

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

MAY 19, 2021

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:45 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
PETER SHAPIRO, Commissioner
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, Esquire
JACK RICE, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on May 19, 2021

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

Case No. 20458 - Application of Washington International School (Rescheduled to June 16, 2021). 8

Case No. 20461 - Application of Alvaro Vasquez and Meredith Hutchinson (Rescheduled to June 16, 2021) 8

Case No. 20462 - Application of Heather Williams and David Riches (Rescheduled to June 16, 2021 8

Case No. 20433 - Application of Prime Realty, (Rescheduled to June 16, 2021 8

Case No. 20409 - Application of Joseph and Elizabeth Lunsford (Rescheduled to June 16, 2021 8

Case No. 20464 - Application of 3200 Penn Ave PJV, LLC (Rescheduled to June 23, 2021 9

Case No. 20465 - Application of Patrick O'Rourke (Rescheduled to June 23, 2021 9

Case No. 20466 - Application of Dan Mickelson (Rescheduled to June 9, 2021 9

Case No. 20389 - Application of Samuel Medeiros and Jessica Ellis (Rescheduled to June 9, 2021 9

Case No. 20361 - Application of G3, LLC (Rescheduled to June 9, 2021 9

Case No. 20424 - Application of Shaw 927, LLC 9

Case No. 20414 - Application of Thurston Fisher 39

Case No. 20434 - Application of John F. Williams and Daniel S. Williams 61

Case No. 20436 - Application of Schmidt Development, LLC. 66

Case No. 20333 - Application of Matthew Pickner 78

Case No. 20339 - Application of Lee Street Development, LLC 82

Case No. 20459 - Application of Nicholas Davis. 86
Case No. 20457 - Application of S5 District, LLC. 114

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

(9:45 a.m.)

CHAIRPERSON HILL: This hearing will please come to order. Good morning, ladies and gentlemen. We're convening and broadcasting this public hearing by video conference. This is the May 19th, 2021, public hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair, and Board Member Carl Blake, and representing the Zoning Commission will be Rob Miller, Peter Shapiro, and Anthony Hood.

Today's hearing agenda is available to you at the Office of Zoning website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The webcast video will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or on telephone will be muted during the hearing and only persons who have signed up to participate or testify will be unmuted at the appropriate time.

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

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

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

11 Requests to enter evidence at the time of an online
12 virtual hearing, such as written testimony or additional
13 supporting documents other than live video, which may not be
14 presented as part of the testimony, may be allowed pursuant to
15 Subtitle Y 103.13, provided that the persons making the request
16 to enter an exhibit explain (a), how the proposed exhibit is
17 relevant; (b), the good cause it justifies allowing the exhibit
18 into the record, including an explanation of why the requester
19 did not file the exhibit prior to the hearing pursuant to Subtitle
20 Y 206, and how the proposed exhibit would not unreasonably
21 prejudice any parties. The order of procedures of special
22 exceptions and variances are pursuant to Y 409. The order of
23 the appeal is pursuant to Subtitle Y 507.

24 At the conclusion of each case, an individual who was
25 unable to testify because of technical issues may file a request

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

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

13 The Board's agenda may include previous cases set for
14 decision. After the Board adjourns the hearing, the Office of
15 Zoning, in consultation with myself, will determine whether a
16 full or summary order may be issued. A full order is required
17 when the decision it contains is adverse to a party, including
18 an affected ANC. A full order may also be needed if the Board's
19 decision differs from the Office of Planning's recommendation.

20 Although the Board favors the use of summary orders
21 whenever possible, an applicant may not request the Board to
22 issue such an order. The District of Columbia Administrative
23 Procedures Act requires that a public hearing on each case be
24 held in the open before the public. However, pursuant to Section
25 405(b) and 406 of the Act, the Board may, consistent with its

1 rules and procedures and the Act, enter into a closed meeting on
2 a case for purposes of seeking legal counsel in a case pursuant
3 to D.C. Official Code, Section 2-575(b)(4) and/or deliberate on
4 a case pursuant to D.C. Official Code, Section 2-575(b)(13), but
5 only after filing the necessary public notice in the case for an
6 emergency closed meeting after taking a roll call vote.

7 Preliminary matters are those which relate to whether
8 a case will or should be heard today, and request for a
9 postponement, continuance, or withdrawal.

10 Mr. Moy, do we have any preliminary matters today?

11 MR. MOY: Yes, sir, we do. As has been customary
12 proceeding for the Board, I'll announce those preliminary matters
13 when I call the specific case. Other than that, I would like to
14 take a moment, Mr. Chairman, to announce for the record in the
15 transcript of cases that we were previously on today's docket
16 that have been rescheduled.

17 First, we have four -- rather five cases that have been
18 rescheduled to June 16, 2021. The five cases are: 20458,
19 application of Washington International School; 20461, the
20 application of Alvaro Vasquez and Meredith Hutchinson; 20462, the
21 application of Heather Williams and David Riches -- that's number
22 3; number 4 is 20433, the application of Prime Realty, LLC; and
23 the fifth is application number 20409 of Joseph and Elizabeth
24 Lunsford. These five cases rescheduled to June 16th, 2021.

25 We also have three cases rescheduled to June 23, 2021.

1 Those three cases are 20464 of 3200 Penn Ave PJV, LLC; 20465,
2 the application of Patrick O'Rourke, R-O-U-R-K-E; and the third
3 -- let's see. Okay. All right. So these two cases I have just
4 cited are rescheduled to June 23, 2021.

5 Finally, we have, 1, 2, 3 cases rescheduled to June 9,
6 2021; 20466 of Dan Mickelson; 20389 of Samuel Medeiros and Jessica
7 Ellis; and 20361, the application of G3, LLC. All three cases to
8 June 9th. And that's it for me, Mr. Chairman.

9 CHAIRPERSON HILL: Okay, thanks.

10 Commissioner Miller, can you hear me?

11 COMMISSIONER MILLER: Yes, I can.

12 CHAIRPERSON HILL: This is the only one you're on,
13 right, this first one?

14 COMMISSIONER MILLER: That's correct.

15 CHAIRPERSON HILL: Okay. Well, if it's all right with
16 you guys, Vice Chair John has -- she doesn't care if I continue
17 to chair tear this case. So I'm going to go ahead and take it
18 over. I did read in, and I very much appreciate Vice Chair John's
19 efforts up until now. And I guess (indiscernible).

