

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

* * * * *

BOARD OF ZONING ADJUSTMENT

* * * * *

VIRTUAL PUBLIC HEARING

* * * * *

WEDNESDAY, APRIL 21, 2021

* * * * *

The Virtual Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Webex video conference, pursuant to notice, at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

BOARD OF ZONING COMMISSION MEMBERS PRESENT:

PETER SHAPIRO, Zoning Commission
PETER MAY, Zoning Commission

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD W. MOY, BZA Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ., OAG

This transcript constitutes the minutes from the virtual public hearing held on April 21, 2021.

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

C O N T E N T S

Opening and General Remarks 3

Case No. 20428: 8
 Application of 1730 Pennsylvania Avenue, LP

Case No. 20413: 24
 Application of 703 Randolph, LLC

Case No. 18238A: 32
 Application of Eighth Street, LLC

Case No. 20359: 53
 Application of 1301 West Virginia, LLC

Case No. 20402: 99
 Appeal of The Chain Bridge Road University
 Terrace Preservation Committee

P R O C E E D I N G S

(9:30 a.m.)

MR. CHAIRMAN: The hearing will please come to order. Good morning, ladies and gentlemen. We are convened and broadcast this public hearing by video conference on the April 21st, 2021 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Lorna John, vice chair, and board members, Carl Blake and Chrishaun Smith. Representing the zoning commission at different points will be Peter Shapiro, Peter May and Rob Miller.

Today's hearing agenda is available to you on the Office of Zoning's website. Please be advised 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 Webex or by telephone will be muted during the hearing and only persons who have signed up to participate and to testify will be unmuted at the appropriate time.

Please state your name and home address before providing oral testimony or your presentation.

1 Oral presentation should be limited to the summary of
2 your most important points. When you're finished
3 speaking, please mute your audio so that your
4 microphone is no longer picking up sound or background
5 noise.

6 If you're experiencing difficulty
7 accessing Webex or your telephone call-in or if you
8 have forgotten to sign up 24 hours prior to this
9 hearing, then please call our OZ hotline number at
10 (202)727-5471 to sign up to testify, enter see Webex
11 login or call-in instructions. All persons planning to
12 testify either in favor or in opposition should have
13 signed up in advance. You'll be called by name to
14 testify. If it is an appeal, only parties are allowed
15 to testify.

16 By signing up to testify, all participants
17 completed the oath or affirmation as required by
18 subtitle Y407.8 (sic). A request to enter evidence at
19 the time of an online hearing -- an online virtual
20 hearing such as written testimony or additional
21 supporting documents other than live video which may
22 not be presented as part of the testimony, may be
23 allowed pursuant to subtitle Y102.13 provided that the
24 persons making the request to enter an exhibit explain
25 how the proposed exhibit is relevant, the good cause

1 that justifies allowing the exhibit into the record
2 including the explanation of why the requester did not
3 file the exhibit prior to the hearing pursuant to
4 subtitle Y206 and how the proposed exhibit would not
5 unreasonably prejudice any party.

6 The order of procedures for special
7 exceptions and variances are pursuant to Y409. The
8 order of appeals is pursuant to Y507.

9 At the conclusion of each case, an
10 individual who was unable to testify because of
11 technical issues may file a request for leave to file a
12 written version of the planned testimony to the record
13 within 24 hours following the conclusion of public
14 testimony and the hearing.

15 If additional written testimony is
16 accepted then parties will be allowed reasonable time
17 to respond as determined by the board. The board will
18 then make its decision at its next meeting but no
19 earlier than 48 hours after the hearing. Moreover, the
20 board may request additional specific information to
21 complete the record. The board and its staff will
22 specify at the end of the hearing exactly what is
23 expected and the date the person must submit the
24 evidence to the Office of Zoning. No other additional
25 information shall be exempt by the board.

1 The board's agenda may include previous
2 cases set for decision after the board adjourns the
3 hearing. The Office of Zone, in consultation with
4 myself, will determine whether a full or summary order
5 may be issued. A full order is required when the
6 decision contained is adverse to a party including
7 effect A and C. A full order may also be needed if the
8 board's decision differs from the Office of Planning's
9 recommendation. Although the board favors
10 (indiscernible) that are possible, an applicant may not
11 request the board to issue such an order.

12 The District of Columbia administrative
13 procedures Act requires that a public hearing on each
14 case be held in the open before the public. However,
15 pursuant to Section 405(b) and 406 of the Act, the
16 board may, consistent with its Rules of Procedures and
17 the Act, enter at a closed meeting on a case for
18 purposes of receiving legal counsel on a case pursuant
19 to these DC Official Code, section 2-575(D)(4) and/or
20 deliberating on a case pursuant to DC Official Code,
21 section 2-575(D)(13) but only after providing the
22 necessary public notice indicates emergency closed
23 meeting after taking a roll call vote.

24 Preliminary matters are those which
25 relate to whether a case will or should be heard or

1 stayed such a request for a postponement, continuance
2 at a trial or whether proper and adequate notice of a
3 hearing has been given. If you're not prepared for the
4 case today or you believe the board should not proceed,
5 you can let us know when you get to there.

6 Mr. Secretary, do you have any
7 preliminary matters?

8 MR. MOY: Good morning, Mr. Chairman,
9 members of the board. We do have preliminary matters
10 today but the staff would suggest that you address
11 those preliminary matters when I call that specific
12 case. Other than that, Mr. Chairman, I do or would
13 want to announce for the record, for the transcript,
14 those cases previously on today's docket that have to
15 be rescheduled. We have four cases that have been
16 rescheduled to May 26th, 2021. The four cases are as
17 follows: case number 20438, David Bland and Marianne
18 Roos, R-O-O-S; the second case is 20435 of 2015 Jackson
19 Street 2019 LLC; the third case is 20445 of 106 13th
20 Street LLC; the last case is 20446 of -- I suppose it's
21 pronounced Cayre, C-A-Y-R-E, Jemal's Nick LLC. All
22 four of these case have been rescheduled to May 26th,
23 2021. And that's it, Mr. Chairman.

24 MR. CHAIRMAN: Okay. Thank you, Mr.
25 Moy. Mr. Moy, you can go ahead and call our first

1 case, if you'd like.

2 MR. MOY: All right. This is case
3 application number 20428 of 1730 Pennsylvania Avenue
4 LP. As the board will recall, this was last heard on
5 April 7th at the April 7th public hearing.

6 This application is as amended for
7 special exception from the penthouse wall enclosure
8 requirements of Subtitle C, Section 1500.9(a) pursuant
9 to Subtitle C, Section 1504.1 and subtitle X, Section
10 1002 and for a use variance from the penthouse use
11 restrictions of Subtitle C, Section 1500.3(d) pursuant
12 to Subtitle C, Section 1504.1, Subtitle X, Section
13 1002. And this would convert existing mechanical
14 penthouse space to habitable penthouse space and to
15 construct a permanent penthouse canopy to an existing
16 office building in the D-6 Zone. This is located at
17 1730 Pennsylvania Avenue, NW, Square 168, Lot 51.

18 And as I said, this was last heard on
19 April 7th. The board requested a filing from the
20 applicant by April 9th. There's no other -- no other
21 information was requested. No other testimony was
22 requested. And there's no other filings in the record
23 except for the one I just mentioned.

24 And participating is the chairman, the
25 vice chair, Mr. Blake, Mr. Smith and Zoning

1 Commissioner Peter Shapiro.

2 MR. CHAIRMAN: Okay. Great.

3 Ms. Prince, can you hear me?

4 MS. PRINCE: I can hear you.

5 MR. CHAIRMAN: Can you introduce
6 yourself for the record, please?

7 MS. PRINCE: Allison Prince with
8 Goldsmith with Goulston & Storrs here on behalf of the
9 building owner.

10 MR. CHAIRMAN: Okay. Great. And who
11 else is here with you today?

12 MS. PRINCE: We have the architect,
13 Hiroshi Jacobs, and a representative of Tishman Speyer,
14 Eric Phillips.

15 MR. CHAIRMAN: Okay. Great. All right.
16 Let's see. I know that there was a filing that we
17 asked you to pull up. And you'll forgive me. I'm just
18 working on one screen today. Can you speak to the
19 filing?

20 MS. PRINCE: Sure. I'm happy to. And I
21 do want to be very sensitive to the board's resources
22 because you've already spent so much on this case.

23 We, at the instruction of the board, we
24 conducted a survey of penthouses in the immediate
25 vicinity of the subject building to be able to

1 demonstrate that our penthouse is unusually large. So
2 we were very careful in preparing the survey. Mr.
3 Jacobs prepared the survey. We were careful in that we
4 wanted to compare similar era penthouses because
5 penthouses from our era are larger than current
6 penthouses. So we were able to look at penthouses that
7 were build between 1960 and 1979.

8 What we learned is that our penthouse is
9 a .31 FAR and the average size of penthouses from that
10 era within a block of our project are .19 FAR. They
11 are significantly smaller. And what does that mean?
12 That means that if our penthouse were anywhere near the
13 average size penthouse, there would be no space left to
14 use for habitable purposes.

15 We're only seeking the ability to use .1
16 FAR for habitable purposes. So we walked through the
17 three parts of the variance test, uniqueness being the
18 first, obviously, as the board is well familiar; and
19 practical difficulty, but in this case undue hardship
20 because we're a use variance; and then finally the
21 third part, the variance test in our pleading.

22 With respect to uniqueness -- and this
23 penthouse is unusually large. The closest penthouse in
24 size seems like it's not that much smaller but it's
25 enough smaller that if our penthouse were that size, we

1 would have no room for habitable space. So small
2 differences in penthouse size are the difference
3 between having room for habitable space and not. But
4 the vast majority of penthouses in the study area are
5 significantly smaller making ours uniquely large.

6 Then with respect to the undue hardship,
7 without relief from the board, there is no use for the
8 space. There is simply no use. Based on the
9 interpretation of the regulations provided by
10 (indiscernible), the space has no other use. And the
11 board has been consistent for years in understanding
12 that there's undue hardship when all use of a property
13 is denied. And we're simply seeking use of existing
14 space.

15 And finally, the third part of the
16 variance test is we know the whole security area was
17 created to address a concern for the Secret Service.
18 And I don't want to lose sight of the fact that the
19 Secret Service is probably one of the most important
20 players in this whole application. And they have no
21 issues with the penthouse. They actually visited the
22 penthouse and wrote a report in support.

23 As you know, we can wait. We can wait
24 some period of months for the rule making to come out
25 to allow this relief to be a special exception. I'm

1 concerned about that because the timing is unclear.
2 The final rule making has not yet been issued. We're
3 in a position to pay the \$300,000 affordable housing
4 payment now and to proceed with certainty with this
5 project now. And in this incredibly uncertain climate
6 that we find ourselves in, being able to proceed with
7 certainty is an imperative.

8 So I would hope that you can agree with
9 me that the penthouse is unusually large, that there's
10 a practical difficulty if we're deprived of any
11 reasonable use of this space, any use of this space,
12 not even storage, and agree that the Secret Service is
13 a very important part of it, has weighed in without any
14 issue. And obviously, from a standpoint of impacts on
15 neighbors, its existing space. It's already there. So
16 I'm very hard to argue that there any impacts and the
17 ANC supports the application.

18 So if we must wait, we will wait. That
19 will jeopardize the project because any delay
20 jeopardizes projects in this climate. I cannot
21 emphasize that enough. The pandemic has had a
22 devastating impact on the office market. We have the
23 highest rates of office vacancy that I have seen in my
24 entire career.

25 This penthouse is really needed to

1 enhance the marketability of the space in the building.
2 And to be able to market, you have to know you have it.
3 You have to know that there's certainty. You have to
4 be able to build it.

5 So months of delay are a problem. But
6 if that's the way we have to go, that's the way we'll
7 go. But I just want you to understand why I push so
8 hard and why I'm really convinced. I wouldn't bring a
9 use variance to you if I didn't feel we've met the
10 burden. That's not what I do. And when we had to
11 switch to these variance standard, I didn't just take
12 that lightly. And after the study was done and I
13 looked at it very thoroughly, especially the court case
14 that says that we can't be deprived of any use of our
15 property, I feel confident in the use variance standard
16 having been met.

17 So that's all I have to say today but
18 I've got Hiroshi here if you have questions about the
19 exact plan. I have the owner here if you want to hear
20 why this is so needed now from a marketing standpoint
21 and that, you know, additional time is not helpful to
22 us. But that's all I have to say this morning. And I
23 really do appreciate your time and I appreciate all the
24 thought that you put into this. I know it's no fun for
25 you to have to rethink a case after it's been filed and

1 devote time and energy during your hearing process to
2 deliberate on what the proper standard is.

3 MR. CHAIRMAN: Okay. All right, Ms.
4 Prince. Thank you. And thank you for your kind words.

5 Mr. Phillips, can you hear me?

6 (Pause)

7 MR. PHILLIPS: Can you hear me?

8 MR. CHAIRMAN: Yes. Could you introduce
9 yourself for the record, Mr. Phillips?

10 MR. PHILLIPS: Yes. My name is Eric
11 Phillips. I work with Tishman Speyer, the owner of
12 1730 Pennsylvania Avenue.

13 MR. CHAIRMAN: Thanks.

14 Mr. Jacobs, can you hear me?

15 MR. JACOBS: Yes, I can.

16 MR. CHAIRMAN: Could you introduce
17 yourself for the record, please, Mr. Jacobs?

18 MR. JACOBS: Yes. I am Hiroshi Jacobs
19 with Studios Architect for the owner.

20 MR. CHAIRMAN: Okay. All right. I've
21 looked at the filings and I've reviewed everything and
22 I don't have any further questions for the applicant.

23 Does the board have any questions for
24 the applicant? And if so, please raise your hand.

25 Okay. It's so funny. So Mr. Moy --

1 well, first of all, Mr. Young, is there anybody here
2 wishing to testify?

3 MR. YOUNG: We do not.

4 MR. CHAIRMAN: Okay. Mr. Moy, are we
5 not going to have OP on the continued hearing cases?

6 MR. MOY: You can. They are available
7 to be --

8 MR. CHAIRMAN: Okay. Well, that's --
9 but we just have to deal with it ahead of time. Okay.
10 That's fine.

11 All right. Okay. Ms. Prince, I'm going
12 to go ahead and close the record and the hearing. And
13 I'm going to excuse you guys and I hope you guys have a
14 good day.

