.

18 CHAIRPERSON HILL: So I got you. I understand what
19 you're saying 100 percent. And so, but anyway. Okay. So let's
20 see. Do you, Mr. Porter, have anything you'd like to add in
21 rebuttal or in conclusion?

22 MR. PORTER: Yes, sir. Well, first, thank you for
23 everybody's time. I do appreciate it, but one thing that I want
24 to make clear is we're talking about these conditions as an
25 Exhibit. It's important what's not in there and Chipotle's asking

1 | for is the extension of time. We want to make sure -- basically,
2 | because of the significant capital investment that we are making,
3 | we want to stay there as long as possible. So however the Board
4 | -- and we understand that the option that's in there may not be
5 | the right mechanism. What we're trying to get at is how can we
6 | continue to be in this neighborhood for a longer extended period
7 | of time? And we'll defer to the judgment of the Board on that.
8 | So thank you.

9 | CHAIRPERSON HILL: Okay. I appreciate that. All right.
10 | If everybody could just mute their lines. I'm having a weird
11 | lag right now, by the way, on my computer. So I apologize. Let's
12 | see.

13 | Okay. I just -- the question that -- and I'll -- we
14 | are not going to be able to deliberate on this, again, today,
15 | because of this discrepancy in our notice requirements. Mr.
16 | Rice, do you know when is the earliest we could come back here
17 | again?

18 | MR. RICE: Yes, sir, one second. I think the earliest
19 | this one can come back would be on April 14th.

20 | CHAIRPERSON HILL: Right. And so we then run into the
21 | problem with Commissioner May, which took me to, I think it was
22 | April -- what was it Commissioner?

23 | MR. MOY: I think it was April 12th, Mr. Chairman.

24 | CHAIRPERSON HILL: Maybe it was April 14th?

25 | MR. MOY: I mean May 12th. I'm sorry. May 12th.

1 CHAIRPERSON HILL: Sorry.

2 COMMISSIONER MAY: I have to be there for a continued
3 hearing on the 21st -- on April 21st.

4 CHAIRPERSON HILL: Right. We just moved something
5 today to April 21st, correct, Mr. May?

6 COMMISSIONER MAY: Right, something that you would have
7 done on the 14th, but out of mercy for me, you extended to the
8 21st.

9 CHAIRPERSON HILL: Got it. April 21st. So we're going
10 to come back here for a continued hearing on April 21st. Okay.

11 And Mr. Mordfin, can you hear me?

12 MR. MORDFIN: Yes.

13 CHAIRPERSON HILL: I don't know if you want to change
14 that caption on your report or not. Do you want to or just leave
15 it the way it is?

16 MR. MORDFIN: If that's what you would like. I
17 discussed it with OAG, I discussed it with OZ --

18 CHAIRPERSON HILL: If it's okay with you, it's okay
19 with me.

20 MR. MORDFIN: Okay. It's okay with me.

21 CHAIRPERSON HILL: Okay. All right. So that's that
22 one.

23 I'll get you in one second, Vice Chair John.

24 I'm just trying to figure what to do with this
25 condition, and I don't know whether, Mr. Porter, you want to

1 submit anything or not.

2 Ms. Elliott, give me one second. It's okay.

3 That, you know, if you all -- if you think that the
4 conditions that the ANC have listed works for you, Mr. Porter,
5 that's what I'm just trying to figure out. Does it work for you?

6 (No audible response.)

7 CHAIRPERSON HILL: Mr. France is nodding "yes."

8 MR. PORTER: Yes.

9 CHAIRPERSON HILL: Okay. We got the thumbs up.

10 Ms. Elliott, does the conditions from the ANC work for
11 you guys?

12 (No audible response.)

13 CHAIRPERSON HILL: You're on mute, Ms. Elliott.

14 MS. ELLIOTT: Okay. As long they -- the ANC references
15 Exhibit 2, which are the conceptualls, we would want those added,
16 because the details that the applicant and we agreed to, with the
17 involvement of the rodentologist, are in those conceptualls.

18 CHAIRPERSON HILL: The conceptualls are in Exhibit 2?

19 MS. ELLIOTT: The conceptualls are in -- let me -- the
20 conceptualls were provided to the ANC. The ANC took it upon --
21 as were the conditions. The ANC took it upon itself to copy and
22 paste -- or attempt to copy and paste the conditions that they
23 were provided, which they agreed with, into their letter. So the
24 conceptualls are available as Exhibit 2 to BZA Exhibit 25 and BZA
25 Exhibit 36. And that is the applicant's modifications and the

1 neighbors memorandum in support. And I am --

2 CHAIRPERSON HILL: Ms. Elliott, give me one sec. Give
3 me one sec. Give me one sec.

4 MS. ELLIOTT: Okay.

5 CHAIRPERSON HILL: So that's all right. So the
6 conceptals that are in Exhibit 25 are the best conceptals that
7 the ANC seems to be referring to, correct?

8 MS. ELLIOTT: They are, absolutely, referring to those.
9 Yes.

10 CHAIRPERSON HILL: Okay. That's fine. That's all I
11 need. So the conceptals (audio interference) in Exhibit 25.
12 And hold on. Now Commissioner May is going to have something to
13 say. Just give me a second.

14 MS. ELLIOTT: Okay.

15 CHAIRPERSON HILL: Ms. Elliott, could you mute your
16 microphone. Great. Okay. Commissioner May, you raised your
17 hand.

18 COMMISSIONER MAY: I did. So, I mean, couldn't we just
19 reference the architectural plans and elevations at Exhibit 41,
20 which I think are the same, and just require that the project be
21 built in accordance with those plans? That would be a fairly
22 typical thing to do in a BZA order.