20 Mr. Moy, if you could go ahead and read in our next
21 case, please.

22 MR. MOY: Thank you, Mr. Chairman. So this is case
23 application number 20424 of Shaw 927, LLC. This application was
24 -- or is captioned and advertised for special exceptions, amended
25 for special exception from the apartment house requirements of

1 Subtitle U, Section 301.4; lot occupancy restrictions of Subtitle
2 E, Section 304.1; rear yard requirements of Subtitle E, Section
3 306.1; minimum court dimensions of Subtitle E, Section 203.1;
4 side yard requirement of Subtitle E, Section 207.4; and parking
5 requirements of Subtitle C, Section 701.5. As you will recall,
6 that applicant had removed their area variance from the access
7 requirements under Subtitle C, Section 711.7. This would
8 construct a three-story rear addition to -- and to renovate an
9 existing nonconforming three-story, four-unit residential
10 building with cellar in the RF-1 zone. This is located at
11 premises 927 N Street, Northwest, Square 367, Lot 13. Thank you,
12 sir.

13 Oh, I should add that the Board last heard this on May
14 5th, 2021, and continued the hearing, a decision to today, May
15 19th. Since May 5th, the applicant did make a filing on May 17th
16 under Exhibit 44, as well as filing a PowerPoint submission
17 yesterday under Exhibit 45. So if it was just yesterday, it was
18 within the 24-hour block and the applicant's filing, as I said,
19 was under Exhibit 44, PowerPoint under Exhibit 45. Thank you,
20 sir.

21 CHAIRPERSON HILL: Thank you. They were timely,
22 correct, Mr. Moy? That's what you are saying.

23 MR. MOY: Except the PowerPoint because of the 24-
24 hour.

25 CHAIRPERSON HILL: Okay, if it's all right with the

1 Board, I would like to go ahead and waive the requirement and
2 have the PowerPoint into the file. And if somebody has an issue
3 with that, just raise your hand. Nobody is raising their hand.
4 Okay.

5 Mr. Sullivan, could you introduce yourself for the
6 record, please?

7 MR. SULLIVAN: Yes. Thank you, Mr. Chair, and members
8 of the Board, Marty Sullivan, with Sullivan and Barros on behalf
9 of the applicant.

10 CHAIRPERSON HILL: Okay. Mr. Sullivan, who's with you
11 here today?

12 MR. SULLIVAN: We have two representatives from the
13 ownership entity and the architect.

14 CHAIRPERSON HILL: Okay. Well, let's see, whoever, you
15 know -- we can have them introduce themselves as they speak. I
16 guess, what I'd like to do, Mr. Sullivan, is we've -- well, first
17 of all, we reviewed the record. I know Mr. Blake has and I have
18 watched the video. So I'm caught up as to where we are with
19 everything. What I think might be helpful is if you could go
20 through your PowerPoint presentation in Exhibit 45. And then, I
21 don't know, to be quite honest, if we're going to get to a vote
22 today because Mr. Smith is not with us. And since it was such a
23 tight vote the last time, we might need him. So we'll -- but
24 I'll let you go ahead and give your presentation. And then I
25 want to also hear from the Office of Planning at some point,

1 because, again, Mr. Blake and I were not here for the first two
2 hearings.

3 But Mr. Sullivan, I'm going to put 15 minutes on the
4 clock just so I know where I am, and you can begin whenever you
5 like.

6 MR. SULLIVAN: Thank you, Mr. Chair and Board members.
7 So my PowerPoint presentation -- and Mr. Young, if you could put
8 that up there -- is really focused on the -- what we call the
9 last area of relief, the special exception relief from the parking
10 number requirement. And because -- based on the conversations in
11 the previous hearing, I think we're okay on the other areas of
12 relief. And the Board is sort of focused in on this -- on a
13 deeper analysis of this particular relief, and this PowerPoint
14 does a little bit of a deeper analysis on that as well.

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

16 So the first section -- and C 703 is what provides for
17 this relief, special exception from the parking requirement. And
18 I'll get to it at the end of the PowerPoint, but the board has
19 approved this special exception several times in a situation like
20 this where the parking spaces actually end up being provided, but
21 for some reason, they can't comply with some of the dimensional
22 requirements around those parking spaces.

23 But the first section in C 703 talks about the purpose
24 of this special exception, relief, saying that, "It provides
25 flexibility from the minimum required number of parking spaces

1 when the provision of the required number of spaces would be
2 contrary to other District of Columbia regulations, or
3 impractical or unnecessary due to the shape or configuration of
4 the site, a lack of demand for parking or proximity to transit."

5 So I think the word "flexibility" is really important
6 here. And I think the phrase "contrary to other District of
7 Columbia regulations" is very important in regard to the
8 regulations regarding historic preservation. There was some
9 discussion about a clash or difficulty in having conditions or
10 requirements from Historic Preservation and then also evaluating
11 a BZA application on its own and the fact that there was sort of
12 a separation between those two or a clash. And I actually think
13 because of this regulation in another section, it's actually very
14 complementary. And the board actually does have the authority
15 to consider Historic Preservation regulations in considering this
16 application.

17 Next slide, please.

18 So that regulation or that condition from Historic
19 Preservation is that they would only approve this addition on the
20 condition that it not be set back from the alley edge. So the
21 addition needs to be on the alley property line according to this
22 written condition, which is in the case file.

23 Next slide, please.

24 And I've talked about this, so next slide, please.

25 So here's the crux of the case, the requirement under

1 C 711.7, which we're impacted by in this case, provides that the
2 entrance, the vehicular entrance to the building shall be set
3 back at least 12 feet from the center line of any adjacent alley.
4 And this is a 20-foot-wide alley, and so we need two feet of
5 relief to comply with this. I mention also that this provision
6 is redundant with some other provisions that were previously
7 reduced to seven and a half feet. And so it's hoped for that it
8 would be corrected someday, but the Office of Planning has stated
9 that they're not going to do that on an emergency basis and maybe
10 not any time soon either.

11 So these two paragraphs, HPO's recommendation, that
12 condition that the building addition has to be on the alley edge,
13 and C 711.7 says that the entrance to that building can't be on
14 that edge, are not reconcilable.

15 Next slide, please.

16 So that leads us to seek special exception relief from
17 the requirement. And we meet possibly five conditions that would
18 provide for the Board to approve this. I'll go through four of
19 them here. The Office of Planning has recognized three of them,
20 but there's another one that we didn't really focus on in the
21 last hearing that I think is really critical here.