15 Okay? Mr. Young, if you could please
16 excuse them.

17 MS. PRINCE: Can I just bring up one
18 issue, Chairman Hill, if I may?

19 MR. CHAIRMAN: Sure. Don't let her go
20 yet, Mr. Young.

21 MS. PRINCE: As I had said at the
22 hearing, if you are inclined to require us to wait for
23 the regulations to change --

24 MR. CHAIRMAN: No. I got you, Ms.
25 Prince. I got you. I got you. I got you. I got you.

1 MS. PRINCE: I would --

2 MR. CHAIRMAN: I understand. I
3 understand. I understand. Okay. I mean -- okay.

4 All right. Thank you, Mr. Young. If
5 you can excuse everybody, please?

6 (Pause)

7 MR. CHAIRMAN: Okay. Cool.

8 All right. Is the board ready to
9 deliberate? I am -- I'm fine with it. I mean, I
10 didn't -- you know, I wasn't really sure how it --
11 well, I shouldn't say I wasn't really sure. I
12 understand we had this long discussion about whether it
13 was a use variance or not. We got -- I voted the other
14 way but that's fine. And so, it ended up becoming a
15 use variance. The whole special exception that they
16 can wait for. And then it became a special exception
17 which is a way easier bar to cross than the area
18 variance. However, I'm comfortable with what the
19 applicant has put forward in terms of how they're
20 meeting the burden for the area variance. I actually
21 agree with their filings, in particular, also the one
22 exhibit 40. Also the Office of Planning's
23 recommendation as well as that of the ANC. And
24 basically, again, they just can't use it. I mean, if
25 they could use it for storage then at least you can

1 take that argument. But they can't even use it for
2 storage. And how this may play out in other cases that
3 we may have in terms of the area variance. I mean,
4 that's the whole thing. Like, they can't use it. And
5 so, I'm going to be voting in favor.

6 Mr. Shapiro, may I go with you next?

7 MR. SHAPIRO: Sure. I just want to make
8 sure we're clear because we've been back and forth.
9 Can we determine that this will be considered a use
10 variance.

11 MR. CHAIRMAN: I'm sorry. Sorry.

12 MR. SHAPIRO: That's all right.

13 MR. CHAIRMAN: I'm sorry. I'm sorry.
14 I'm sorry. Use variance. My mistake.

15 MR. SHAPIRO: That's fine. I just want
16 to make sure.

17 I agree with you. I think that as the
18 applicant's representative laid out that the use
19 variance standard has been met. There is a pretty
20 unique circumstance. You know, this isn't about
21 highest and best use. This is about any use. So I
22 don't have any concerns with this. I don't have any
23 concerns about us taking action and I would be in favor
24 of it.

25 MR. CHAIRMAN: Okay. And I love how OAG

1 tends to pop up and then I know something else is going
2 on.

3 So I also don't have any issues with the
4 special exception. And I believe they meet the
5 criteria for that as well. And I'm also in agreement
6 with the arguments that they're making for the special
7 exception.

8 Mr. Shapiro, would you agree with me?

9 MR. SHAPIRO: I would agree with you.

10 Again, to your previous point, I am happy to move
11 forward on this, to take action as a use variance. But
12 I imagine if it came before us as a special exception -
13 -

14 MR. CHAIRMAN: No, no. There's -- part
15 of it is a special exception. So that's --

16 MR. SHAPIRO: Yes. I have no issues
17 with that. That's the reduced -- yeah. I have no
18 issues with that at all.

19 MR. CHAIRMAN: Okay. All right. Mr.
20 Smith?

21 MR. SMITH: So I do agree with your
22 interpretation on the special exception. I do believe
23 that they met the burden of proof as to special
24 exception.

25 I do struggle with the first and second

1 prong of the variance, the use variance
2 (indiscernible). I do not believe that an oversize
3 penthouse presents an exception situation or condition
4 that hinders the use of a property. For me, the key
5 words is use of property. Large penthouses are common
6 occurrences especially for old buildings that
7 originally had large bulky equipment. To make an
8 argument that a large penthouse has a (indiscernible)
9 because of technological changes and mechanical
10 equipment will open the door to this type of variance
11 and recurrent in nature and I believe would more so
12 necessitate a testament (indiscernible) properly this
13 particular case is before the zoning commission to fix.

14 So I do believe that, to me, the best
15 avenue is to allow this particular case is for this
16 project to wait.

17 And also, in regard to the second prong
18 -- because the property can be used even if the
19 penthouse remains vacant. So to me, it's about the key
20 word is use of the property not necessarily a space on
21 the property. So I do not support the matter.

22 MR. CHAIRMAN: Okay. Great. All right.
23 Magistrate John?

24 MS. JOHN: I'm in support of the
25 application for the use variance. And I read the

1 applicant's submission and the exhibits 40A -- 40, 40A
2 and 40B. And I agree that -- with the analysis --

3 Can you hear me, Mr. Chairman?

4 MR. CHAIRMAN: Yes, I hear you.

5 MS. JOHN: I believe that the
6 applicant's analysis of the penthouses built in that
7 particular time is helpful in showing how this
8 particular situation presents a unique condition. And
9 I agree with the applicant that in this case it really
10 is undue hardship because the only other use of the
11 space is storage which is also not allowed. And so,
12 essentially, we would be saying to this applicant that
13 this very large space cannot be used and should remain
14 vacant.

15 So -- and I think this case is
16 (indiscernible) is also unique because this particular
17 provision was intended to support the Secret Service in
18 securing the White House. And the Secret Service is in
19 agreement, as I understand it, in changing to a special
20 exception in situations like this.

21 So I believe this case stands on its own
22 facts and it is particularly unique. And so I am in
23 support of their application. I will give great credit
24 to OP's analysis and the ANC's support. I believe DDOT
25 has no objection to the application and so I will vote

1 in support.

2 MR. CHAIRMAN: Okay. Great. Mr. Blake?

3 MR. BLAKE: Yes. Thank you.

4 In looking at the use variance, I do
5 think that there is a number of issues that could be
6 resolved to its next amendment. And I agree with many
7 of things that Mr. Smith pointed out.

8 However, I do think this is an
9 exceptional condition based on the large size which was
10 pointed out in the penthouse survey. And I do think
11 it's an undue hardship because it can't be used for any
12 other purpose at all other than mechanical space based
13 on the regulations.

14 And I do think that the third prong is
15 met and supported by the Secret Service input as well
16 as the strong support from the ANC. So I'd be prepared
17 to support this use variance.

18 The special exception requirements I
19 think have been met and I would give significant weight
20 to the Office of Planning's findings and
21 recommendations on that. I'm prepared to support that
22 as well.

23 MR. CHAIRMAN: Okay. Thank you, Mr.
24 Blake.

25 All right. I'm going to go ahead and

1 make a motion then to approve Application number 20428
2 as read by the secretary and ask for a second.

3 Ms. John?

4 MS. JOHN: Second.

5 MR. CHAIRMAN: The motion was made and
6 seconded. Mr. Moy, could you take a roll call vote,
7 please?

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

9 When I call your name, if you would
10 please respond with a "yes", "no" or "abstain" to the
11 motion made by Chairman Hill to approve the application
12 for the relief requested. The motion was seconded by
13 Vice Chair John.

14 Zoning commissioner Peter Shapiro?

15 MR. SHAPIRO: I vote yes.

16 MR. MOY: Mr. Smith?

17 MR. SMITH: No.

18 MR. MOY: Mr. Blake?

19 MR. BLAKE: Yes.

20 MR. MOY: Vice Chair John?

21 MS. JOHN: Yes.

22 MR. MOY: Chairman Hill?

23 MR. CHAIRMAN: Yes.

24 MR. MOY: Staff would record the vote as
25 4 to 1 to 0. And this is on the motion made by

1 Chairman Hill to approve the application, seconded by
2 Vice Chair John. Also, in support of the motion to
3 approve is Mr. Blake and Zoning Commissioner Peter
4 Shapiro. Opposed to the motion is Mr. Smith.

5 Again, the motion carries on a vote of 4
6 to 1 to 0.

7 MR. CHAIRMAN: Okay. Great. All right.
8 Mr. Shapiro, is that it for you, Commissioner? Okay.
9 You have a good day, Commissioner.

10 Mr. Young, I guess you're getting
11 another commissioner?

12 (Pause)

13 MR. CHAIRMAN: Good morning,
14 Commissioner. Can you hear me? You're on mute,
15 Commissioner, I believe. No? Well, maybe they still
16 have you on mute. No?

17 (Pause)

18 MR. CHAIRMAN: Mr. Young -- well, now at
19 least you show yourself as being on mute.

20 MR. MAY: How about now?

21 MR. CHAIRMAN: Yep. Good.

22 MR. MAY: Yeah. It's a very strange
23 thing that happens every once in a while with the
24 speaker settings or the microphone settings.

25 MR. CHAIRMAN: Can you hear me?

1 MR. MAY: I can hear you.

2 MR. CHAIRMAN: Okay. Did you watch the
3 previous -- did you watch the previous one,
4 Commissioner?

5 MR. MAY: I had it in the background
6 while I was doing other things.

7 MR. CHAIRMAN: I see 'cause I laughed
8 because Mr. Smith did not agree with the board. And I
9 thought about you and how I would have to bifurcate,
10 you know, so that Mr. Smith could have possibly voted
11 for the special exception because, Mr. Smith, you were
12 okay with the special exception, I believe.

13 MR. SMITH: Uh-huh.

14 MR. CHAIRMAN: Yeah. Yeah. So I had to
15 go around that step. But if the commissioner were
16 here, I'd have to make sure that was accurate.

17 MR. MAY: Oh yeah. Yeah. I would have
18 forced that.

19 MR. CHAIRMAN: Okay. All right. Okay.
20 Let's see.

21 Mr. Moy, if you could please call the
22 next case?

23 MR. MOY: Yes. Thank you, Mr. Chairman.

24 So the next case before the board is
25 Application number 20413 of 703 Randolph, LLC. This is

1 caption advertised for special exception under the
2 residential conversion requirement, Subtitle U, Section
3 320.2, rooftop architectural requirements, Subtitle E,
4 Section 206.1. This would convert an existing semi-
5 detached three-story flat into a three-unit apartment
6 house and to construct a rooftop addition in the RF-1
7 zone. This is located at 703 Randolph Street, N.W.,
8 Square 3132, Lot 12.

9 As the board will recall, this was last
10 heard at your hearing on March 31st. The board
11 requested no supplemental information, requested no
12 other testimony and there are no other filings in the
13 record since March 31st. Participating is the
14 chairman, the vice chair, Mr. Blake, Mr. Smith and
15 Zoning Commissioner Peter May.

16 MR. CHAIRMAN: Okay. Great. Give me
17 one moment here, please.

18 (Pause)

19 MR. CHAIRMAN: I'm sorry. Just give me
20 one moment. I have -- I just have the one screen since
21 I'm here at the house.

22 (Pause)

23 MR. CHAIRMAN: Okay. Great.

24 Mr. Heisey, can you hear me?

25 MR. HEISEY: Yes, I can. Good morning.

1 MR. CHAIRMAN: Good morning. Could you
2 introduce yourself on the record, please?

3 MR. HEISEY: Hi. I'm Joel Heisey. I'm
4 the agent for the owner, the Ulysses Glee.

5 MR. CHAIRMAN: Okay. Great. So we
6 didn't request any additional filings from Mr. Heisey.
7 And I guess I'm a little bit at a loss here because the
8 second -- it's a long story. I took my second shot and
9 I'm not at the office so I don't have everything that I
10 had hoped to have.

11 But the board have any further questions
12 for Mr. Heisey? And if so, please raise your hand.
13 Okay.

14 Mr. Young, is there anyone in here
15 wishing to participate?

16 MR. YOUNG: We do not.

17 MR. CHAIRMAN: Okay. All right. Well,
18 Mr. Heisey, I'm going to go ahead -- and I appreciate
19 your time and the fact that we have to do this little
20 dance in order to make sure we're fulfilling all of the
21 requirements. And so, I'm going to go ahead and close
22 the hearing and the record. And, sir, you're excused.
23 I hope you have a good day.

24 MR. HEISEY: Okay. I'll still be
25 watching, of course. But, yes, thank you. I know you

1 have hundreds of cases. I'm hoping this is still fresh
2 in your mind. If you do have any questions, before you
3 officially close it, I'm available.

4 MR. CHAIRMAN: Okay. Thank you. Well,
5 I don't -- the board doesn't have any questions,
6 correct? And if so, please raise your hand. Okay.
7 All right.

8 So, Mr. Heisey, we don't have any other
9 questions so we're going to go ahead and close the
10 record.

11 MR. HEISEY: Okay. Thank you,
12 gentlemen, and Ms. John.

13 MR. CHAIRMAN: Thank you.

14 Mr. Young, if you can excuse Mr. Heisey,
15 please.

16 Okay. I'm going to ask someone else to
17 start because I have to kind of like look at some other
18 things real quick on this screen.

19 Mr. Commissioner May, would you mind
20 beginning for us?

21 MR. MAY: Yeah. So I don't really see
22 any issues on this. I mean, the Office of Planning
23 support, the ANC support. The design, I think, is
24 pretty sensitive to what I think is a really
25 interesting and unusual house for Washington.

1 And the relief is really pretty minimal.
2 So -- and it helps to have the neighbor support as
3 well. So I don't have any problems with it. I'm
4 prepared to vote in favor.

5 MR. CHAIRMAN: Okay. Thank you,
6 Commissioner.

7 Mr. Smith?

8 MR. SMITH: I agree with Mr. May. I
9 feel like the request is fairly minimal in nature.
10 Respondent (indiscernible) support of the adjacent
11 property owners (indiscernible) property owner across
12 the street (indiscernible). And so I would grant -- I
13 stand my ground on Mr. May's comments and
14 (indiscernible) and the support of the ANC. So
15 (indiscernible) I would be in support of this
16 application.

17 MR. CHAIRMAN: Okay. Thank you, Mr.
18 Smith.

19 Vice Chair John?

20 MS. JOHN: Thank you, Mr. Chairman.

21 And so, this is a straightforward
22 application for conversion of a two-unit flat to a
23 three-unit apartment house in the RF-1 zone under
24 Subtitle U320.2. In this particular application, the
25 applicant does meet all of the development standards

1 and I thought that the architectural relief was
2 reasonable. And so I am in support of the requested
3 relief on this Subtitle E, 206.1 (indiscernible)
4 support. There are also issues related to construction
5 that the ANC has raised. And we need the applicant
6 (indiscernible) which of those conditions
7 (indiscernible).

8 So, yeah. So there is the ANC's letter.
9 And I don't even know if you can pull those up, Mr.
10 Chairman. And these are not permissions that the board
11 would include in the order. But if you'd like, I can
12 sort of read that or just taking note of the
13 conditions. I think --

14 MR. CHAIRMAN: Magistrate --

15 MS. JOHN: Yes?

16 MR. CHAIRMAN: Yeah. Magistrate John,
17 and I appreciate your help because I'm again having
18 difficulties here.

19 I think what you were saying is again
20 those were conditions that the ANC and the applicant
21 had agreed to but they're not necessarily ones that the
22 board would put in place?

23 MS. JOHN: Yes. That's correct.

24 MR. CHAIRMAN: Okay. Thank you.

25 MS. JOHN: I have nothing further, Mr.

1 Chairman. I support the application.

2 MR. CHAIRMAN: Okay. Great. Thank you.

3 Mr. Blake?

4 MR. BLAKE: Yes. Certainly.

5 I agree that the standards -- specific
6 standards have been met for the residential conversion.

7 Also, that the architectural relief requested which is
8 minimal certainly has demonstrated through the shades
9 that is in the architectural renderings of the door
10 that it won't really cause a material impact on the
11 use, privacy, line of the neighboring properties or
12 anything like that. I also acknowledge the OP's
13 approval, DDOT has no objections and the support from
14 the adjacent neighbors as well. So I would prepare to
15 support this as well.

16 MR. CHAIRMAN: Okay. Thank you all very
17 much for your input. I appreciate it and it was
18 helpful.

19 I will agree with all of the comments
20 that were made by my colleagues. I'm going to go ahead
21 and make a motion to approve Application number 20413
22 as caption read by the secretary and ask for a second,
23 Ms. John.