23 CHAIRPERSON HILL: That's fine with me. Hold on one
24 second. Ms. Elliott has a comment. You're -- that's all right.
25 You're (indiscernible). You're on mute.

1 MS. ELLIOTT: I'm just trying to look -- I want to get
2 to Exhibit 41 to see what that is -- to see what -- I'm sure it's
3 the right.

4 MR. PORTER: They're the same. They're the same plans.

5 MS. ELLIOTT: The conceptualls aren't there, though, are
6 they?

7 COMMISSIONER MAY: Yes, they are.

8 MS. ELLIOTT: But aren't they architectural plans from
9 the build out in 2011 and '12, I believe.

10 COMMISSIONER MAY: No. On pages 9 and 10, they show
11 how they would be updated.

12 CHAIRPERSON HILL: Are you (audio interference) A or
13 B, Commissioner?

14 COMMISSIONER MAY: It's probably B. I combined it, so
15 it's probably in (audio interference).

16 CHAIRPERSON HILL: It's A.

17 MS. ELLIOTT: It's A. Let me -- I'm sure -- okay. Now
18 I see -- yes. That would be fine. Those are the same conceptualls
19 that were submitted by the applicant and by the neighbors and
20 presented to the BZA. Thank you, Mr. May. That was great.

21 CHAIRPERSON HILL: Okay. Exhibit 41 B. Okay. The
22 reason this is going to be such a pain, anyway, though Mr. May's
23 going to be here also when we come back, is that we're going to
24 be coming back. So -- all right. So and he remembers (audio
25 interference) being gone for, like, a month is not the easiest.

1 All right. Okay. So Ms. Elliott, if you could mute
2 your microphone. You had something to say? Would you say it,
3 please.

4 MS. ELLIOTT: I had a potential solution since we're
5 coming back to deliberate, and that is that (audio interference)
6 -- what?

7 CHAIRPERSON HILL: Go ahead. I'm sorry. What's your
8 solution?

9 (No audible response.)

10 CHAIRPERSON HILL: You can hit mute again. You're on
11 mute again.

12 MS. ELLIOTT: Sorry.

13 CHAIRPERSON HILL: That's all right.

14 MS. ELLIOTT: I'm sure the ANC would be willing to send
15 you an updated letter attaching the conditions that we and the
16 applicant submitted saying these were the ones they intended to
17 approve, if that's -- would be helpful.

18 CHAIRPERSON HILL: Okay. Ms. Elliott, if you want to,
19 I'll leave the record open -- well, the record's open. If you
20 want to, the ANC can submit updated conditions. Okay. The (audio
21 interference) could also attach those plans if you wanted to, but
22 I'm perfectly fine with, currently, the conditions that are in
23 Exhibit 31 if -- I mean, we still have to deliberate on this,
24 so I don't even know what we're going to do with your conditions,
25 but nonetheless, the conditions in Exhibit 31, and then the

1 conceptual, which are the architectural plans in Exhibit 41 B.
2 So, you know, that's where I think we are at this point in terms
3 of discussions, but if you want to reach out to the ANC and get
4 something different, the record will be open. Okay. Okay. And
5 if it provides better comfort for you guys to get rid of the rat
6 run thing, then that's fine. Just go ahead and talk to the ANC,
7 and then I have to -- at the continued hearing, I have to make
8 sure that Mr. Porter was there to say, again, that he agrees with
9 the conditions that are going on, and then the Board will have
10 to deliberate and agree what we think they are good conditions.
11 So this is where there's a bunch of steps here that I don't know
12 yet. Right. But nonetheless, we'll leave it open for the ANC.
13 Okay.

14 Mr. Porter, are you done?

15 (No audible response.)

16 Okay. All right. Does anyone have anything else they'd
17 like to say, and if so, please raise your hand.

18 Ms. John?

19 (No audible response.)

20 CHAIRPERSON HILL: You're on mute, Ms. John.

21 VICE CHAIR JOHN: I believe there's a request for waiver
22 of the 21-day rule. Did we decide on that?

23 CHAIRPERSON HILL: No. Thank you, Ms. John. I got so
24 tied up with everything I forgot. All right. So there was a
25 waiver for the 21 Rule (indiscernible) the self-cert;

1 architectural plans; statement, existing and continued; his
2 photos; and certificate of occupancy. We've basically gone
3 through the whole hearing. I don't have any issues, including
4 those items into the record, unless anybody from the Board has
5 an issue. Please raise your hand, if so. Okay.

6 So thank you, Ms. John. We have now gone through that.

7 Mr. Rice, at OAG, am I missing anything before I move
8 us on?

9 MR. RICE: No, sir.

10 CHAIRPERSON HILL: Okay. All right. Okay. Well,
11 thank you all very much, and we will see somebody on the continued
12 hearing on April 21st.

13 And Mr. Young, if you could please excuse everybody.
14 Bye-bye. You're welcome. Goodbye. And we're waiting for Mr.
15 Young. Okay.

16 All right. Well, Mr. Blake, congratulations on
17 surviving Day 1 of 372.

18 BOARD MEMBER BLAKE: Oh, my goodness.

19 CHAIRPERSON HILL: You know, actually, I wonder what
20 number it is? It's probably a number you don't want to calculate.
21 And so there you go.

22 Does anybody have anything else they'd like to say to
23 anybody before we conclude here? No? Okay.

24 Mr. Moy, are we done?

25 MR. MOY: Yes, sir, there's nothing from the staff.

1 CHAIRPERSON HILL: Okay. See you all next week. We're
2 adjourned.

3 (Whereupon, the above-entitled matter went off the
4 record at 4:06 p.m.)

5

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: 03-03-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
accurate record of the proceedings.

A handwritten signature in cursive script that reads "Gary Euell". The signature is written in black ink and is positioned above a horizontal line.

Gary Euell

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