22 So this is the first condition. The use or structure
23 is particularly well served by mass transit, shared vehicle, or
24 bicycle facilities.

25 Next slide, please.

1 Land use or transportation characteristics of the
2 neighborhood minimize the need for required parking spaces.

3 Next slide, please.

4 Amount of traffic congestion existing or which the
5 parking for the building structure would reasonably be expected
6 to create in the neighborhood.

7 And I think -- I don't think there was much confusion
8 about the fact that the application meets these requirements.

9 Next slide, please.

10 But I think the fourth condition that's listed in that
11 under J, is really appropriate here. And this ties into that
12 first paragraph that talked about where the Board can consider
13 the impact from other District of Columbia regulations as this
14 is very specific. It provides that if the nature or location of
15 a historic resource precludes the provision of parking spaces;
16 or providing the required parking would result in significant
17 architectural or structural difficulty in maintaining the
18 integrity and appearance of the historic resource. And I think
19 this ties into the addition itself because Historic Preservation
20 has a very specific direction on what they think is needed to
21 maintain the integrity and appearance of the historic resource
22 here, and that is having the building addition on the property
23 line.

24 Next slide, please.

25 Regarding C 703.3, which is one thing the Board

1 discussed at the last hearing. I interpreted some of the Board
2 discussion as requiring absolute proof under a very stringent
3 standard, that the applicant is physically unable to provide
4 this, along the lines of seeing -- pushing back with HPO or
5 otherwise altering what HPO wants in order to comply with this
6 provision. And I think that those provisions that relate to
7 Historic Preservation, the provision that says the Board can
8 consider other District of Columbia regulations, and specifically
9 the first paragraph that talks about flexibility, provides the
10 background here that allows the Board to provide flexibility to
11 the applicant so that the Historic Preservation Office can get
12 its most desired outcome here. And if we're talking about the
13 equity of the two sides, Historic Preservation has a significant
14 interest in protecting the integrity of Naylor Court. It's a very
15 specific thing. Naylor Court, Blagden Alley, there's no other
16 alley system or block like it when it comes to Historic
17 Preservation's Office concerns and directives regarding the
18 integrity of that historic resource.

19 On the other side, there's zoning. Now we have a 20-
20 foot-wide alley. It's not a 15-foot-wide alley. So there's
21 plenty of space there. And the provisions, this same provision
22 which was in the rear yard setback section of other regulations
23 was reduced from 12 feet to seven and a half feet, evidence that
24 the Zoning Commission has considered this distance and found that
25 a 15-foot-wide alley may now have an accessory building on the

1 alley edge. We've got a 20-foot-wide alley here. So I think
2 there's little interest on the Zoning Regulation side as to
3 protecting this requirement of C 711.7 In this case versus the
4 interests of Historic Preservation. But the bottom line is we
5 meet the requirements. We meet at least four conditions of this
6 requirement.

7 Next slide, please. Next slide, please.

8 These are two cases that I'm familiar with, there may
9 be more. Cases where special exception relief from the number
10 of parking spaces under C 703 was approved by the Board, even
11 though a parking space was provided. And the fact that the
12 parking space was provided was considered a mitigating factor in
13 those cases as well. But in one case, 1818 Rhode Island, we had
14 a seven-foot-wide driveway, where eight foot was required. At
15 435 Park Road, there was a six-foot-wide alley, and a ten-foot-
16 wide alley is required. In doing a conversion, we needed to
17 provide a parking space, so we asked for relief from that parking
18 space and still provided a small parking space on that property.
19 There was some discussion at the last hearing about what we are
20 asserting would change a policy, and I'm not sure exactly what
21 that meant. But I think for the Board to ignore this precedent
22 and say that there's something wrong with the path that we're
23 taking here by asking special exception relief from spaces that
24 we end up providing anyway, I think that would be changing policy.
25 Because the regulations exist; they're written as the Zoning

1 Commission provided and this Board has made decisions like this
2 in the past. I understand the phrase often heard that every case
3 is decided on its own merits; true, because every case has
4 different facts. But the law doesn't change or shouldn't change
5 drastically from case to case; that would be considered arbitrary
6 and capricious.

7 So I think the precedent matters. I think the Board
8 has the authority to grant this special exception. And I think
9 very specifically in this case, it's important to do so in regard
10 to a condition provided by Historic Preservation Office that
11 makes it impossible to comply with C 11 -- C 711.7. And that's
12 all I have. Thank you.

13 CHAIRPERSON HILL: All right. Thanks, Mr. Sullivan.

14 Great. Let's see, does the Board have any questions for
15 Mr. Sullivan? Okay. You all can think about it.

16 Can I turn to the Office of Planning?

17 MS. MYERS: Crystal Myers with the Office of Planning.

18 The Office of Planning again recommends approval of all
19 of the relief requested in this case. The one we're discussing I
20 think most now is the special exception relief from the parking
21 requirement. And the Office of Planning's viewpoint on that is
22 that they meet quite a number of the reasons for the relief, one
23 primary one being they're only like a few blocks away from the
24 Mount Vernon Convention Center Metro station. So from our
25 understanding of the section, parking isn't really required on

1 this site because they do meet so many of the other of the reasons
2 for this relief. And the Historic Preservation Review Board's
3 condition prevents them from providing the two parking spaces,
4 the required parking spaces on this site. If they do, they would
5 run into the problem of having to not get an approved plan from
6 HPRB. So that is a physical condition that is a challenge for
7 them. So from the Office of Planning's point of view, we think
8 that relief is from the special -- from the parking is appropriate
9 and we recommend approval for it.

10 CHAIRPERSON HILL: Okay. Does the Board have any
11 questions for the Office of Planning? Okay.

12 All right, let's see. Mr. Sullivan, you got any
13 questions for the Office of Planning?

14 MR. SULLIVAN: No, thank you.

15 CHAIRPERSON HILL: Mr. Young, is there anybody here
16 wishing to speak?

17 MR. YOUNG: We do not.

18 CHAIRPERSON HILL: Okay. All right. So I guess then
19 we're done.

20 BOARD MEMBER BLAKE: Well, actually, I'm sorry, Mr.
21 Chair, I do have a couple small questions. I thought someone
22 else would probably ask something first. But I do have a couple
23 of small questions.