24 MS. JOHN: Second.

25 MR. CHAIRMAN: The motion is made and

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

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

3 When I call your name, if you would
4 please respond with a "yes", "no" or "abstain" to the
5 motion made by Chairman Hill to approve the application
6 for the relief requested. The motion was seconded by
7 Vice Chair John.

8 Zoning Commissioner Peter May?

9 MR. MAY: Yes. Yes.

10 MR. MOY: Mr. Smith?

11 MR. SMITH: Yes. Yes.

12 MR. MOY: Mr. Blake?

13 MR. BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 MS. JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 MR. CHAIRMAN: Yes.

18 MR. MOY: Staff will record the vote as
19 5 to 0 to 0. And this is on the motion made by
20 Chairman Hill to approve, seconded by Vice Chair John.
21 Also in support of the motion to approve is Mr. Blake,
22 Mr. Smith and Zoning Commissioner Peter May. Motion
23 carries 5 to 0 to 0.

24 MR. CHAIRMAN: Okay. Thank you, Mr.
25 Moy.

1 You can go ahead and call our next one
2 when you get a chance, Mr. Moy.

3 (Pause)

4 MR. MOY: Okay. This is the next
5 application before the board, case number 18238A, A as
6 in alpha, of Eighth Street, LLC, as amended. This is a
7 special exception from the use restrictions of Subtitle
8 U, Section 412.1(e)(1). This would continue a fast
9 food use with the term of it set to expire on August
10 1st, 2021 in the MU-25 zone.

11 This property is located at 413 8th
12 Street, S.E., square 902, lot 828.

13 This application was last heard by the
14 board on March the 31st. The board granted party
15 status to a Linda Elliott and John West. Since March
16 31st, the board -- well, at the (indiscernible) on
17 March 31st, the board requested supplemental
18 information from the ANC and the -- no. Strike that.

19 So since March 31st, the filing in the
20 record is an ANC 6B report which is in support as well
21 as filings from the neighbors of square 902 and as well
22 as a PowerPoint from Linda Elliott.

23 MR. CHAIRMAN: Okay. Thank you, Mr.
24 Moy.

25 Let's see. Mr. Porter, are you there?

1 Great. Can you introduce yourself for the record,
2 please?

3 MR. PORTER: Yes, sir. Sam Porter from
4 the law firm of Ice Miller on behalf of the applicant.
5 And we have two members with us today.

6 MR. CHAIRMAN: Great.

7 MR. PORTER: Do you want me to introduce
8 them?

9 MR. CHAIRMAN: I'm just going to go
10 around the table here. I think you got Mr. France and
11 is it Mr. Holman?

12 MR. PORTER: Mr. Silverman.

13 MR. CHAIRMAN: Mr. Silverman. I don't
14 see Silverman.

15 MR. PORTER: I believe he's being --
16 he's connected by telephone.

17 MR. CHAIRMAN: Okay. Mr. Young, is Mr.
18 Silverman there?

19 MR. YOUNG: Yes. I just unmuted him.
20 He's calling in.

21 MR. CHAIRMAN: Mr. Silverman, can you
22 hear me?

23 MR. SILVERMAN: Yes, I can. Can you
24 hear me?

25 MR. CHAIRMAN: Yes. Could you introduce

1 | yourself for the record, Mr. Silverman?

2 | MR. SILVERMAN: Yes. I'm Guy Silverman
3 | and I'm representing the ownership of 413.

4 | MR. CHAIRMAN: Okay. Mr. France, can
5 | you hear me? No. You're on mute, Mr. France. Nope.
6 | Still on mute.

7 | MR. FRANCE: Hi. Sorry.

8 | MR. CHAIRMAN: It's all right.

9 | MR. FRANCE: I have too many numbers
10 | going.

11 | Hi. I'm Matt France. I'm the director
12 | of development for the Northeast for Chipotle Mexican
13 | Grill.

14 | MR. CHAIRMAN: Okay. Great.

15 | Ms. Elliott, can you introduce yourself
16 | for the record, please? You're on mute, Ms. Elliott.

17 | MS. ELLIOTT: Hi. I'm sorry. My name
18 | is Linda Elliott. I live at 414 7th Street, S.E. I am
19 | behind Chipotle. Like, my corner of my husband and my
20 | property touches Chipotle. And my husband, John West,
21 | is also on.

22 | MR. CHAIRMAN: Okay. Mr. Holman, can
23 | you hear me?

24 | MR. HOLMAN: I can, yes, sir.

25 | MR. CHAIRMAN: Could you introduce

1 | yourself for the record, Mr. Holman?

2 | MR. HOLMAN: Sure. Corey Holman,
3 | commissioner for 6B06 and chair of A260's planning and
4 | zoning committee. And (indiscernible). Thank you.

5 | MR. CHAIRMAN: Great. All right,
6 | Commissioner.

7 | Let's see -- okay. Mr. Porter --

8 | MR. PORTER: Yes, sir.

9 | MR. CHAIRMAN: -- can you hear me?

10 | MR. PORTER: Yes, sir.

11 | MR. CHAIRMAN: Okay. So, I mean, we
12 | didn't really get a whole bunch of new stuff that I
13 | think we wanted. I mean, I remember that what we had
14 | talked about was that the ANC had all these conditions
15 | in Exhibit 51. And the applicant was in agreement with
16 | all those conditions. Is that correct?

17 | MR. PORTER: Yes, sir.

18 | MR. CHAIRMAN: Right. And the one that
19 | was a little bit peculiar was this rat run thing. I
20 | think it was, like -- it was condition number 8. And
21 | so they -- I mean, you guys were in -- you were in
22 | agreement with removing the rat run, correct, or
23 | whatever those boards are, correct?

24 | MR. PORTER: That's fine. Yep. They're
25 | in agreement.

1 MR. CHAIRMAN: Okay. And I know that
2 you were hopeful that we could do a 12-year time limit
3 because it would then -- it would then sync up with
4 your lease, correct?

5 MR. PORTER: Yes, sir.

6 MR. CHAIRMAN: Okay. Then there was
7 another discussion about a 10-year option or 10-year
8 options after the 12-year sync up, correct?

9 MR. PORTER: That's correct.

10 MR. CHAIRMAN: Okay. I don't think
11 we're going to be able to do the 10-year thing because
12 it's just too -- it just doesn't work out. Like I
13 mean, we can't decide for another board what's going to
14 happen, right?

15 MR. PORTER: No. But I understand.

16 MR. CHAIRMAN: Right. So that's not
17 going to be able to work out.

18 Ms. Elliott, can you hear me?

19 MS. ELLIOTT: Yes, I can.

20 MR. CHAIRMAN: Okay. I know that you've
21 been very involved in all of this and that you also
22 went through the whole hearing and then got to talk
23 with everybody about everything that's going on. And
24 thankfully at least, Chipotle doesn't seem to be, you
25 know, a terrible neighbor. And so they're trying to do

1 their best. And so you understand all the conditions
2 that are in Exhibit 51, correct?

3 MS. ELLIOTT: Yes. And I would just add
4 that the ANC revoted and you have Exhibit 52 which
5 is -- I'm sorry -- yes, 51. You're right. You're
6 right. Let me just take all that back. I just mixed
7 something up.

8 MR. CHAIRMAN: Okay.

9 MS. ELLIOTT: But it has -- condition 8
10 has now been simplified so it's much more
11 straightforward. Corey Holman can speak to that. But
12 got it. Okay.

13 MR. CHAIRMAN: That's okay. So you guys
14 are all in favor of all of the conditions that are in
15 Exhibit 51.

16 MS. ELLIOTT: Yes.

17 MR. CHAIRMAN: Okay. And actually, out
18 of curiosity then, so are you all -- I can't remember
19 who else was part of your group off the top of my head.
20 And again, I don't have all my notes because I'm here
21 at the house. But are you guys withdrawing your
22 opposition?

23 MS. ELLIOTT: So I'm in as a party
24 support and my husband and I are supporting. And the
25 neighbors -- the other neigh -- so we are the only ones

1 | who have party status. And we have supported from the
2 | beginning. We've worked closely with Matt France and
3 | Guy Silverman. And they have been incredible in
4 | admitting after 10 years of the neighbors that they do
5 | have an adverse impact on all the other properties.
6 | And they have been most incredible about their
7 | willingness to agree to conditions, particularly indoor
8 | trash and sound mitigation that will correct that
9 | adverse impact. And so we are supportive.

10 | There were other neighbors many of whom
11 | are watching right now and who signed up to speak if
12 | you have any questions -- were not sure how they should
13 | characterize themselves because the bottom line is we
14 | are all supportive as long as the conditions are
15 | included in the order.

16 | MR. CHAIRMAN: Okay. I understand. So
17 | the reason why I'm asking because I wasn't clear
18 | because I remember it being a little confusing when we
19 | were kind of originally going through it. But, right,
20 | you are in support. You're the only party that has
21 | been given party status and you're in support.

22 | The reason why I'm asking that is that
23 | makes a difference between a summary order and a full
24 | order. And that makes a difference to Chipotle. Okay?

25 | MS. ELLIOTT: Yep.

1 MR. CHAIRMAN: So -- all right. Okay.

2 MS. ELLIOTT: And can I -- I just want
3 to clarify. We are only -- we are -- just to make
4 absolutely clear for the record, we are fully
5 supportive as long as the eight conditions are put into
6 the order.

7 MR. CHAIRMAN: Okay. I got -- I got
8 you.

9 Commissioner Holman, do you have
10 anything to add?

11 MR. HOLMAN: No, I don't. I just want
12 to reiterate again, we fixed item 8 and to apologize
13 about some of the confusion our full report last month
14 caused. Thank you.

15 MR. CHAIRMAN: Yeah. I thought your
16 report was really good, Commissioner. And I think you
17 guys are doing a great job over there. And the rat run
18 thing was fine. It all got worked up. But thank you
19 for clarifying the conditions that you have there in
20 number 8.

21 Let's see. Okay. Does the board have
22 any questions for anybody? If so, raise your hand.

23 All right. I don't see anybody.

24 Okay. Ms. Elliott?

25 MS. ELLIOTT: I just wanted -- if you're

1 going to close the record, I just wanted to make one
2 comment about what we provided in addition. But I'm
3 just not sure where you're going. If you're --

4 MR. CHAIRMAN: No problem. I'll let you
5 speak at the end then.

6 Mr. Young, is there anybody here wishing
7 to testify?

8 MR. YOUNG: Yes, we do.

9 MR. CHAIRMAN: How many we got?

10 MR. YOUNG: I believe we have three.

11 MR. CHAIRMAN: Okay. You want to bring
12 them up?

13 Ms. Elliott?

14 MS. ELLIOTT: If these are neighbors, I
15 can tell you that they are available essentially to
16 answer questions the board may have about the adverse
17 impact on their property. So they're not here to give
18 independent testimony.

19 MR. CHAIRMAN: Okay. I got you. I
20 appreciate it. I just have to do this because I'm
21 supposed to do this.

22 MS. ELLIOTT: Yeah, I know.

23 MR. CHAIRMAN: But I appreciate that.
24 I'll try to, whatever, simplify everything.

25 Mr. -- oh, I had a hard time with the

1 name last time. Ms. Upadhyay?

2 MS. UPADHYAY: Yes.

3 MR. CHAIRMAN: Can you hear me?

4 MS. UPADHYAY: Yes. I can hear you.

5 MR. CHAIRMAN: Okay. Where are you
6 again, Ms. Upadhyay?

7 MS. UPADHYAY: I am currently in Dubai
8 but I reside in -- we own the two properties, 422 and
9 424.

10 MR. CHAIRMAN: No. I got you.

11 MS. UPADHYAY: We reside in one --

12 MR. CHAIRMAN: I got you. I'm just
13 trying to remember. The last time it was like 11:30
14 p.m. and it looks like it's better --

15 MS. UPADHYAY: Yes. It's a much, much
16 better time this time around.

17 MR. CHAIRMAN: Right. Okay.

18 So, Ms. Upadhyay, I don't think -- I
19 mean, you're welcome to give your testimony. I
20 don't -- well, let me get through -- let me ask
21 everybody first to introduce themselves and just see if
22 the board has any questions for them.

23 Mr. Beatley, can you hear me?

24 MR. BEATLEY: Yeah. I can hear you.

25 MR. CHAIRMAN: Could you introduce

1 | yourself for the record, please?

2 | MR. BEATLEY: Yes. My name is Kirk
3 | Beatley. I own the property at 416 7th Street, S.E.,
4 | which is directly behind the Chipotle Restaurant.

5 | MR. CHAIRMAN: Okay.

6 | MR. BEATLEY: Our fence line shares the
7 | properties -- separates the property between my
8 | property and Chipotle Restaurant.

9 | MR. CHAIRMAN: Okay. Great. Thank you,
10 | Mr. Beatley.

11 | Mr. Young, who's our third participant?

12 | MR. YOUNG: The third one is Kristen
13 | Fenty. And she's calling in by phone. I just unmuted
14 | her.

15 | MR. CHAIRMAN: Ms. Fenty, can you hear
16 | me?

17 | MS. FENTY: I can.

18 | MR. CHAIRMAN: Could you introduce
19 | yourself for the record, please?

20 | MS. FENTY: Sure. My name is Kristen
21 | Fenty and I am the owner of 426 7th Street, S.E.

22 | MR. CHAIRMAN: Okay.

23 | MS. FENTY: I live right next to the
24 | beach and have been a landlord.

25 | MR. CHAIRMAN: Okay. All right. So I'm

1 going to just summarize what I think is going on
2 because of what Ms. Elliott has said. And so, if you
3 want to give testimony, you can. And I'm going to go
4 around the table. But what I understood is that
5 everyone is comfortable with the conditions and is in
6 support as long as those conditions are implemented.
7 That seems to be the gist of this. And you're here to
8 answer any questions that the board might have. And
9 so, I'm going to go around the table and you can just
10 confirm that that's what your testimony is.

11 Ms. Upadhyay, may I start with you?

12 MS. UPADHYAY: Yes. That's correct. I
13 am fully in support if all of the conditions are met.
14 And I've already submitted our testimony on how the
15 rats have affected us. If there's any questions, I'm
16 happy to answer.

17 MR. CHAIRMAN: Great. Thank you.

18 Mr. Beatley, is that correct?

19 MR. BEATLEY: Yes, the same. We're
20 fully in support as long as the eight conditions are
21 adhered to, agreed to, included. And we're here to
22 offer any testimony necessary.

23 MR. CHAIRMAN: Okay. Ms. Fenty, can you
24 hear me? Is that correct?

25 MS. FENTY: Yes. Yes.

1 MR. CHAIRMAN: Okay. Does the board
2 have any questions for the witnesses? And if so,
3 please raise your hand.

4 Okay. Nobody has any questions for the
5 witnesses.

6 Okay. I'm going to excuse the
7 witnesses. Ms. Upadhyay, you're the farthest one
8 that's ever testified. We got somebody from England
9 one time but you're farthest away.

10 MS. UPADHYAY: Thanks for having me.

11 MR. CHAIRMAN: Okay.

12 MS. UPADHYAY: Thanks.

13 MR. CHAIRMAN: All right. Mr. Young, if
14 you could excuse everybody, please.

15 Okay. Ms. Elliott, you said you wanted
16 to add something at the end?

17 You're still on mute, Ms. Elliott.

18 MS. ELLIOTT: I just wanted to be -- to
19 say two things. We had -- we submitted Exhibit 52.
20 And that is sworn testimony from representatives of
21 each of the nine residential properties on the block
22 that describe the adverse impact of rat sustenance or
23 basically the inability of Chipotle which they have
24 admitted to manage their trash and also sound
25 mitigation issues.

1 That was -- for the record, we thought
2 it was important that the board members have the
3 evidence before them that the ANC is more familiar
4 with, that OP in providing their support is more
5 familiar with, because Steve Morton (ph) worked on the
6 (indiscernible) pizza case with us. And we realized
7 last time we were up that perhaps we hadn't shared
8 enough information with the board or enough evidence to
9 show the impact. So we submitted those statements.

10 We also put together 16 slides just that
11 are illustrative of the -- the state of the trash
12 management and rat (indiscernible) over the last nine
13 years since Chipotle has been operating. And I want to
14 be clear to say that over the course of that time, we
15 worked closely with Chipotle and they were cooperative
16 in trying to figure out how to fix the problem. And
17 there were multiple e-mails and photos sent back and
18 forth. We are happy to show those slides to the board.
19 They've been submitted to the record. Mr. Young's
20 prepared them and we can explain what they are if
21 that's -- if the board feels the need to see them.

22 We want to explain that part of the
23 reason it's happened this way is the neighbors were so
24 thrilled with the willingness of Chipotle to admit that
25 they have had an adverse impact on the block and, more

1 | importantly, to correct it. And ANC unanimously voted
2 | for it and OP recognized the importance of those
3 | conditions. That we sort of lost track of the fact
4 | that the board members might not be familiar with the
5 | conditions (indiscernible) effect it has. And so
6 | that's why we put together this additional
7 | (indiscernible) reference. But we are very pleased
8 | with how Chipotle has admitted the impact and is
9 | willing to correct it.

10 | So I'm (indiscernible) slides if you
11 | want it or not but they are there. And we hope the
12 | board has looked at them.

13 | MR. CHAIRMAN: I got you. Yeah, Ms.
14 | Elliott. We did look at the slides and all of the
15 | exhibits that you presented. They were helpful and
16 | also thorough.

17 | Commissioner Holman, do you have
18 | anything you'd like to add at the end?

19 | MR. HOLMAN: I do not.

20 | MR. CHAIRMAN: Okay. Mr. Porter, do you
21 | have anything you'd like to add at the end?

22 | MR. PORTER: No, sir. We just
23 | respectfully request that you grant the special
24 | exception for the fast food restaurant. Thank you.

25 | MR. CHAIRMAN: Okay. All right. Let's

1 see. All right. Does the board have any final
2 questions for anybody? And, if so, please raise your
3 hand.

4 No? All right. Okay. I'm going to
5 close the record and the hearing. Mr. Young, if you
6 can please excuse everyone.

7 Okay. Ms. John, are you there?

8 MS. JOHN: Yes. Oh --

9 MR. CHAIRMAN: Okay.

10 MS. JOHN: -- sorry, Mr. Chairman. I
11 did not realize my video was off. Yes, I'm here.

12 MR. CHAIRMAN: Okay. Great.

13 Okay. I'm ready to deliberate. It's
14 like I was getting hungry. I was, like, oh, maybe I'll
15 have Chipotle for lunch. And then I was, like, well,
16 there's rats. You know -- and so -- it kind of was a
17 mix. I know that Chipotle right now is, like, going
18 what has he got --

19 So --

20 MS. JOHN: Mr. Chairman, let me just
21 say, if no (indiscernible) about rats, you would not
22 eat anywhere in the city. There is a whole underground
23 city of rats that live here in burrows and they're very
24 smart. They move from place to place, from burrow to
25 burrow to concrete.

1 MR. CHAIRMAN: Okay. All right. Let's
2 not ruin all our appetites forever. Okay?

3 So all right. I don't have an issue
4 with the application. I mean, I think that it was
5 really great that there was so much community
6 involvement. I'm glad that the ANC was able to work
7 with the applicant. I'm happy to hear that the
8 applicant was willing to work with the ANC and the
9 neighbors to the extent that they were willing to do so
10 in terms of bringing the trash inside and trying to do
11 their best to -- you know, for the rat abatement.

12 I didn't have any issues with any of the
13 conditions 1 through 8. I think that we can implement
14 all of those, the ones -- the conditions that are in
15 Exhibit 51 from the ANC.

16 I also would agree with the argument
17 that the attorney has made for the applicant as to how
18 they're meeting the criteria for us to grant the relief
19 requested.

20 I also am fine with the 12-year mark in
21 terms of lining up the lease with the relief. And so
22 I'm in favor. And I also would agree with the analysis
23 the Office of Planning has provided as well as that of
24 DDOT.

25 I'm going to go ahead and go around the

1 table and start with you, Commissioner May.

2 Now you're back. I lost you for a
3 second, Commissioner May. And now I can't hear you.

4 MR. MAY: I lost all of you for a
5 moment.

6 MR. CHAIRMAN: Oh, got you.

7 MR. MAY: No. You summarized everything
8 very well. I don't have anything else to add. And I'm
9 prepared to vote in favor with the conditions that were
10 agreed to by the neighbors and the ANC.

11 MR. CHAIRMAN: Okay. Mr. Smith?

12 MR. SMITH: I agree. I think you
13 summarized everything well. I would just note that
14 they raise a little -- I mean, the conditions raise a
15 little trouble for me because I think it's kind of hard
16 to enforce the (indiscernible) section of it. But I'll
17 leave it up to DC (indiscernible) and respect the
18 wishes of the ANC and the citizens out there. But
19 kudos to the citizens for reaching an agreement, you
20 know, having very thorough conversations with Chipotle
21 and everybody coming to a mutual agreement. So I would
22 support the special exception with the conditions.

23 MR. CHAIRMAN: All right. Thank you,
24 Mr. Smith.

25 Vice Chair John?

1 MS. JOHN: I'm in support of the
2 application. And I believe you've summarized very well
3 how the application meets the criteria. I give great
4 weight to the recommendations of the Office of Planning
5 and the ANC. And I would like to commend all of the
6 (indiscernible) for working together to (indiscernible)
7 conditions. And I can support the application.

8 MR. CHAIRMAN: Mr. Blake?

9 MR. BLAKE: Yes. I, too, would be in
10 support of the special exception and it does meet all
11 the standards. And certainly, the agreement does go a
12 long way to mitigate the adverse effects shown in
13 Exhibit 52 and 54. And I think the community
14 involvement has been tremendous. And again, I would be
15 very comfortable supporting this special exception.

16 MR. CHAIRMAN: Okay. Thank you, Mr.
17 Blake. Thank you to all my colleagues. I'm going to
18 make a motion to approve application of 18238A as
19 caption read by the secretary including the conditions
20 in Exhibit 51 and the 12-year time limit and ask for a
21 second, Ms. John.

22 MS. JOHN: Second.

23 MR. CHAIRMAN: The motion made and
24 seconded. Mr. Moy, if you could please take a roll
25 call vote.

1 MR. MOY: Thank you, Mr. Chairman.
2 When I call your name, if you would
3 please respond with "yes", "no" or "abstain" to the
4 motion made by Chairman Hill to approve the application
5 for the relief requested along with the eight
6 conditions as listed in Exhibit 51 plus for a 12-year
7 time limit. Seconded the motion Vice Chair John.

8 Starting with Commissioner Peter May?

9 MR. MAY: Yes.

10 MR. MOY: Mr. Smith?

11 MR. SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 MR. BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 MS. JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 MS. JOHN: Yes. Can you hear me, Mr.

18 Moy? Can you hear me, Mr. Moy?

19 MR. MOY: Yes, ma'am.

20 MS. JOHN: Okay. Thank you.

21 MR. MOY: Yes, ma'am.

22 Chairman Hill?

23 MR. CHAIRMAN: Yes.

24 MR. MOY: Staff would record the vote as

25 5 to 0 to 0. And this is the motion of Chairman Hill

1 to approve along with the eight conditions listed under
2 Exhibit 51 along with the approval for a 12-year time
3 limit. The motion was seconded by Vice Chair John.
4 Also in support of the motion are Mr. Smith, Mr. Blake
5 and Zoning Commissioner Peter May. Motion carries on a
6 vote of 5 to 0 to 0.

7 MR. CHAIRMAN: Okay. Thanks, Mr. Moy.
8 Okay. Just so my fellow board members
9 are kind of aware, so this next case, I think, is going
10 to take a little bit longer. So if we can maybe take a
11 quick break. And then also there is an appeal that I
12 don't know whether is going to happen or not today.
13 Just to let everybody know kind of the heads up. So
14 this may be a shorter day than we had anticipated. But
15 we'll see where we get when we get there.

16 So if we can just take a 10-minute break
17 if that's okay with everybody and see you all in a
18 little bit. Thank you.

19 (Recess)

20 MR. CHAIRMAN: All right. Folks, I
21 think we got everybody. Mr. Blake is not on this next
22 case. So, Mr. Moy, if you could go ahead and call the
23 case, please?

24 MR. MOY: Thank you, Mr. Chairman. The
25 board is back in its public hearing session after a

1 quick break. And the time is at or about 10:52.

2 As the chairman just said, participating
3 on this application is the chairman, the vice chair,
4 Mr. Smith and Zoning Commissioner Peter May.

5 This is Application number 20359, 1301
6 West Virginia, LLC. Caption advertise, as amended, for
7 a special exception under the residential conversion
8 requirements of Subtitle U, Section 320.2, which would
9 convert the existing principal dwelling unit into a
10 three-unit apartment house in the RF-1 zone at premises
11 1301 West Virginia Avenue N.E., square 4064, lot 75.

12 As the board will recall, this was last
13 heard at its hearing on March 10th. And at that time,
14 the board heard testimony and then scheduled a limited
15 scope hearing on April 21st. The board requested
16 supplemental information from the applicant and allowed
17 responses from the Office of Planning and ANC 5D. And
18 I believe there are filings to that effect in the
19 record, Mr. Chairman.

20 That's it.

21 MR. CHAIRMAN: Okay. Great. Thank you,
22 Mr. Moy.

23 Mr. Young, can you hear me?

24 MR. YOUNG: Yes, I can.

25 MR. CHAIRMAN: I just realized, Mr.

1 Young, you juggle a lot of people back there behind the
2 scenes and the phones and all that stuff. And I've
3 never thanked you. I think you're doing a great job
4 during this whole pandemic. You're doing a wonderful
5 job juggling all the -- I don't know how you're doing
6 it or what charts you're doing back there but it's
7 amazing that you keep everybody in the same way and
8 some random person doesn't show up. So good job. Just
9 wanted to say thank you.

10 MR. YOUNG: I appreciate it. I have a
11 lot of help from OZ staff. So I thank them as well.

12 MR. CHAIRMAN: Okay. Wonderful. And
13 I'll also thank OZ staff. Thank you.

14 All right. Let's see. Is it Mr.
15 Williams?

16 MR. WILLIAMS: Yes, Chairman Hill.

17 MR. CHAIRMAN: Mr. Williams, you're the
18 attorney, correct?

19 MR. WILLIAMS: That's correct.

20 MR. CHAIRMAN: Okay. Could you
21 introduce yourself for the record, please?

22 MR. WILLIAMS: Yes. Zach Williams, land
23 use attorney with Venable representing the applicant.

24 MR. CHAIRMAN: Right. And the applicant
25 -- it's -- can you tell me who's here with you? I'm

1 not going to go around and introduce everybody just yet
2 but who's with you here?

3 MR. WILLIAMS: Sam and Matt Medvene are
4 the owners and the applicant. And Ryan Petyak is our
5 architect. He is also here.

6 MR. CHAIRMAN: Got you. And then do you
7 know who Mr. Hoffman is?

8 MR. WILLIAMS: The ANC commissioner.

9 MR. CHAIRMAN: Oh, got you. Okay.
10 Great.

11 Commissioner Hoffman, can you hear me?

12 MR. HOFFMAN: Yes, Chairman Hill. How
13 are you?

14 MR. CHAIRMAN: Good. Could you
15 introduce yourself for the record, sir?

16 MR. HOFFMAN: Yes. I'm the ANC
17 commissioner for 5D06 which is where the property is
18 located.

19 MR. CHAIRMAN: Got it. Great. Thank
20 you.

21 All right. Ms. Dale, can you hear me?

22 MS. DALE: Yes. I can hear you.

23 MR. CHAIRMAN: Great. Can you introduce
24 yourself for the record, please?

25 MS. DALE: Yes. I'm Benita Albury Dale.

1 I'm Mrs. Albury -- Lottie Albury's representative and
2 her daughter.

3 MR. CHAIRMAN: Great. Okay. Okay.

4 Let's see. Mr. Williams, I'm going to start with you.
5 Okay?

6 Could everybody mute themselves unless
7 they're speaking? Ms. Dale, if you don't mind just
8 muting yourself unless you're speaking. Thank you.

9 Mr. Williams, can you hear me?

10 MR. WILLIAMS: Yes, I can.

11 MR. CHAIRMAN: Okay. So, Mr. Williams,
12 I'm going to start with you.

13 There was a bunch of stuff that we asked
14 for in terms of filings and, you know, as far as I can
15 tell, we didn't get anything from you. I got a bunch
16 of stuff from -- where we got a bunch of stuff from Ms.
17 Albury. And so I'm going to start with you as to if
18 you could please explain what has happened since the
19 last time. And we're going to go through this very
20 slowly so nobody has to get excited or -- we're going
21 to hear from everyone. Okay? But if you could just
22 kind of start to explain what has happened since the
23 last time you were with us and why we didn't get any
24 additional filings from you.

25 MR. WILLIAMS: Yes. Absolutely.

1 So we did file new architectural plans
2 after the last hearing. And in those plans, we
3 responded to some of the comments from the board.

4 MR. CHAIRMAN: Can you tell me --

5 MR. WILLIAMS: I'm happy to walk --

6 MR. CHAIRMAN: -- which exhibits --

7 MR. WILLIAMS: Yes. It's Exhibit 90A,
8 90A, 90A2 and 90A3. A1, A2 and 3.

9 MR. CHAIRMAN: Okay. I'm going to --
10 maybe I missed those. I'm going to look it up then.

11 If you could please go ahead and then
12 just tell me about those plans and also what happened
13 since the last time you were here.

14 MR. WILLIAMS: Sure. And I did submit a
15 presentation or walk through some of the changes to
16 those plans. I don't have to go through those right
17 now. It's if the board -- it's for illustrative
18 purposes.

19 MR. CHAIRMAN: Is that 98? Is that
20 Exhibit --

21 MR. WILLIAMS: Yes.

22 MR. CHAIRMAN: -- 98?

23 MR. WILLIAMS: Yes. That's correct.

24 MR. CHAIRMAN: Okay. Now why don't you
25 first talk us through what changes you all composed?

1 And actually, Mr. Williams, if you could also kind of
2 go back with me. And I know that there were some
3 original changes that you all made to try to
4 accommodate the party in opposition as well as I think
5 maybe some of the concerns of the ANC. If you could
6 speak to those as well.