24 CHAIRPERSON HILL: Sure.

25 BOARD MEMBER BLAKE: First, as we look at the whole

1 issue of the decision, with HPRB being the main factor in this
2 case, I was just curious, and I did listen to the tapes and read
3 the transcript. But I would be curious just to understand the
4 other alternatives or the approach that the applicant and HPRB
5 went to determine this particular configuration and design. I
6 know that I asked the question a couple times, but I haven't been
7 able to get a careful answer about exactly how that was and the
8 other designs that were considered and how we arrived at this
9 particular one.

10 MR. SULLIVAN: So -- and we do have the architect here
11 that maybe could talk about that. He's had significant
12 discussions with them. And my understanding is this is the Naylor
13 Court requirement is very well known and high profile, high
14 priority requirement for Historic Preservation to have the
15 building structures be on the alley line and provide a continuous
16 wall along that alley. So we have, among ourselves, sort of
17 strategized trying to think and find a way where we can comply
18 with both C 711.7 and this condition that says the addition has
19 to be on the outer edge, but the entrance to that addition cannot
20 be. And I don't I don't know how to square those. And we could,
21 I suppose, you know, we could have HPO -- I don't know if there's
22 an answer there. I mean, we haven't heard anything from HPO that
23 would allow us to do anything else that we've tried to consider.
24 If you put the parking spaces deeper inside the building, the
25 entrance to those parking spaces remains the same, arguably. And

1 that's where we're at. So I don't know if, Jim, if you have
2 anything to add on that point. I'm sorry if I'm not directly
3 addressing your question Board Member.

4 MR. FOSTER: Hi. This is Jim Foster.

5 CHAIRPERSON HILL: I'm sorry. Could you introduce
6 yourself for the record, please?

7 MR. FOSTER: Right. I was going to. Jim Foster from
8 Arcadia design. And we did the original analysis for this
9 property that (audio interference), and original design, that was
10 submitted to HPO with what I would describe as a more typical or
11 traditional renovation addition. We kept the front building,
12 which Historic required, but we basically replaced the L wing
13 addition on the back of the building with simply a larger one.
14 It was a little wider, a little deeper, but it had about 30 feet
15 between the rear of the addition and the alley in order to provide
16 at-grade parking, open air, at-grade parking accessible from the
17 alley. We submitted that proposal to HPO staff and were told
18 after peer review, not only did Mr. Meyer review the plans
19 himself, but he showed it to all the other people on staff at
20 HPO, that peer review. And we were told explicitly that they
21 would not approve that design, that per the existing conditions
22 in Naylor Court and the goals of HPO in general for Naylor Court,
23 that all buildings proposed -- all new proposed buildings or
24 renovations or additions, they wanted the rear face of the wall
25 to be at the property line at the alley. If you walk through

1 Naylor Court at any extent, you can see that the vast majority
2 of the buildings are this way. There are a few empty lots. There
3 are a few a couple odds and ends of buildings here, there that
4 don't comply with that. But the overwhelming majority of all
5 buildings on Naylor Court go to the property line. HPO has made
6 a very, very vigilant effort to keep that intact and encourage -
7 - actually not encourage -- require all new development to have
8 the same nature.

9 So we were very clearly told by the staff that
10 submitting a design that had a building that was set back from
11 the alley and had parking at grade would not get approval by
12 HPRB. So we submitted the new design and that was enthusiastically
13 received by the staff and the ANC and the CDC within the ANC and
14 all of the neighbors on both sides, across the alley, all up and
15 down Naylor Court, all of the neighbors are very happy with the
16 design and the approach. And we have worked closely with the
17 staff to refine the design as we've gone on in terms of scale
18 and context, the material of the entire thing, and we have, you
19 know, very, very strong support from the staff on the design.
20 But the primary issue was that it had -- the face of -- the rear
21 face façade of the building was, to us, required to be on the
22 face of the property line. That's all I can put to that, unless
23 I have any more questions.

24 BOARD MEMBER BLAKE: That's very helpful. In looking
25 at it though, the two questions I have, we looked at the issue

1 of the -- you mentioned that it was a very well documented fact
2 or right that Naylor Court had to be in this way. You said it
3 was -- Mr. Sullivan, you indicated, it was well documented. Is
4 there something that we can put in the record that reflects that?

5 MR. SULLIVAN: Well, the HPO staff report has that
6 condition that I mentioned.

7 BOARD MEMBER BLAKE: I assumed it was -- (audio
8 interference).

9 MR. SULLIVAN: Yeah, I suppose we could. Okay. I want
10 to get at like what the regulations like -- with the Zoning
11 Regulations and satisfying the special exception requirement. So
12 just so I know specifically where we're --

13 BOARD MEMBER BLAKE: (Audio interference.)

14 MR. SULLIVAN: -- what I'm trying to show.

15 BOARD MEMBER BLAKE: I just want to make sure. You
16 said it was a well-documented fact. I want to make sure I'm
17 comfortable, personally, that this is something that this is
18 something that has to be done this way. We've asked -- what Ms.
19 John has asked a couple times about the issue of an alternative
20 plan. I appreciate what Mr. Foster has done to take us through
21 the process because that's very helpful to understand kind of the
22 backdrop behind it, because it's almost as though it's a curtain
23 and we have no idea what kind of thought process goes behind it.
24 So that was very, very helpful. But you did indicate it was a
25 well-documented fact that this was the way it had to be done in

1 Naylor Court, and I was just saying, let's, for the record, have
2 something that at least represents the fact that it was a well-
3 documented fact for that.

4 The reason I'm so concerned with what HPRB has said is
5 that is the foundation of both arguments for a variance or for
6 this relief; it all comes down to this is the issue. So I'm just
7 trying to make sure I'm comfortable and understand it and then
8 we can continue about this special exception. I just to make
9 sure I can understand this particular part of it, because I do
10 think it's fairly important.

11 Another point to that. Ms. John mentioned a design
12 concept that you said would likely not work because of this issue.
13 And one of the issues that came to me there when I heard that
14 was you indicated that the zoning administrator would be likely
15 uncomfortable with this. And I was just hoping that we could at
16 least have some sense of the zoning -- the zoning administrator's
17 view on that in the record just so we have a sense of it. That
18 was the only other thing -- in terms of just getting something
19 on record to just substantiate what we're talking about beyond
20 the veil, because I had no understanding of it. So if you can
21 elaborate on that, that's fine. I'd appreciate it.