7 MR. WILLIAMS: Yes.

8 So we filed this case last August. And
9 we've been through -- I think we walked through this
10 last time -- numerous meetings with the ANC and with
11 the community, with -- worked to respondent comments
12 and concerns from the ANC and from neighbors in the
13 community we have. Some of the major changes we've
14 made are that we originally were seeking relief to
15 extend the rear of the structure more than 10 feet
16 beyond the neighbor's structure. And that required
17 special exception relief.

18 We removed that relief and brought the
19 rear of the building back to the by-right 10-foot
20 extension --

21 MR. CHAIRMAN: How far back were you
22 going to go, Mr. Williams? Do you know?

23 MR. WILLIAMS: I want to say it was --
24 it was only a few feet more than the 10. I don't
25 remember --

1 MR. CHAIRMAN: Somebody just
2 (indiscernible) off. Mr. Petyak, is that you?

3 MR. PETYAK: Yes, sir.

4 MR. CHAIRMAN: Could you introduce
5 yourself for the record, please?

6 MR. PETYAK: Yes. This is Ryan Petyak
7 with 3877 Architect. I'm project manager on 1301 West
8 Virginia Avenue.

9 MR. CHAIRMAN: Got it. So you were
10 going to do a special exception for 2.5 feet past the
11 10 feet, correct?

12 MR. WILLIAMS: That's right. So the
13 other area of relief that we were seeking was a
14 penthouse on the roof. We needed relief for that as
15 well. We took that away and so we ended up with just
16 one item of relief which is the third dwelling unit.
17 The structure now is completely by-right in the sense
18 that it's allowed in the development -- by the
19 developments standards of the RF-1 zone.

20 So those are changes that we made
21 directly in response to the community. We also redid
22 our architectural renderings and our design in response
23 to comments from the ANC that they wanted it to look
24 like the approved project that were just a couple
25 blocks up the street at 1501 West Virginia Avenue. So

1 we modeled our project after that and redid our plans.

2 So those are some of the changes that we
3 made to the architecture. In addition to that --

4 MR. CHAIRMAN: Mr. Williams? Mr.
5 Williams? Mr. Williams, why did you get rid of the
6 penthouse?

7 MR. WILLIAMS: There was a concern about
8 -- there was a concern about height and potential
9 impact to neighbors. And I think it was more of a
10 design thing. Folks just didn't really like it. So --

11 MR. CHAIRMAN: When you say folks and
12 when you say you were accommodating the ANC or was it
13 the immediate neighbor? Was it Ms. Albury?

14 MR. WILLIAMS: Yeah. So the ANC has a
15 planning and zoning committee. So I believe it was in
16 one of the planning and zoning committee meetings that
17 we heard this feedback that they didn't really like the
18 penthouse and they suggested that we consider
19 withdrawing it.

20 MR. CHAIRMAN: Okay. Okay. Let's see.
21 Yeah. And again, I appreciate, Mr. Williams, what
22 you're speaking to and also for the party in
23 opposition. I mean, you're meeting the zoning
24 requirements for the massing of the property. However,
25 since you are here before us, it kinds of brings into

1 account light and air issues, a variety of different
2 things. I always -- I mean, I'm just teasing a little
3 bit. I laugh when people say it's a matter of right.
4 If it were a matter of right, we wouldn't be here which
5 is great because then I wouldn't have to even deal with
6 these people. Right? But it's not matter of right and
7 so you're here.

8 But I understand the clarification that
9 the massing is matter of right. It's the third
10 dwelling unit, right?

11 So -- okay. I got you. All right.

12 Let's see. Does anybody have any
13 questions for the applicant? May I ask my fellow board
14 --

15 Mr. Williams, you seem like you want to
16 say something.

17 MR. WILLIAMS: Well, there's a little
18 bit more that we've done since the last hearing.

19 MR. CHAIRMAN: Oh. Great.

20 MR. WILLIAMS: And I just wanted to make
21 sure everyone was aware of that.

22 So at the last hearing where there was a
23 lot of discussion about the parapet and that was
24 adjoining the party in opposition, Ms. Albury's
25 property. So we went back and we studied that. We

1 looked at whether we could move the roof hatches to the
2 middle of the structure. And we ultimately decided
3 that that was not something that was feasible because
4 it was going to require structural alterations and we
5 were going to lose habitable living space inside the
6 building.

7 So instead, what we did was we reduced
8 the footprint and the height of the parapet and below
9 four feet. And we also ensured -- we did another
10 shadow study that the revised parapet will not have any
11 impact on the shadowing of the adjacent property. And
12 that's in my presentation and also in the architectural
13 plans. So we made sure that the revised architecture
14 of that parapet will not impact the adjoining property
15 whether it's there or not. So we thought that that was
16 important as well as the board.

17 There was one other thing. There was a
18 suggestion that we provide some sort of contribution or
19 some sort of relief in the sense that -- so that Ms.
20 Albury could either walk or sit beyond or use her rear
21 yard beyond the new addition of our building. And we
22 did make an offer to contribute to that. It has not
23 been accepted by the Albury family. And I'll say that
24 we were also offered a 10-page construction management
25 agreement that hits all the major points that you would

1 expect in a construction management agreement. To the
2 Albury family and other neighbors, that has also not
3 been accepted. And I'll let the Albury family speak to
4 why they have not accepted it but I just want the board
5 to know that we have offered those things to the
6 neighbors. And those have been out there actually for
7 several months now.

8 MR. CHAIRMAN: Okay. Mr. Williams, and
9 again the -- and we will get to all of this. But the
10 financial contribution was \$1400, was that correct?

11 MR. WILLIAMS: The financial
12 contribution for the deck was \$2500. Deck, walkway.
13 It was really -- we were leaving it up to them as to
14 what they might want to (indiscernible).

15 We were also providing or offering a
16 financial contribution to negate other potential
17 impacts and I believe that was around \$1500.

18 So that has not been accepted. And that
19 was in addition to all the other things that you would
20 expect in a construction management agreement, hours of
21 operation, noise, everything else.

22 MR. CHAIRMAN: Did you put that
23 construction management agreement in the record?

24 MR. WILLIAMS: We have not put it in the
25 record because it hasn't been agreed to.

1 MR. CHAIRMAN: Okay. So the total was
2 the \$2500 for the walkway. And then the \$1500 in
3 addition to that?

4 MR. WILLIAMS: Correct.

5 MR. CHAIRMAN: So just in general, so
6 you're giving them \$4,000.

7 MR. WILLIAMS: More or less, yes.

8 MR. CHAIRMAN: Okay. Well, when you say
9 more or less, what do you mean?

10 MR. WILLIAMS: Because the other payment
11 was tied to how many months construction went on for.
12 So I think we estimated something like six months. And
13 that's where I came up with the 1500.

14 MR. CHAIRMAN: The 1500 --

15 MR. WILLIAMS: It's a payment per month.
16 It was a payment per month. And we estimated -- I
17 think it was 250 a month, I want to say, and we
18 estimated six months.

19 MR. CHAIRMAN: I got you. Okay. Oh, I
20 see. Okay. And so maybe they could move out of there
21 or something?

22 MR. WILLIAMS: It was for anything they
23 wanted to use it for, ubers, cleaning, anything. It
24 wasn't tied to anything in particular. It was just
25 basically like sort of a stipend.

1 MR. CHAIRMAN: Okay. Got it. Okay. Is
2 that it, Mr. Williams?

3 MR. WILLIAMS: That is it.

4 MR. CHAIRMAN: Okay. Commissioner
5 Hoffman, can you hear me?

6 MR. HOFFMAN: Yes, sir.

7 MR. CHAIRMAN: Could you do me a favor
8 and again just clarify the ANC's position?

9 MR. HOFFMAN: Yeah. That might be a
10 little bit complicated but bear with me here.

11 We -- from the minute of the last
12 hearing that we had on this case, I've been very
13 involved in making sure that communication between the
14 Albury family and the applicant have been flowing in
15 order to hopefully secure everything that we discussed
16 in the last hearing, the deck walkway situation, the
17 construction management agreement, whatever it might
18 be. And I had a hard deadline from my chairperson for
19 the ANC. They said if there was no substantial changes
20 between the opposition parties and the applicant then
21 we would not hear a vote on the case at the next
22 meeting. And that deadline came and went and we did
23 not have a vote to support or to oppose the project.
24 So I was kind of hamstrung by my chairperson in that
25 situation but we did not take a position to support or

1 to oppose the project.

2 MR. CHAIRMAN: Okay. And I apologize,
3 Commissioner, because I'm just trying to remember this.
4 Right. So you guys didn't support or oppose.

5 MR. HOFFMAN: We have only voted once to
6 postpone the hearing in the first time. And that's all
7 that we've done at the moment.

8 MR. CHAIRMAN: Right. So there's no
9 official act from you guys right now.

10 MR. HOFFMAN: No.

11 MR. CHAIRMAN: Okay. All right. Okay.
12 Thank you, Commissioner.

13 Ms. Dale, can you hear me?

14 MS. DALE: Yes. I can hear you. Can
15 you hear me?

16 MR. CHAIRMAN: I can, thank you. And,
17 Ms. Dale, you know, we've read through the record and I
18 thought that your letter was very concise. And it's
19 nice to see your mother there as well. And I like the
20 photograph of her behind the dumpsters. That was very
21 nice, you know.

22 And so -- but, Ms. Dale, if you wouldn't
23 mind telling me what you believe has happened since the
24 last time we were together.

25 MS. DALE: Sure. And we will explain it

1 more when we give our presentation.

2 Unfortunately, we've not been able to
3 come up with -- we have been working Andrea, our
4 attorney, in negotiation with the Medvenes.
5 Unfortunately, each time we come up -- well, each time
6 we were working with them, it seems as though their
7 plans change. And when their plans change, we have to
8 go back to the table to try to negotiate something
9 else. For example, if you want me to give you an
10 example, we wanted them to -- with the picture of my
11 mom behind the trash can, they were going to line up
12 six storage and recycling bins along the party fence
13 line. Well, we don't want that on my mom's fence line,
14 of course. And we know why. Means that's a situation
15 for rodents. It's a situation where you're going to
16 get the smells from the trash can.

17 But to make a long story short, we had
18 met with the Medvenes on March 14th with our attorney
19 asking them to move the trash bins -- recycling bins to
20 the Neal Street side, what the cutout was. And at that
21 time, DDOT had asked them or requested them in terms of
22 in order for you to get approval of a special exception
23 you have to bring that up to grade. And so it isn't --
24 there is an exhibit with DDOT's -- I think it's Exhibit
25 -- I have it written down.

1 But anyway, I'll explain that further
2 later on. But again, the plans have changed because
3 now they want to use it as a bike storage.

4 So this is the reason why we have not
5 come up with a memorandum of understanding because
6 plans keep changing and we have to constantly get back
7 to the tables.

8 And they have -- and Matt specifically
9 said he was going to go back to DDOT to ask if that
10 area could be used for that specific purpose. But
11 obviously, that did not happen because on the revised
12 plans -- and you will see in my filing it is now used
13 for bike storage.

14 MR. CHAIRMAN: Okay.

15 MS. DALE: So this is the complications
16 that we're having with them in trying to come up -- we
17 are working very hard with our attorney and with them
18 to come up with some understanding of what it is that
19 we would like to have done for our mother. We have to
20 protect her rights as well.

21 And again, I will explain more as, you
22 know, we give our presentation.

23 MR. CHAIRMAN: Okay, Ms. Dale.

24 MS. DALE: If you don't mind -- I didn't
25 want to tell you the whole story upfront.

1 MR. CHAIRMAN: It' okay. I'm just --
2 I'm smiling and we'll see how it goes. I just -- we're
3 here for a continued hearing, right?

4 MS. DALE: Yes.

5 MR. CHAIRMAN: What that means is we've
6 already had the hearing. Right?

7 MS. DALE: Okay.

8 MR. CHAIRMAN: We're here just to talk
9 about the things that happened since the hearing.

10 MS. DALE: Okay.

11 MR. CHAIRMAN: We're not going to --
12 it's okay. We're going to talk through all of this.
13 What I'm trying to say is, like --

14 MS. DALE: Okay.

15 MR. CHAIRMAN: -- we're not going to go
16 through big long presentations unless the board wants
17 to hear that. I mean, I think we understand all of the
18 issues. The board does. And it understands what we're
19 able to do. Right?

20 MS. DALE: Okay. Okay.

21 MR. CHAIRMAN: So I'm going to kind of
22 work through this a little bit for myself. And then
23 I'm going to ask the board what they questions they
24 might have. So --

25 MS. DALE: So can I also -- oh, I'm

1 | sorry. I didn't mean to interrupt.

2 | MR. CHAIRMAN: That's all right. Go
3 | ahead, Ms. Dale.

4 | MS. DALE: I can also add in terms of
5 | the offer then for the \$2500 for the deck, we
6 | remeasured our mother's width and length of the
7 | backyard. A deck would cost more than that what they
8 | had offered. And the \$250 a month for uber costs, we
9 | had -- I mean, we faced actual uber costs to my
10 | sister's house to 900 a month. Now we're not saying
11 | that we were -- we wouldn't need 900 a month. My mom
12 | loves to stay in her house. But during the harshest
13 | part of this construction period, which we have no idea
14 | how long that will be, she would need to vacate her
15 | house. And the \$250 a month -- and you really -- if
16 | you break that down in a month, it's \$8 a day. No one
17 | can take a uber roundtrip for \$8 a day. You probably
18 | couldn't even buy a decent meal for \$8.

19 | But neither here nor there, I mean,
20 | those are the offers that we just kept going back to
21 | the table. And there are other things that we -- okay.

22 | MR. CHAIRMAN: Okay. That's all right.
23 | So -- okay.

24 | Mr. Williams, can you tell me about this
25 | whole thing about the DDOT and the bike thing and the

1 trash?

2 MR. WILLIAMS: Yes. So first, that
3 hasn't changed. Now what is -- what's being referred
4 to as -- there's a curb cut. And we are likely going
5 to have to go to the public space committee process to
6 determine whether that curb cut needs to be closed.
7 And so it's up to DDOT to determine what happens with
8 that. That's a different process.

9 And so, what we've done is, we've said
10 if we're allowed to keep it open, we can use it as the
11 trash area. But we can't guarantee that because it's
12 up to DDOT.

13 Now regardless, we're not going to
14 designate the property line for the trash. We're going
15 to put the trash cans along the Neal Street side. That
16 being said, these units will be sold. And these -- the
17 folks that own these units, we can't obviously control
18 where they're going to put their trash cans. We can
19 simply tell them and suggest to them they should be on
20 the Neal Street side. I just worry about a little bit
21 of enforcement because once the units are sold, we
22 don't know what happens to trash cans in an alley. I
23 mean, I live in a row home in an alley. It's hard to
24 enforce that. And I don't know what we can do except
25 say that as far as we have control of this project, we

1 will agree to that.

2 MR. CHAIRMAN: Okay. Well, yeah, I
3 mean, the DDOT curb cut thing, I mean, they probably
4 are going to make you lose that curb cut. Right? And
5 so, Ms. Dale, they're probably not going to be able to
6 keep that curb cut. So they're at least being honest
7 about what they think might happen. And they seem to
8 be being honest about what they're going to be able to
9 do once the units are sold. Right.

10 So, Mr. Williams, I mean, I don't know
11 what we're going to need after this is all said and
12 done. But I do know that I'm going to want to look at
13 your CNA agreement. Okay? And then I'm also go --
14 talk about if you can't show me where the -- and you
15 can either create a new exhibit to show me about where
16 the trash is supposedly going to go. Right? Because
17 if it's done in a way that is attractive to the tenants
18 -- I'm sorry -- to the new homeowners then they likely
19 will continue to put it in that spot. Right? And so
20 that's another -- that's something I'd just like to
21 see. Right? Okay.

22 Commissioner Hoffman, so you all haven't
23 voted on this at all. So you're saying you haven't had
24 a vote on it because you haven't had the party status
25 in opposition clarified one way or the other. Is that

1 correct?

2 MR. HOFFMAN: Essentially, yes.

3 MR. CHAIRMAN: Okay. So if you did have
4 this party status issue clarified, you might be able to
5 take a vote. And do you think that you might have a
6 approval vote?

7 MR. HOFFMAN: I think ultimately we
8 would like to support the project knowing that the
9 opposition parties have had their requests met. I
10 think that's what we would like to do. And that's sort
11 of what was the goal for our April meeting. However,
12 the -- it wasn't able to be done.

13 MR. CHAIRMAN: Okay. All right. So
14 what I'm going to do is I'm going to, again, just
15 continue to talk through my questions. I'm going to
16 see if the board has any questions. I'm then going to
17 turn to you, Mr. Williams, for anything further you'd
18 like to add. I then also will turn to you, Ms. Dale,
19 about anything further you'd like to add. And if you
20 want to pull up a PowerPoint, maybe we can do that at
21 that time. Right?

22 But again, I'm trying to cut to the
23 chase on this one because we've already done a lot of
24 this. Right? And, Ms. Dale, again, so I know that
25 you're working with Ms. Ferster. Right?

1 MS. DALE: Yes.

2 MR. CHAIRMAN: Okay. And so, you know,
3 I think that what I'd like to see again is this
4 construction management agreement. Right? What I'd
5 like to see if there's anything that you guys can kind
6 of talk about in terms of resolution for your mother
7 and what she might be able to do. Right? I mean, I'm
8 being very honest here as to what I'm thinking about
9 this currently. And then I'll let my fellow board
10 members ask their questions. Right?

11 I do think that the applicant is trying
12 to work with you guys. Right? And I do think that the
13 applicant has already made some adjustments to their
14 plans. What the applicant is here before us right now
15 is they're here for that third unit. Right? And it's
16 whether or not that third unit -- what problems that
17 third unit is causing for the special exception.
18 Right? Because they're here, there are some light and
19 air issues that we can take into account which is what
20 gets me to kind of like there's backyard and the deck
21 and the ability for your mother to maybe see beyond
22 that 10-foot wall. Right? Okay. But the 10 feet is
23 matter of right. Right?

24 So I'm just trying to be very clear as
25 to what I see as your current situation. Right? And

1 that what you also have is that if you guys can come to
2 an agreement and then you would be willing to withdraw
3 your party status -- this is all up to you -- then the
4 ANC could vote and perhaps they would vote yes.
5 Everybody's on the same page. And these guys could get
6 a building permit that would happen sooner than a full
7 order. And Ms. Ferster can explain all this to you. A
8 full order takes longer than a summary order. So
9 that's why there's incentive also for these developers
10 to keep working through this. And the sooner also they
11 start, the sooner also it's over and the sooner also
12 it's finished. Right? And your mother is back in the
13 house. Right? You know, rather than this dragging on
14 for over a year, it can maybe be done in six months. I
15 don't know. Right? But there still seems to be some
16 discussions to take place.

17 I don't know about \$900 for uber or any
18 of that stuff. I mean, the deck -- again, this is all
19 you guys trying to figure it out. I don't know what
20 kind of a deck you got, by the way, you can make for
21 \$2500 unless you all are going to do it while you are
22 there doing the construction. Right? So we're also --
23 again, the reason why we're able to have this
24 discussion is because of the light and air issues that
25 are now brought into the discussion because you need

1 our special exception relief. Right?

2 Okay. So those are all my little
3 thoughts. And I'm going to turn to my fellow board
4 members and see if they have any questions of either
5 the applicant or any of the stuff that I've said. And
6 I'm going to start with you, Commissioner May, if I
7 could.

8 MR. MAY: Sure. So I appreciate all of
9 the -- all that you've done so far, Mr. Chairman, to
10 walk through the issues. Particularly, I was curious
11 about the resolution of the -- or I had similar
12 questions about the DDOT issue and the curb cut former
13 driveway and how that could be used. So it's helpful
14 to have that clarified.

15 In terms of the perfect overall, I mean,
16 I think we actually have a lot of information in the
17 record. And what we received most recently was
18 helpful. The applicant's actions to address concerns
19 in particular that I had about parapet wall have been
20 largely addressed. I still am not enthusiastic about
21 the issue of parapet wall in the circumstance but I
22 understand how that is permitted by the regulations.
23 And that's something that has gone on my list of things
24 that the zoning commission will need to look at because
25 it's an unintended effect of the regulations to allow

1 things like this. But again, the applicant, I think,
2 has done a good job of trying to address that and
3 minimize the impacts of it.

4 I think the -- this project, if not for
5 the three units, would very clearly be a matter of
6 right which, in my mind, means that the impacts
7 associated with the additional story and the addition
8 at the back are deemed generally to be consistent with
9 the nature of the neighborhood and the type of housing.
10 And so therefore, I think there's very little that we
11 can do to try to impose conditions or to even to deny
12 the application on the basis of things like light and
13 air impacts because, generally speaking, you know, the
14 commissioner said it's less than 35 feet, it's okay.
15 The light and air impacts are acceptable. If it's less
16 than 10 feet off the back wall, you know, light and air
17 impacts are okay.

18 So I think that this is -- you know, in
19 terms of the physical form, I think it's as good as it
20 can get. I do appreciate the concerns of Ms. Albury
21 and her representatives. And I also appreciate the
22 applicant's efforts to try to address the concerns that
23 were raised since the application was first filed, the
24 changes that have been made to the design and so on.

25 But, you know, this is not sort of

1 | circumstance where I think that we'll wind up holding
2 | up or that we should wind up holding up an approval for
3 | a third unit over impacts that would otherwise be
4 | deemed acceptable if it were just a two-unit building.
5 | So I don't see that this is -- I mean, I appreciate the
6 | fact that there have been improvements to Ms. Albury's
7 | property that would be beneficial and would mitigate
8 | some of the immediate impacts of this proposed
9 | redevelopment. But I don't think that there's a lot of
10 | reason for us to try -- or ability on our part to be
11 | able to mitigate those concerns. I do -- you know, I
12 | really do want the applicant to do as much as they can
13 | possibly do to minimize the impact on Ms. Albury's
14 | immediate circumstances during construction and long
15 | term. But, you know, generally speaking, what they're
16 | trying to do with that construction is the matter of
17 | right. So again, except for the third unit.

18 | So anyway, that's what I'm thinking
19 | about it. I don't really need to see more testimony
20 | about it. I'm ready to move forward.

21 | MR. CHAIRMAN: Okay. Mr. Smith, do you
22 | have any comments or questions?

23 | MR. SMITH: I don't have any questions.
24 | I think Mr. May's points is very -- can you hear me?

25 | MR. CHAIRMAN: Yeah.

1 MR. SMITH: I believe Mr. May has
2 thoroughly explained -- and I think (indiscernible) Mr.
3 May's concerns about the questions about setbacks and
4 whatnot, that was clarified by OP in discussions with
5 the zoning administrative and supplemental report. So
6 my concerns which were more so the setbacks related to
7 the hatchet and whatnot, that has been addressed. And
8 as Mr. May stated, much of the work that's being
9 proposed to there, the bulk and the (indiscernible) of
10 this property, I mean, (indiscernible) proposed are
11 these by-rights. And the applicant has attempted to
12 address some of these concerns or some of the concerns
13 that we raised by redesigning the third floor. And I
14 do believe that it's been much improved.

15 So I just want to reiterate that I do
16 wish for, as Mr. May said, I do wish for the applicant
17 to continue to work with Ms. Albury to address the
18 construction impacts. And some of these impacts that
19 you brought up, Mr. Chairman, related to the light and
20 air impacts from Ms. Albury's balcony. I can't speak
21 to -- I think I read something about mini-split. I
22 can't speak to that. But I do-- I think that any
23 requests and impacts need to be narrowly tailored to
24 light and air impact and the things of that particular
25 nature.

1 So I would say they should continue to
2 work with each other. I agree with you, Mr. Chairman.
3 I do want to see that agreement. But otherwise, I'm
4 where Mr. May is. And then other than that, I'm 95
5 percent ready to deliberate on this and in tailoring
6 those requests to the specific impacts.

7 So that's my only problem.

8 MR. CHAIRMAN: Okay. Ms. John, any
9 questions or comments?

10 MS. JOHN: Just a few, Mr. Chairman.

11 First, let me just say that I appreciate
12 the applicant's efforts to work with the ANC and the
13 neighbor. I do have a question about the trash whether
14 it will be in a contained receptacle. We just had a
15 whole hearing about rats. So I am really interested in
16 knowing how the trash will be taken care of and whether
17 or not it will be placed in a position that it's away
18 from the neighbor's property more -- I believe that's
19 the Neal Street side because this is a semi-attached
20 dwelling. So I will be interested in seeing where the
21 trash receptacle would be.

22 I'm also interested in seeing what size
23 deck is being proposed because I recognize we're here
24 for the third unit. But nevertheless, we need to look
25 at whether there's an adverse impact in terms of the

1 impact there because the regulations require us to do
2 that. I think we have to sort of take the situation as
3 it is. We have an elderly lady that lives in that
4 house for many years who is now deprived to some degree
5 of the amount of light that's available to her in her
6 condition.

7 And so I'm interested in what size deck,
8 whether there's something -- a reasonably sized deck
9 could be built at the rear of her property. And I
10 would be interested in seeing that. And I appreciate
11 the applicant's efforts in that regard.

12 And I believe that's all I would have.
13 I appreciate also Commissioner Shapiro's (sic)
14 comments. And this is a unique situation. We don't
15 often have an applicant as the one we have now. And I
16 also agree with Mr. Smith in terms of his comments of
17 mini-split and all of that. And like you, Mr.
18 Chairman, I don't know -- you know, I can't get into
19 the uber situation but I do know there will be
20 construction impacts on Ms. Albury. And so that would
21 be subject to whatever construction management
22 agreement they could come up with. And the board could
23 not enforce the construction management agreement. And
24 that's something perhaps the ANC could help them to
25 come to agreement on.

1 So that's where I am. I think the
2 (indiscernible) some adverse impact notwithstanding
3 that the (indiscernible) is appropriate under the
4 regulations. But we do have a little bit
5 (indiscernible) complete the picture. That's where --
6 that's how I would look at this case.

7 MR. CHAIRMAN: Okay. Thank you, Vice
8 Chair John. I appreciate your comments. And I saw
9 Commissioner May smile. You called him Commissioner
10 Shapiro but --

11 MS. JOHN: Sorry, Commissioner May.
12 Didn't mean to confuse you.

13 MR. MAY: You know, all us peers look
14 alike.

15 MS. JOHN: No, no, no. You're
16 (indiscernible), Commissioner May.

17 MR. MAY: Thank you.

18 MR. CHAIRMAN: Okay. Mr. Williams -- oh
19 wait a minute. Hold on. Before I go to you --
20 Commissioner Hoffman, when's your next ANC meeting?

21 MR. HOFFMAN: Next ANC meeting will be
22 May 11th.

23 MR. CHAIRMAN: May 11th. Okay. Not bad
24 then.

25 So, Mr. Williams, I think what I'm

1 hearing from everybody is --

2 MS. JOHN: Mr. Chairman, oh --

3 MR. CHAIRMAN: Yes. Go ahead, Ms. John.

4 MS. JOHN: Never mind.

5 MR. CHAIRMAN: Okay.

6 MS. JOHN: Mr. Blake is not on this.

7 MR. CHAIRMAN: The -- I guess, Mr.

8 Williams, what I'm kind of hearing is, first of all,

9 we'd like to see the CNA thing. Right? Okay? The

10 construction management agreement. By the way, what

11 Vice Chair John mentioned, which is true, is we

12 normally don't implement those as a condition because

13 it's just outside of our purview. But we do like to

14 see them. Right? And so that, Ms. Dale, means that

15 that would be something that you and the applicant

16 might agree on as to what the CNA is. And then we can

17 see at least see that that was agreed to. Right?

18 Then, I guess, it seems as though, Mr.

19 Williams, we'd like to see how the trash is going to be

20 handled. If you don't -- I guess you could show us how

21 it's going to happen if you do get the curb cut and how

22 it's going to be handled if you don't get the curb cut.

23 Knowing that I think you're not going to get the curb

24 cut and that, again, I'm just curious as to what it

25 actually looks like because, as I mentioned, if you

1 make it something that is nice for the people that own
2 the place, they tend to leave it there. Right? But if
3 it's just willy-nilly, they'll put it wherever they
4 want to. Right?

5 And then -- so that's one thing, I
6 guess. And you can kind of think about how you want to
7 do this after you talk to your client, Mr. Williams.
8 But again, you know, the -- I guess, right -- the trash
9 was some question, the DDOT thing. You know, any kind
10 of memorandum of understanding that you may or may not
11 come up with. Right? You know, I would hate to see
12 you guys kind of back away from any dollar value you
13 had kind of already put forward.

14 But if you and Ms. Dale -- I mean, Ms.
15 Dale, like, I don't want to get involved with, like,
16 what you think is or isn't appropriate in terms of how
17 you might be able to help your mother. But so, you can
18 kind of talk with Mr. Williams about that. Maybe --
19 you know, who knows? Right? Maybe you don't want a
20 deck but you want the money. I don't know. Right?
21 Okay. Whatever it is because what basically now, I
22 believe, is happening, Ms. Dale, is that if you can
23 come to an agreement -- and I'm being really clear
24 because I know that you work with Ms. Ferster. If you
25 can come to an agreement and if you withdraw your party

1 status in opposition and the ANC votes yes, they get to
2 build sooner rather than later. Okay? Right?

3 So that's kind of your little, you know,
4 negotiation point. Right? And at the same time, I
5 think we're kind of talking through this. And it seems
6 as though they basically are going to get this win.

7 Okay? Because we already have -- but there is a reason
8 why they want to continue to talk with you. Right?

9 But I don't know whether they have all the votes or
10 not. I'm just being very honest. And by the way, Ms.
11 Dale, we have seen all of the information that you
12 submitted. I mean, we read it all. So there's no need
13 to present that. We do look at it all. Right? But
14 I'm just cutting right to the chase about it.

15 Let's see. So first, I'm going to ask
16 Mr. Williams, do you have any questions on anything
17 that we were asking for?

18 MR. WILLIAMS: I do. I have a follow-up
19 because I think it's important for the board to know.
20 The construction management agreement has basically
21 been agreed to for months now. There's nothing at
22 issue --

23 MR. CHAIRMAN: That's fine, Mr.
24 Williams. I'm just going to cut you off. It doesn't
25 matter. I just want to see it. Right?