22 MR. SULLIVAN: I'm sure we can provide something. I
23 think nothing more direct than the specific condition for this
24 particular property, which is in the HPO staff report, so. And
25 I'd like the Board to focus on the question though, because HPRB's

1 position necessarily isn't central to the relief that we're
2 requesting here. And I'll take you back to 703.1; this Section
3 provides flexibility from the minimum required parking spaces
4 when the required number of spaces would be contrary to other
5 District of Columbia regulations. We're hung up on some sort of
6 impossibility use variance standard, I think, in relation to this
7 special exception for two feet of relief for a redundant
8 requirement. And I think it's a little out of balance here
9 because well --

10 CHAIRPERSON HILL: Mr. Sullivan -- and Mr. Sullivan.
11 So if you can put something in the record, Mr. Blake is looking
12 for, which in -- I don't know if the HPRB report is in there,
13 right, that says that it has to be on the line, okay. Is it in
14 there? Is that what you said?

15 MR. SULLIVAN: It is in there and I talked about in my
16 PowerPoint.

17 COMMISSIONER MILLER: It's Exhibit 29C.

18 CHAIRPERSON HILL: Okay. Say it again. I'm sorry.

19 COMMISSIONER MILLER: It's Exhibit 29C.

20 CHAIRPERSON HILL: Fine. So 29C, so that is something
21 that is already in the record. There's nothing else -- I'm just
22 trying to understand what Mr. Blake might be looking for. Also
23 in terms of something from the zoning administrator, Mr. Blake,
24 that you were -- something about. I'm sorry.

25 BOARD MEMBER BLAKE: Yes, there are two things. One

1 was the -- we made an assertion earlier that the zoning
2 administrator was uncomfortable with the other design, and it
3 wouldn't work. I was just hoping that we could have something
4 to substantiate that in the record as it relates to this issue.
5 I do understand that the HPO report does state it. But more to
6 the "well documented fact," that was the part I was trying to
7 get evidence. Not just in that one statement, but if it's been
8 done throughout in other instances, just the "well documented
9 fact" is the part I was trying to get comfortable with, not with
10 the fact it was in the HPO report, I did see that.

11 CHAIRPERSON HILL: Mr. Sullivan, maybe -- I don't know
12 if there's other pictures of other things in Naylor Court. Is
13 that what, Mr. Blake, you think might make you more comfortable?

14 BOARD MEMBER BLAKE: Well, ideally, it would be
15 something that said, it's required throughout and has been a
16 general practice, that this is what is done for new developments
17 in that area. I just -- that would help me to understand it,
18 because it was a "well documented fact." And I'm just trying to
19 get the documentation to support that, that's all. It's not --
20 I just want us to have something in the record to support that.
21 If it's not available, that's fine.

22 MR. SULLIVAN: It's available and we can provide it.
23 It was just a general statement acknowledging the significance
24 of Naylor Court, but I'm sure there's information on the HPO's
25 that provides more detailed information.

1 CHAIRPERSON HILL: Okay, so you are going to add
2 something to the record, Mr. Sullivan. Okay. Okay.

3 Mr. Blake, do you have another question.

4 BOARD MEMBER BLAKE: I actually have no other questions
5 for the applicant. I do have one quick question for the Office
6 of Planning.

7 CHAIRPERSON HILL: Okay, Ms. Myers. Go ahead, Mr.
8 Blake, go ahead.

9 BOARD MEMBER BLAKE: Yeah, the only thing I get on the
10 703.3, your analysis would certainly dovetail with the applicants
11 in terms of that analysis; and you'd feel comfortable with that.
12 And is there any element of the fact that the parking still being
13 provided that concerns you at all?

14 MS. MYERS: No, I mean, you know, as has been discussed
15 earlier, there are other examples where we have even been in
16 support of parking relief, but parking was still provided.

17 Our point of view is more looking at the requirements
18 for this relief and do you satisfy it, and anything put on the
19 property after that, you know, I guess, non-required parking. It
20 just has to satisfy the review process at DCRA, but it doesn't
21 have to satisfy the zoning requirements which are more rigid when
22 it comes to the dimensions and the other -- like, in this case,
23 the setback, et cetera. But just so you know, also, DDOT has
24 taken a look at this case, and it meets their needs when it comes
25 to -- or their requirements, when it comes to safety. So, you

1 know, that's another thing to perhaps keep in mind as well. When
2 it comes to them doing the property or doing the development the
3 way that they're proposing, DDOT is satisfied, they have no
4 objections to it. It's just the zoning requirements went a little
5 bit beyond even DDOT's usual specifications. And in this case,
6 our review of it is parking isn't even really necessary on the
7 site. So that's -- if you have any other questions, I'm here
8 for that as well.

9 BOARD MEMBER SMITH: Sure. Has there been any other
10 case like this in Naylor Court or application in Naylor Court?

11 MS. MYERS: I am not aware of any others in Naylor
12 Court. I think this might be the only one in Naylor Court. I'm
13 sure -- perhaps there are others (audio interference) aware.

14 BOARD MEMBER BLAKE: Okay. Thank you very much.

15 Mr. Chairman, I have no other questions.

16 CHAIRPERSON HILL: Thank you. Ms. John, you had a
17 question.

18 VICE CHAIR JOHN: Yes, one question for Mr. Sullivan.
19 So is -- Naylor Court, has it been designated as a -- I don't
20 think it would be a contributing structure, but a historic
21 landmark or historic resource because you're citing a regulation
22 that's in conflict, and I am struggling to see what the two
23 regulations are that are in conflict. Because if you look at
24 the provision on parking, it's specific as to which -- as to
25 where the Board is allowed flexibility. So if you could clarify

1 that where it specifies, I believe a historic resource. I'm
2 trying to find the provision now. So if you could clarify that,
3 if you know, or in your --

4 MR. SULLIVAN: Sure, I can provide that. It is
5 regulation which provides for the ability or the authority for
6 HPO and HPRB to have any say at all on where this addition goes,
7 so. Those regulations are in Subtitle 10 C, and they those
8 regulations in general provide for HPRB review and authority. So
9 if HPRB says no to where this building is proposed, they have
10 the authority under those regulations to do that and to prevent
11 this building from being set back from that property line. So
12 those are the regulations that I'm referring to, but I can
13 certainly get more specific on that point if the Board needs to
14 do that.

15 VICE CHAIR JOHN: So I found the language. I don't
16 have the exact cite, but it's in 703, and I printed this off
17 badly, so I don't have the specific site, but it says, "The nature
18 or location of a historic resource precludes the provision of
19 parking spaces." And so that's what the Board has to consider
20 in terms of flexibility. So no one is, at least I am not disputing
21 that that provision applies, but it's not clear to me that we're
22 talking about a historic resource, or that providing the required
23 parking would result in significant architectural or structural
24 difficulty in maintaining the integrity and appearance of the
25 historic resource.

1 So if you could address that, that provision, it would
2 be very good. So I agree that there is flexibility, but the
3 regulation specifies how that flexibility should be addressed.
4 And in my view, because there's so many ways that that the
5 applicant could qualify for this special exception suggests to
6 me that there was some intent to allow parking relief in a less
7 stringent way. So if you could clarify that, that would be great.

8 MR. SULLIVAN: First of all, the flexibility that I
9 talked about applies to all the conditions. It doesn't just
10 solely apply to this condition J. So we meet four other
11 conditions in addition to this condition. And the flexibility
12 noted in the first paragraph of C 703 applies to all those
13 conditions.

14 The second, I think we're getting caught up in
15 semantics of the historic resource. The bottom line is that the
16 HPRB has the authority to -- has the authority over this addition.
17 There's nothing about this addition that allows us to say we
18 can't say, "well, this addition is not part of the resource," so
19 we can't -- "so we're not subject to your conditions." We don't
20 have to put it on. We can comply with zoning.

21 I mean, I think this case is much more acute and
22 straightforward than where it's being made out to be. There's a
23 condition of HPO that HPO is authorized to provide under other
24 District of Columbia regulations. And reasonably speaking, that
25 condition obviously doesn't allow us to set the building back as

1 zoning is requiring. It is two feet of relief. It's a special
2 exception. It's been provided before.

3 We're happy to extend this out and prolong the case and
4 get you whatever other information you think might be necessary,
5 but I want to make sure that I understand the point of that, so
6 I focus that that information and make sure we get to the end at
7 some point.

8 VICE CHAIR JOHN: If I could follow up, Mr. Sullivan.
9 You're saying that the mention of historic resource here has
10 nothing to do with the definition of a historic resource in the
11 regulation?

12 MR. SULLIVAN: No. Well, no, I'm saying it is a
13 historic resource. A historic resource is a building that is
14 within -- generally, it's considered, in my opinion -- and I'm
15 not an expert on historic preservation -- to be considered a
16 building that was constructed within the significant time period,
17 as documented in the regulations and HPR's. And that means that
18 the addition to that building is also part of that historic
19 resource because they have authority over that as well.

20 But again, this is one of four of five conditions that
21 we meet, only one of which is required. The regulations
22 specifically state that that only one of these regulations is
23 required to be met. So I'm not sure what we're not meeting at
24 this point.

25 VICE CHAIR JOHN: Well.

1 MR. SULLIVAN: Or what the stopping point is for the
2 Board members on -- what are we failing to meet? What condition
3 is not being met as part of this special exception?

4 CHAIRPERSON HILL: Mr. Sullivan. Mr. Sullivan, just
5 let me get to Board Member John's question.

6 Board Member, John, I mean, just so Mr. Sullivan knows
7 what he can possibly provide. What is it that you might like
8 him to provide more specifically? And we can -- because I have
9 to -- they're going to -- he's -- Mr. Blake is getting some stuff,
10 I think, also this week, so that might be time for Mr. Sullivan
11 as well.

12 VICE CHAIR JOHN: So Mr. Sullivan mentioned that they
13 also qualified for this condition because it's -- the property
14 is a historic resource. And so I inquired whether or not it met
15 the definition of a historic resource. And that's my question.
16 But it appears to me Mr. Sullivan is now saying that that doesn't
17 matter because he meets another condition, which I agree. The
18 application does meet one condition and that's all that's
19 necessary, that the application meet one condition.

20 As I understand it, the issue is whether or not having
21 granted the special exception on the basis that the applicant is
22 not able to provide parking, that the applicant then shows parking
23 in the same space that does not meet the regulation. And so --
24 and I believe if the applicant were to remove the parking from
25 the plans, the issue would be resolved because you're not showing

1 parking in the same place that does not meet the regulation. And
2 that was the view I expressed last week. And I'm still struggling
3 to understand that, and I will continue to look at Mr. Sullivan's
4 submission to see if I can understand it.

5 CHAIRPERSON HILL: Okay, so.

6 VICE CHAIR JOHN: Let's clarify one more thing. As
7 long as the applicant meets one of those conditions, only one,
8 then the applicant ordinarily must be granted the special
9 exception. So there is no debate that the applicant has shown
10 that parking really is warranted. But then there's the other
11 section that says parking relief should be granted for only what
12 the applicant is physically unable to provide. And so, as I
13 understand the argument, the Board needs to interpret that
14 section broadly to include the recommendation, which is what it
15 is. It is a recommendation to the BZA that the Board needs to
16 interpret that section broadly to give effect to the HPRB's
17 recommendation. However, having looked at Exhibit 29C, it is not
18 a recommendation. It is a statement that we will not approve this
19 project unless it is set back along the property line. So that's
20 the issue I was struggling with last week.

21 CHAIRPERSON HILL: Okay.

22 MR. SULLIVAN: If I could just for a second point out
23 the precedence on that, because I think I understand your point,
24 because we're still providing the spaces, right? And the Board,
25 in my opinion, at least on the two cases that I did, and I think

1 Ms. Myers mentioned she was familiar with a case too, interpreted
2 that provision to mean physically unable to provide compliant
3 parking spaces. And once a compliant parking space is -- once
4 you have relief from the requirement to provide a compliant
5 parking space, now you can do what -- there is nothing restricting
6 you from actually having a place where you can park a car. And
7 that's what was considered and approved in those other cases. So
8 -- because we were physically able to provide a parking space at
9 1818 Rhode Island and 435 Park Road, but we weren't physically
10 able to provide a compliant, required parking space. And I think
11 that's the point here; that was interpreted in previous cases to
12 be how you interpret that provision. And so I think it would be
13 reasonable for the Board to follow that interpretation in this
14 case rather than to change it, especially for really minor relief
15 for what's a 20-foot-wide alley. I don't know if that answers
16 your question or gets to your point or not.

17 VICE CHAIR JOHN: Thank you, Mr. Sullivan.

18 CHAIRPERSON HILL: Okay. So I don't know whether or not
19 -- so the only thing I got that I think you're giving, Mr.
20 Sullivan, that you're getting for us is proof that there's some
21 kind -- I guess "well documented" was mentioned a few times, that
22 the Naylor Court and the whole like, you know, you have to go to
23 the property line. I guess you can provide something to Board
24 Member Blake.