1 MR. WILLIAMS: But the issue is -- and
2 this is a catch 22 we're in with the ANC -- is that
3 it's basically one thing that is the impasse. And it's
4 been -- I have raised -- it was raised by the
5 opposition party and it was raised by reference by
6 Commissioner Smith. It's whether or not we're going to
7 build a very high and expensive mini-split system in
8 Ms. Albury's home. That's what this is about at this
9 point. And unless we do that, the ANC won't hear our
10 case. We won't -- no one will agree to our
11 construction management agreement. And that's
12 basically what it's come down to. And --

13 MR. CHAIRMAN: Okay. Okay.

14 MR. WILLIAMS: -- I don't know what --

15 MR. CHAIRMAN: Give me a second.

16 MR. WILLIAMS: We're going to be in the
17 same boat again --

18 MR. CHAIRMAN: That's fine. That's
19 cool. Mr. Williams, I'm with you. I'm just trying to
20 help. Right.

21 MR. WILLIAMS: I understand.

22 MR. CHAIRMAN: So what's a mini-split
23 system again? That's the thing about the whole heat
24 thing?

25 MR. WILLIAMS: It's a high-end HVAC

1 system that's a 15,000 bus -- it's a 15 to \$17,000
2 system. It's a high-end HVAC system that installed in
3 a home. That's basically what it is.

4 MR. CHAIRMAN: Okay. Okay. Let me
5 stop. Let me stop. I'll let Mr. May go next. Ms.
6 Dale, I don't think we're going to be able to negotiate
7 things like that for you guys. Right? So that's not
8 what we're here to do. Right? So you guys can figure
9 out what you want to do later. I'm just letting you
10 know where we are right now.

11 So, Mr. Williams, I'll come back to you
12 in a second.

13 Mr. May?

14 MR. MAY: Yeah. I was just going to
15 emphasize what you've been saying, that at this moment,
16 the -- I think there is an incentive for the applicant
17 to be as generous as possible in working with the
18 Albury family because of the benefit of getting an
19 order more quickly and getting -- you know, once we
20 make a decision.

21 So that's their incentive. And then the
22 Albury's decision is -- your incentive is to help them
23 get to that point. You can use that to be able to get
24 as much as you can. But if you don't get it, we're
25 going to make the decision and you're going to wind up

1 with nothing or very little. So, I mean, I think
2 you -- it's in your best interest (indiscernible) part
3 of the way and get to that deal.

4 I would also let Mr. Williams know that
5 how ever expensive the components of a mini-split
6 system may be is not reasonable to expect that you
7 could put any kind of full house air conditioning
8 system in a row house like that for less than the kind
9 of money they're talking about for the mini-split
10 system. It's -- you know, components may be more
11 expensive but, I mean, I've put an air condition system
12 into a row house and it ain't cheap. So this is a way
13 to do it. You know, as I said, components -- you know,
14 it seems like you're trying to make it sound like
15 they're guilding a lily by requesting this high-end
16 system. Again, maybe high-end components but it ain't
17 cheap putting this system in like that. So hopefully
18 you can come to an agreement.

19 MR. CHAIRMAN: Thank you. Okay. Ms.
20 Dale, I'll get to you in one second, I promise. I
21 promise.

22 Okay. So, all right, Mr. Williams, I
23 don't know. Right? You all got -- you're going to get
24 one more crack at this. Right? And you know what I'm
25 talking about, Mr. Williams. And if you don't -- if

1 the applicant doesn't understand then you can talk to
2 the applicant because the difference -- and there's a
3 couple of hoops you got to go through, right? You got
4 to get somebody to withdraw their party status in
5 opposition, you got to get the ANC to say yes. Right?
6 Then you get your summary order. Okay? So what else?
7 Right? You all can do whatever you need to do. Right?

8 So, Ms. Dale, you have a comment?
9 You're on mute, Ms. Dale.

10 MS. DALE: Can you hear me now? Well,
11 he mentioned the mini-split and that is something that
12 Andrea and we have been negotiating back and forth.

13 The issue here is my mom's finances.
14 She's already -- she is -- she cannot afford in her
15 fixed income to pay for the mini-split out front. So
16 what they are suggesting is giving us \$5,000 to start
17 and giving us the rest as the part -- the end of, I
18 guess, (indiscernible) occupancy. But she can't afford
19 to put these mini-splits in. And she has to close her
20 windows during construction to keep her air clean.
21 There's no way she can open her windows. She doesn't
22 have the money. It's far beyond her resources.

23 That's all we're asking them to do
24 basically is to cover these expenses for the mini-
25 splits. As Mr. May (indiscernible) be generous about

1 | it. I mean, it wouldn't be an issue if it wasn't for
2 | their development. My mom opens her windows up for
3 | cross-breezes. Even when --

4 | MR. MAY: Ms. Dale, we read all this in
5 | the submission that you made.

6 | MS. DALE: Okay.

7 | MR. MAY: And we're aware of that.

8 | MS. DALE: Okay.

9 | MR. MAY: I mean, this is just -- again,
10 | the -- I think you're both -- you and the applicant
11 | have an incentive right now to come to an agreement.
12 | But it does mean that people have to be reasonable
13 | about it because if it doesn't -- you know, if you
14 | can't come to agreement about it, we're going to wind
15 | up make this decision based on your not getting
16 | anything. So it would be best --

17 | MS. DALE: I understand. Yes.

18 | MR. MAY: -- for everybody to come to
19 | agreement, if it's possible. If it's not then, you
20 | know, we make our decision.

21 | MS. DALE: Right.

22 | MR. MAY: Okay.

23 | MS. DALE: I understand.

24 | MR. CHAIRMAN: Okay. All right. Mr.
25 | Williams, are you there?

1 MR. WILLIAMS: Yes.

2 MR. CHAIRMAN: Okay. So let me see.

3 Okay. Ms. Dale, you have anything to add at the end?

4 MS. DALE: Well, not really. The only
5 other part was in terms of the 10-foot extensions that
6 now they're adding rolling garage doors which also
7 blocks out our mother's view. So that was basically
8 it. I mean, it's like in -- every time we turn around
9 there's always something in their revised plans. So
10 now, even if she walks past a 10-foot extension, she
11 won't be able to see anything up Neal Street. Her
12 views will be blocked. And that was not in the
13 previous plan. So these were in -- this is in the
14 revised plan, the 18-foot rolling garage doors that
15 they're now wanting to install.

16 MR. CHAIRMAN: I understand.

17 MS. DALE: But that was it. No, I don't
18 have any -- I don't think I have any more to add.

19 MR. CHAIRMAN: Okay. Mr. Williams? Can
20 you hear me?

21 MR. WILLIAMS: Yes.

22 MR. CHAIRMAN: I'm really interested to
23 see how this one plays out. I got to let you know.
24 And so, Mr. Williams, you can go ahead and write
25 whatever you want to write at the end of this. Right?

1 And even know Mr. May is where Mr. May is, I still
2 don't know if you have the votes. I just want to let
3 you know. Right? And you still might get this light
4 and air thing thrown back in your face. And you still
5 might get a no. And you might get a split vote. And
6 then Mr. Blake, who is listening, is going to have to
7 come in and decide. Right? I don't know. Right?

8 So I'm just letting you know that I
9 don't know what's going to happen. Right? And so, you
10 know, I would not -- we all know the situation you're
11 in. Okay? And we all know the situation that Ms. Dale
12 is in. Right? And it's unfortunate for you that
13 you're in the situation you're in. But you're in that
14 situation. Okay? Right? And so if you come back --
15 and I'm just making a comment, I guess. You know, this
16 is a very interesting case that we will remember. And
17 if your client comes back and basically pulls
18 everything off the table and says whatever, we're going
19 to remember. Okay? So I'm just letting you know
20 again. Okay? Right?

21 All right. So that's it then. So then
22 I'm just trying to let -- oh, Ms. John?

23 MS. JOHN: Very quickly. Ms. Dale, I
24 just want you to know that the rolling garage door is
25 fairly standard. So -- and it's a better option than a

1 | wooden fence that, as we learned in an earlier case,
2 | that gets eaten by rats. So I just wanted to let her
3 | know

4 | MR. CHAIRMAN: Okay. All right. Let's
5 | see. So I'm -- Mr. -- Commissioner, do you think you
6 | can get them to get a vote by -- you said you all are
7 | meeting on the 11th of May?

8 | MR. HOFFMAN: Uh-huh.

9 | MR. CHAIRMAN: Right.

10 | MR. HOFFMAN: Yes.

11 | MR. CHAIRMAN: So that means that you
12 | guys have two weeks basically, Mr. Williams, or so.
13 | When -- do you think, Commissioner, that you guys can
14 | actually -- and maybe I just asked this. Can you get
15 | them on the agenda?

16 | MR. HOFFMAN: I am confident we can get
17 | them on the agenda. And I want nothing more than to
18 | move this case forward as I'm sure you feel that way as
19 | well. So I am incentivized in my own duties as an ANC
20 | commissioner to see that this moves forward. And I
21 | would like to see that and I know that I can put them
22 | on the agenda.

23 | MR. CHAIRMAN: Okay. So, Mr. Moy, can
24 | you hear me?

25 | MR. MOY: Sorry, Mr. Chair. I had to

1 plug in my charger.

2 MR. CHAIRMAN: Got you.

3 MR. MOY: Yeah.

4 MR. CHAIRMAN: So if -- I'm trying to
5 see what happens. Oh, okay. So, Mr. Williams?

6 MR. WILLIAMS: Yes.

7 MR. CHAIRMAN: I forget, Mr. Williams.
8 You've come before us a couple of times, right?

9 MR. WILLIAMS: Yes.

10 MR. CHAIRMAN: Right. This one is one
11 of the more interesting ones, Mr. Williams. So --

12 MR. WILLIAMS: Seems that way.

13 MR. CHAIRMAN: Yeah. So, Mr. Williams,
14 I don't even think we need anything from you. You get
15 to try to somehow figure out what you need to do so
16 that you can get a vote at the ANC meeting on the 11th.
17 Okay? Right? And, you know, whatever. Whatever you
18 all decide is fine. Right? And so the 11th then is
19 the ANC meeting. Commissioner, if you can get us
20 something back from the ANC -- is the 14th fair, which
21 is the Friday?

22 MR. HOFFMAN: Yes.

23 MR. CHAIRMAN: Okay. So if you take a
24 vote on the 11th, we'll know -- and you might not even
25 have a vote, honest to God. You might be exactly where

1 we are right now and there's no vote. And that's just
2 what it is. Right? And if that's what it is, we'll
3 figure it out. And we're going to make a decision on
4 the 19th. Okay?

5 So -- oh. Mr. May is shaking his head.
6 Hold on. Hold on.

7 MR. MAY: Yeah. I'm not available on
8 the 19th or the 26th.

9 MR. CHAIRMAN: No. Okay. So --

10 MR. MAY: I would love to spend every
11 week here with you but --

12 MR. CHAIRMAN: Yes. Mr. Moy?

13 MR. MOY: Yeah. I was going to suggest,
14 Mr. Chairman, if it's at all humanly possible to bring
15 this back on May 12th because I believe Peter May will
16 be available on May 12th.

17 MR. MAY: Right. I'm here May 12th. So
18 if the report was at night and we got the report the
19 next morning, then that --

20 MR. HOFFMAN: That's possible.

21 MR. MAY: -- wouldn't be a problem.

22 MR. CHAIRMAN: Okay. Commissioner,
23 you're lucky then you guys because that's great. The
24 commissioner says he's going to flip it around. I
25 mean, I just need to know what happened, Commissioner.

1 Like --

2 MR. HOFFMAN: Absolutely.

3 MR. CHAIRMAN: -- and Mr. Williams will
4 probably be able to tell us -- hold on. Wait. Mr.
5 Williams will probably be able to tell us as well. So
6 then -- dang. So I don't know then. I don't know --
7 how am I going to get submissions, Mr. Moy, and for us
8 to be able to -- well, I guess we can have a continued
9 hearing on the 12th and then deliberate right after
10 that. That's fine. Okay.

11 So we'll have a continued hearing on the
12 12th of May with Commissioner May. And we're going to
13 see what happens. And there you go. Okay?

14 Mr. Young, was there anybody who's
15 wishing to speak?

16 MR. YOUNG: We do not.

17 MR. CHAIRMAN: Okay. So then once
18 again, to be clear, whatever is going to happen is
19 going to happen. And if you guys can get a vote on the
20 11th with the ANC, or not, but we're going to have a
21 continued hearing, meaning we'll be back here again
22 just to find out what happened on the 12th. And then
23 we're probably going to vote. And I don't know what's
24 going to happen to the vote either but we're probably
25 going to vote.

1 So, okay. Do you have any questions,
2 Ms. Dale?

3 MS. DALE: I do not.

4 MR. CHAIRMAN: I'm sorry. You're on
5 mute, Ms. Dale.

6 MS. DALE: I can't -- with these
7 technology -- thank you very much for listening to our
8 issues. I appreciate it. And we definitely do -- we
9 do want to work with the applicant to come to some
10 agreement. We understand they are willing to -- are
11 ready to move forward. And personally, we are, too.
12 So I'm hoping that we can come up to some agreement,
13 you know, at some point.

14 MR. CHAIRMAN: Ms. Albury, how are you
15 doing?

16 MS. ALBURY: I'm fine, Mr. Hill.

17 MS. DALE: She may want to save a speech
18 for you.

19 MR. CHAIRMAN: Oh, that's all right.
20 Next time, Ms. Albury.

21 MS. ALBURY: That's fine.

22 MR. CHAIRMAN: All right. Mr. Williams,
23 you got any questions?

24 MR. WILLIAMS: I do not. Thank you.

25 MR. CHAIRMAN: Yeah. You got a problem,

1 Mr. Williams. Ms. Albury is just too cute.

2 All right. Okay. All right. That's
3 it, right? All right. We'll see you guys on the 12th.

4 MR. WILLIAMS: Thank you.

5 MR. CHAIRMAN: Okay. Bye. We can --

6 MR. MAY: Thank you.

7 MR. CHAIRMAN: -- say goodbye.

8 MS. DALE: Thank you.

9 MR. MAY: Bye-bye.

10 MR. CHAIRMAN: Okay.

11 MR. MAY: I think I'm done.

12 MR. CHAIRMAN: Oh, you're done? All
13 right, Commissioner.

14 MR. MAY: Isn't that right, Mr. Moy?

15 MR. MOY: You're done, Commissioner.

16 MR. MAY: Okay. See you next time. I
17 think I'm here on the 5th --

18 MS. JOHN: Bye, Mr. May.

19 MR. MAY: Bye-bye. Thank you.

20 MR. SMITH: This is a carousel for them.

21 MR. CHAIRMAN: A what?

22 MR. SMITH: I said a carousel

23 (indiscernible) --

24 MR. CHAIRMAN: Yeah. Mr. Blake, did you
25 watch any of that?

1 MR. BLAKE: Every bit.

2 MR. CHAIRMAN: You might get to decide,
3 Mr. Blake.

4 MR. BLAKE: That's a wonder -- that's an
5 amazing case.

6 MR. CHAIRMAN: All right. Is
7 Commissioner Miller there?

8 MR. MILLER: Yes. Commissioner Miller
9 is here. Can you hear me?

10 MR. CHAIRMAN: Yeah. All right.
11 Commissioner, we might have a problem with this next
12 case. I'm sorry you had to wait around all day for
13 this to get to this.