25 In terms of Vice Chair John, I don't know if there's

1 anything specifically you may or may not be able to provide her
2 concerning what has been this discussion. But I'm going to leave
3 the record open for something, if you think there is something
4 that you might be able to provide Board Member John concerning
5 what her questions were. I think there was a lot of discussion
6 about a lot of different things. And so, you know, I don't know
7 if there is a specific thing. And Board Member John, if there
8 is, then just please let me know. But it seems as though you
9 might get a little bit more of what you've gotten before, but
10 we'll leave it for Mr. Sullivan to add.

11 VICE CHAIR JOHN: Mr. Chairman, I'm not requesting
12 anything more because I believe Mr. Sullivan is clear that the
13 applicant needs to meet only one condition, and I do not dispute
14 that.

15 CHAIRPERSON HILL: Okay, so then we're going to have
16 an interesting discussion, I think. It more just where we're all
17 deliberating without Mr. Sullivan I can see anyway. So.

18 All right, Mr. Sullivan. So you got the one thing that
19 you need to be giving us, correct?

20 MR. SULLIVAN: Yes, can I ask the Board to --following
21 up on our bifurcation request, if the Board is willing to vote
22 on the other areas of relief so that the project -- there's a
23 lot of moving parts regarding financing. CHAIRPERSON

24 HILL: Mr. Sullivan, I got you. I saw the bifurcation thing.
25 It's -- I'll figure it out. We'll figure it out, okay? We'll

1 figure it out. We're not going to figure it out today because I
2 need Mr. Smith, right, to come back. He's the fifth person,
3 right? Unless you want us to vote on the bifurcation thing right
4 now. I don't understand. You want the vote on the bifurcation
5 and then we'll do the vote on the garage later?

6 MR. SULLIVAN: Yes. If the Board was willing to do
7 that, yes. We'll bifurcate as far as timing of the vote, because
8 --

9 CHAIRPERSON HILL: One week?

10 MR. SULLIVAN: Well, if it's only one week, then maybe
11 that's not a big deal.

12 CHAIRPERSON HILL: I think you should wait your week,
13 Mr. Sullivan.

14 MR. SULLIVAN: Okay. There's financing concerns with
15 the project and they need to see that the project is going to be
16 feasible. But I think one week is probably okay.

17 CHAIRPERSON HILL: If one week is okay, then let's do
18 it for next week, okay, because Mr. Smith will be back with us.
19 All right.

20 So does anybody have anything else they'd like to add?
21 Okay, sure. Mr. Blake.

22 BOARD MEMBER BLAKE: I have a question for Mr. Sullivan
23 just to follow up on that.

24 It sounded like to me that the project isn't viable if
25 there is no parking; is that the right way I should read that?

1 MR. SULLIVAN: It puts the project in jeopardy if we
2 can't build the addition where the addition is intended to go and
3 if we took away parking, I wouldn't see the benefit in that for
4 anybody. It would just tremendously devalue the purpose of the
5 project, of course. I mean, two parking spaces in this
6 neighborhood is worth something. But again, I don't want it to
7 come down to the money of the parking space. We're providing
8 the parking spaces.

9 CHAIRPERSON HILL: Mr. Sullivan, I got you. I
10 understand what Mr. Blake is asking. So he asked whether or not
11 it was viable without the parking spaces and it still might be
12 viable without the parking spaces. So that's the answer I think
13 you get, Mr. Blake. Well, Mr. Sullivan is shrugging his head,
14 he doesn't know that, right. It may die, is what he's saying.
15 But they want to know, so we'll go ahead and give them a decision
16 next week one way or the other. And Mr. Sullivan, you'll know.
17 Okay. So if anybody has got anything else, I'm going to close
18 the hearing. Okay? All right. I'm going to close the hearing,
19 close the record.

20 Mr. Sullivan, thank you all very much. We'll see you
21 next week.

22 Commissioner Miller, I think this is it for you.
23 Correct? All right.

24 So we're going to do -- I got -- next week there's a
25 decision with Commissioner May. We're going to do them first,

1 if that's okay, and then we'll do you after that.

2 COMMISSIONER MILLER: That's fine. Thank you.

3 CHAIRPERSON HILL: Okay. Great. All right. Thank you
4 all. Thank you, Commissioner Miller.

5 We have -- it's an "All Star" Commissioner Day. We
6 have Commissioner Shapiro next. So let's take a quick break,
7 however -- Oh, Mr. Moy.

8 MR. MOY: Before you take a quick recess, Mr. Chairman
9 -- in following the discussion, were you asking for any further
10 supplemental information or not?

11 CHAIRPERSON HILL: Sorry, I forgot. Mr. Sullivan
12 (audio interference). I'm leaving the record open for one thing
13 that Mr. Blake was interested in, was this "well documented" how
14 Naylor Court is, right? And so if he wants to provide something
15 to that effect, great.

16 MR. MOY: That sounds good, Mr. Chairman. Would you
17 like to set a deadline for this Friday or Monday?

18 CHAIRPERSON HILL: Yeah, this Friday. Yeah.

19 MR. MOY: Okay. No responses, then?

20 CHAIRPERSON HILL: No, no. I mean, you want to -- Mr.
21 Young, you want to bring back in Mr. Sullivan for one second if
22 he's still there, or he can reach out to Mr. Moy.

23 MR. MOY: I can reach out to him after this hearing,
24 Mr. Chairman.

25 CHAIRPERSON HILL: Okay. All right. Do you guys mind

1 taking a break? Okay. All right, like 15 minutes, we'll come
2 back.

3 (Whereupon, there was a brief recess and reconvened at
4 approximately 11:05 a.m.)

5 CHAIRPERSON HILL: Mr. Moy, if you could read in our
6 next one, please.

7 MR. MOY: Thank you, sir. The Board is back in session
8 after a quick recess and the time is at or about 11:05 a.m.

9 The next case before the Board is Application Number
10 20414 of Thurston Fisher. This is an application as amended for
11 special exception from the rear addition requirement of Subtitle
12 E, Section 205.4, and the lot occupancy requirement of Subtitle
13 E, Section 304.1. This would construct a two-story with basement
14 addition to an existing non-conforming two-story with basement
15 principal dwelling unit in the RF-1 zone. The property is located
16 at 1637 D Street Northeast, Square 4563, Lot 131.