14 But I guess, Mr. Moy, we can go ahead
15 and call it.

16 MR. MOY: Yes, Mr. Chairman. So the
17 next and final case before the board today is Appeal
18 number 20402 of The Chain Bridge Road/University
19 Terrace Preservation Committee.

20 This is an appeal from the decisions
21 made on August 25, 2020, September 4, 2020, September
22 15, 2020 and October 21, 2020 by the Zoning
23 Administrator, Department of Consumer and Regulatory
24 Affairs to issue building permits numbers B2000096,
25 B2010618, B2010621, B2010623, B2010625, B2010627,

1 B2010628, B2010871. These were issued on August 25th,
2 2020 to construct eight apiaries on existing vacant
3 lots in the R-21 zone.

4 This is property located at 2750 through
5 2762 Chain Bridge Road, N.W., square 1425, lots 841,
6 847.

7 And let's see. The preliminary matter,
8 Mr. Chairman, is one from us, from the office and that
9 we learned yesterday that ANC 3D did not receive a
10 public hearing notice. And I believe the appellant may
11 have a preliminary matter as well but I'll leave that
12 to him.

13 And I think that's it from me, sir.

14 MR. CHAIRMAN: Okay. All right. Mr.
15 Brown, can you hear me?

16 MR. BROWN: Yes.

17 MR. CHAIRMAN: Could you introduce
18 yourself for the record, Mr. Brown?

19 MR. BROWN: Yes. Good morning, Chairman
20 Hill, members of the board. Patrick Brown from
21 Greenstein Delorme & Luchs. I'm here on behalf of The
22 Chain Bridge Road University Terrace Preservation
23 Committee.

24 MR. CHAIRMAN: Great. Thank you. Mr.
25 Brown, is this your first time with us since the

1 pandemic?

2 MR. BROWN: No.

3 MR. CHAIRMAN: Ahh. All right. Okay.

4 Well, welcome back. Welcome again. I -- for some
5 reason, I -- but anyway, it's been a year now so I
6 guess everybody's gone through the system.

7 Let's see. Ms. Moldenhauer, could you
8 introduce yourself, please, for the record?

9 MS. MOLDENHAUER: Good afternoon -- so
10 it's nine minutes. My name is Meredith Moldenhauer
11 from the law firm of Cozen O'Connor here on behalf of
12 the ownership of the property. I also have a client
13 that was going to be put into the record or put into
14 this -- brought from, I guess, the public group into
15 the panel by the name of Morton Bender. Might be
16 coming in under the e-mail of Grace Bender.

17 MR. CHAIRMAN: Okay. We'll let Mr.
18 Young try to find that person.

19 MS. MOLDENHAUER: Thank you.

20 MR. CHAIRMAN: Mr. Green, do you want to
21 introduce yourself for the record, please?

22 MR. GREEN: Hi. Good afternoon, Mr.
23 Chairman and members of the board. My name is Hugh
24 Green, attorney with the D.C. Department of Consumer
25 and Regulatory Affairs.

1 MR. CHAIRMAN: Mr. Grant, could you
2 introduce yourself for the record, please?

3 MR. LE GRANT: Certainly, Chairman Hill
4 and members of the board. I'm Matthew Le Grant and
5 zoning administrator with DCRA.

6 MR. CHAIRMAN: Is there a Mr. Watson
7 there? And if so, can you hear me?

8 MR. BROWN: He should be there. Mr.
9 Watson is the co-chair of the Preservation Committee.

10 MR. CHAIRMAN: Oh, got it.

11 Mr. Watson, can you hear me?

12 Okay. I'll come back to you, Mr.

13 Watson.

14 Mr. Bernard, can you hear me?

15 MR. WATSON: Mr. Hill, this is Arthur
16 Watson. I can hear you. And now I pressed my unmute
17 button. Can you hear me?

18 MR. CHAIRMAN: Yes. Could you introduce
19 yourself for the record, Mr. Watson?

20 MR. WATSON: Yes. My name is Arthur
21 Watson. I'm a resident of 2828 Chain Bridge Road,
22 N.W., D.C. And I am an abutting property owner to the
23 property in question.

24 MR. CHAIRMAN: Okay. And you're here
25 with Mr. Brown, correct?

1 MR. WATSON: Yes, I am.

2 MR. CHAIRMAN: Okay. Mr. Bernard, are
3 you there? Mr. Bernard?

4 Mr. Brown, is Mr. Bernard with you?

5 MR. BROWN: Yes, he is. He's the other
6 co-chair of the Preservation Committee.

7 MR. CHAIRMAN: Okay. Mr. Bernard, it's
8 okay. If you get unmuted, we're fine. We'll just
9 figure that out in a second.

10 Ms. Moldenhauer, who again were you
11 looking for?

12 MS. MOLDENHAUER: Looking for a
13 representative for the property ownership. It is a
14 Morton Bender but I think coming in under Grace Bender.

15 MR. CHAIRMAN: Okay. All right. We'll
16 see what happens.

17 Okay. Well, I don't know if you guys
18 were listening earlier.

19 Oh. Mr. Moy, go ahead.

20 MR. MOY: Yeah. I neglected to mention,
21 Mr. Chairman, that I believe we have an ANC member who
22 is joining us.

23 MR. CHAIRMAN: Oh great.

24 MR. MOY: The ANC is automatic party, as
25 you know.

1 MR. CHAIRMAN: Yep. Who is the ANC or
2 do you have his name or her name?

3 MR. MOY: It's a she but I forgot her
4 name at the moment. But I can get that to you in a
5 moment. But maybe Paul Young may know.

6 MR. CHAIRMAN: Okay, Mr. Young.

7 MR. YOUNG: Yes. It's Kate Nanavatty
8 but I don't see her on yet. I believe staff is
9 reaching out to her.

10 MR. CHAIRMAN: Okay.

11 MS. MOLDENHAUER: My client will be
12 coming in under the name of Mark Brodsky. That might
13 just help Mr. Young. That's just the name of the
14 e-mail account that he's walking in through, to help
15 him.

16 MR. CHAIRMAN: Okay. Okay. Great.

17 All right. Well, so what's happening
18 here is there was some notice issues that continue to
19 be unresolved because of different things that have
20 been going on with us due to the pandemic. And so we
21 won't be able to even take action on this until April
22 21st (sic).

23 And so I also believe that, Mr. Brown,
24 one of your witnesses is not available, is that
25 correct?

1 MR. BROWN: That's correct.

2 MR. CHAIRMAN: Right. And is that Mr.
3 Bellows?

4 MR. BROWN: That's correct.

5 MR. CHAIRMAN: Right. And he's out of
6 the country, is that correct?

7 MR. BROWN: He is in Nigeria. I cannot
8 reach him.

9 MR. CHAIRMAN: That's okay. So, really,
10 the more important issue is that the ANC didn't get
11 their notice. And so what's going to happen with me
12 is, first of all -- with the board, I should say, is
13 that, first of all, we couldn't take any action on this
14 until the 21st anyway. And then, secondly, if the ANC
15 had wanted to participate, I wouldn't -- they wouldn't
16 have as much ability to cross-examine if I were to try
17 to do everything now.

18 So I'm looking at my fellow board
19 members also. And so is it Mr. Brodsky -- it's not
20 Brodsky, I guess. Who's your property owner, Ms.
21 Moldenhauer?

22 MR. BRODSKY: I'm -- can you hear me,
23 sir?

24 MR. CHAIRMAN: Yes.

25 MR. BRODSKY: Mark Brodsky. I'm Mr.

1 Bender's personal attorney. He's sitting next to me.
2 I don't know why he's not logged in. He's the property
3 owner.

4 MR. YOUNG: We are logged in now.

5 MR. CHAIRMAN: Okay. Great. Could you
6 introduce yourself and, I'm sorry, your client?

7 MR. BRODSKY: Morty, introduce yourself.

8 MR. BENDER: Morton Bender, the owner of
9 the property under discussion.

10 MR. CHAIRMAN: Okay. Great. Okay. So,
11 Mr. Brown, I mean, this is your appeal. And so I'm
12 letting you know that we're probably going to push this
13 off to April (sic) 21st because I don't have any way
14 that -- I see you, Ms. Moldenhauer -- that I don't have
15 any way to do this right now because I can't make --
16 the ANC wasn't notified and then I wouldn't be able to
17 vote on anything until April 21st (sic).

18 MR. BROWN: Can I interrupt you, Mr.
19 Chairman. Today is April 21st.

20 MR. CHAIRMAN: Oh. Well, then wait a
21 minute. And now, Mr. Moy, you've confused me. Sure.
22 Go ahead, Mr. Moy.

23 MR. MOY: Yeah. That date, Mr. Chairman
24 -- you got 21 right. It's -- more accurately, it's
25 July 21st.

1 MR. CHAIRMAN: Oh, July 21st. Okay.

2 Well, there you go.

3 So it is what it is and there's nothing
4 I can do about it. So, Mr. Brown, I think Mr. Bellows
5 will probably be back here by the 21st of July. And
6 I'm going to go around the board and ask the board if
7 they have anything they'd like to add, if they
8 understand where I am, and if they have any clarifying
9 questions that they might want of the appellant or any
10 parties, I should say.

11 I'm going to -- I see that Commissioner
12 Miller is kind of getting himself organized. But,
13 Commissioner Miller, do you have anything that you
14 would like clarification on before we come back on July
15 21st?

16 MR. MILLER: No. I think I -- if I'm --
17 I may not even be the commissioner who's here on July
18 21st. I mean, I haven't -- we're not hearing the case.
19 So -- I mean, I've read everything in the record. But
20 -- and I am available whenever it's heard. But --
21 unless I'm in Nigeria, I guess. But -- which I won't
22 be.

23 Yeah. So let me ask the zoning
24 administrator a question clarifying their position but
25 I think I can wait till the hearing to do that.

1 MR. CHAIRMAN: Okay. So, Mr. Miller, if
2 -- I mean, it would be great to have you. If you've
3 already read and you're welcome to stay. But you guys
4 -- you and Mr. Moy can figure that out, I guess. Okay?

5 Mr. Smith, do you have any thing you
6 want from anybody?

7 MR. SMITH: No. But I agree with you,
8 Mr. Chair. I don't have any particular information
9 that I need at this point. And any questions that I
10 have, I'll wait to discuss them at the meeting in July.

11 MR. CHAIRMAN: Okay. Ms. John, do you
12 have anything?

13 MS. JOHN: No, Mr. Chairman. I have no
14 questions that can't be (indiscernible) the hearing.

15 MR. CHAIRMAN: Mr. Blake, do you have
16 anything?

17 MS. JOHN: Can you hear me?

18 MR. CHAIRMAN: Yes.

19 MR. BLAKE: I don't have any questions.

20 MS. JOHN: I have no questions.

21 MR. CHAIRMAN: Okay. Great. All right.
22 I'm going to go in reverse order because it's Mr.
23 Brown's appeal. Ms. Moldenhauer, as the property
24 owner, do you have any questions?

25 MS. MOLDENHAUER: Well, I'm just a

1 little confused. I know that the board has been
2 delaying certain cases. We've been typically been
3 receiving notice from the office informing us of those
4 delays in advance of the hearing. We received no
5 notification that this case was going to be impacted by
6 those delays. You know, our understanding is that this
7 property was given -- ANC was given notice in Exhibit
8 13 of this case and that all notice has been fully
9 complied with. So I just -- and I'm not sure I
10 understand what the rationale is or the requirement is
11 as to why the board is indicating that the case has to
12 be postponed. And I believe that it would be
13 prejudicial to our client to postpone that given the
14 fact that we've been waiting and this case has been
15 ongoing, you know, since literally a BZA case that was
16 filed in 2007.

17 If you can maybe clarify for the record
18 --

19 MR. CHAIRMAN: Got it. I understand.
20 Ms. Moldenhauer, I know you, right? We've been doing
21 this a long time, right? If you don't think that I
22 could deal with it -- I would deal with it. Right? I
23 can't deal with it. I'll let you talk to Mr. Moy after
24 the fact and he can explain to you why. Right? But I
25 can't deal with it right now. I just can't. And so

1 I'm not going to get into a long discussion about it
2 because if I could, I would. Right?

3 So I'm postponing this till July 21st.
4 And do you have any -- I guess you don't have any
5 questions. You just want us to go ahead and move
6 forward with us which I'm not going to be able to do.
7 So is there anything else you'd like to add?

8 MS. MOLDENHAUER: Well, I would also
9 just like to add, obviously, if the appellant is -- on
10 the 21st is also unable to bring forward any of their
11 witnesses, it's their obligation to prove their case.
12 So I would just put in the record that, obviously, no
13 additional delays should be requested or, if it's done
14 it should be done in writing. So obviously, we
15 would -- we'd usually object understanding your opinion
16 of why we're postponing this just for the record and we
17 will move forward in July.

18 MR. CHAIRMAN: Okay. I'm going to
19 clarify again just what I kind of understand. Right?
20 The ANC is an automatic party. If the ANC had wanted
21 to participate, they need to be able to cross-examine.
22 You wouldn't be able to cross-examine today. The ANC
23 didn't know. So that right there makes me want to wait
24 until the 21st. I can't -- and now I can't do anything
25 on this on the 21st but I understand you're

1 representing your client and I appreciate that. And so
2 I appreciate all the comments you made. But it is what
3 it is.

4 Mr. Green, do you have any questions or
5 anything?

6 MR. GREEN: No, Chair, I have no
7 questions.

8 MR. CHAIRMAN: Okay. Mr. Brown, do you
9 have anything?

10 MR. BROWN: No.

11 MR. CHAIRMAN: Okay.

12 MR. BROWN: We'll be ready to proceed on
13 July 21st.

14 MR. CHAIRMAN: Okay. All right. Well,
15 guys, I'm sorry. I would have loved to have done it
16 today. But we'll see you guys on July 21st which, by
17 the way, you know, I'd rather -- and again, I'd rather
18 we do it today but there you go.

19 Okay. Thank you all very much.

20 MR. GREEN: Stay well, everyone.

21 MS. MOLDENHAUER: Thank you. Thank you.

22 MR. CHAIRMAN: Bye-bye.

23 Okay. Let's see. Let everybody go.

24 All right. Commissioner Miller, I'm sorry that you had
25 to wait around that long for that.

1 Does anybody got anything they'd like --
2 and we'd love to hear -- you know, Commissioner Miller,
3 we'd love to have you 'cause you've already seen at
4 least the beginning of the whole characters involved.
5 So it's up to you.

6 Okay. Does anybody got anything they
7 want to say? Okay. Mr. Moy, is there anything you
8 need from us?

9 MR. MOY: Nothing else from the staff,
10 sir.

11 MR. CHAIRMAN: Okay. All right. Then
12 we stand adjourned. Have a nice day because the 21st
13 of July is going to suck. Okay? All right.

14 MS. JOHN: Bye-bye. Have a good day.
15 Have a good day.

16 (Board of Zoning Adjustment hearing adjourned)

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Virtual Public Hearing

Before: DC BZA

Date: April 21, 2021

Place: Via Webex Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Walter Murphy