17 The last time the Board heard this case was on April
18 7th and at that point the Board scheduled a continued hearing and
19 a decision on May 19th. Since April 7th, the applicant has filed
20 a revised self-certification under Exhibit 43 with corrected
21 floor plans, a burden of proof for an affidavit maintenance.
22 Other than the applicants' team, Mr. Chairman, there's no one
23 else who has signed up to testify.

24 CHAIRPERSON HILL: Okay, Ms. Rogers, are you there?

25 MS. ROGERS: Yes. Good morning, Chairman. I'm here.

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

3 MS. ROGERS: Yes, good morning. My name is Elizabeth
4 Rogers with Lerch, Early and Brewer, here today on behalf of the
5 behalf of the applicant, Thurston Fisher.

6 CHAIRPERSON HILL: Okay, all right. I know we heard
7 this already the last time and we weren't able to move on it
8 because of some notice requirements that we had. I don't have
9 any additional questions for you since the last time we were
10 here. Does the Board have any additional questions of Ms. Rogers?
11 And if so, please raise your hand. No?

12 Does the Bboard have any additional questions of the
13 Office of Planning? And if so, raise your hand? All right.

14 Mr. Young, is there any one here wishing to speak?

15 MR. YOUNG: We do. We have one witness who is calling
16 in by phone who I will unmute now. That's Natalie Lewis.

17 CHAIRPERSON HILL: Natalie Lewis.

18 MR. YOUNG: Yes.

19 CHAIRPERSON HILL: Ms. Lewis, can you hear me?

20 MS. LEWIS: Yes, sir. I can hear you.

21 CHAIRPERSON HILL: Okay, great. Ms. Lewis, you'll have
22 three minutes to testify as a member of the public. If you can
23 see the clock, that's great. But otherwise, I can let you know
24 when your three minutes are up, and you can begin whenever you
25 like.

1 MS. LEWIS: All right. So good morning. My name is
2 Natalie Lewis and I live at 1635 E Street. I'm the house next
3 door to Thurston.

4 Thurston wants to expand his house by 18.6 feet, which
5 is like 19 feet. That would literally cut off all of my air and
6 my light. The circulation of the air and the light that I will
7 receive. My neighbor to the right of me is 1633. She expanded
8 her home a couple of years ago and when she did that, it cut off
9 a lot of my light. So that is the only reason why I don't want
10 Thurston to be able to expand that far out because it will
11 literally cut me off. I submitted pictures in the file so that
12 you could see how -- you know, how the light comes through and
13 the air. If he expands, I will have no light in my house on the
14 first floor and very little light on the second floor, so that
15 is my objection.

16 CHAIRPERSON HILL: Ms. Lewis, where was the -- I didn't
17 see those in the exhibit. I see your letter in opposition.

18 MS. LEWIS: I think that the pictures are under the
19 opposition. I think they're there.

20 CHAIRPERSON HILL: All right, Ms. Rogers, have you been
21 in touch with Ms. Lewis before?

22 MS. ROGERS: I have not directly. The applicant has.
23 I know he -- just kind of by way of background, I know I shared
24 this before. We did our due diligence before submitting the
25 application and reached out to our immediate neighbors. It was

1 actually -- I believe it was Ms. Lewis's husband who Thurston had
2 originally spoken to and gotten support of this application. It
3 was brought to our attention later, only after filing the
4 application, that he didn't have an ownership interest in the
5 property and that Ms. Lewis had some objections. So we did
6 postpone our application hearing date about a month. We were
7 originally scheduled in March to see if there was an opportunity
8 to work through any kind of compromise with her. And we were
9 told that she really opposed any addition, even a by right ten-
10 foot addition. So we tried to have those conversations but were
11 unsuccessful in doing so. CHAIRPERSON HILL: Okay.

12 MS. LEWIS: No one tried to have any conversations with
13 me at all. No one did.

14 CHAIRPERSON HILL: Okay. I guess, Ms. Lewis is saying
15 they have tried to speak with someone else in the home, but I
16 guess they didn't have the authority; is that correct?

17 MS. LEWIS: Yes.

18 CHAIRPERSON HILL: Okay. All right. Let me see. Give
19 me a second, Ms. Lewis. All right, Ms. Lewis, I'm going to just
20 -- since you're a party in opposition, I'm first going to ask
21 the Board if they have any questions of you. Does the Board have
22 any questions of Ms. Lewis? Okay.

23 Ms. Lewis, I'm going to -- just stay with us, but I'm
24 going to pull you out of the hearing room for a minute, okay?

25 MS. LEWIS: All right. Okay.

1 CHAIRPERSON HILL: Thank you. Mr. Cochran, can you
2 hear me?

3 MR. COCHRAN: Yes, sir, I can.

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

6 MR. COCHRAN: For the record, I'm Stephen Cochran with
7 the D.C. Office of Planning, representing OP on this case.

8 CHAIRPERSON HILL: Okay. Mr. Cochran, do you have any
9 thoughts concerning Ms. Lewis's home?

10 MR. COCHRAN: Yes, sir. The applicant already has an
11 addition that's sort of like one story. It's a deck that is
12 partially covered that is more than four feet above grade. So
13 there's already some shadow cast. The addition issue -- well,
14 if you look at -- let's see the shadow studies at Exhibit 27A
15 and then on page 5 of Exhibit 6, you can see the comparison of
16 the comparison of the existing addition -- the 10-foot addition
17 and an 18-foot 6-inch addition. Right now, that first -- that
18 deck that's covered has -- it goes back 18 feet, six inches. So
19 there are just going to be taking that footprint, rebuilding it,
20 and going up an additional story.

21 Ms. Lewis is correct that there are shadows cast in the
22 afternoon from the building to her west. The applicant's proposed
23 additions would cast shadows because it's to the east of Ms.
24 Lewis's property. Those shadows would be in the relatively early
25 morning hours and would likely not be there for most of the year

1 from about 10 or 10:30 in the morning on through sometime in the
2 middle of the afternoon, after which the house to the west of
3 Ms. Lewis's would start casting shadows.

4 If you look at, especially the shadows study in Exhibit
5 6, page 5, you begin to see that most of the shadows are cast on
6 the concrete pad that Ms. Lewis has in the back. Contrary to
7 what OP had said in our report, there is no deck on the back of
8 Ms. Lewis's house and the increase in the shadows that would be
9 on the back wall of Ms. Lewis's property would not be
10 substantially greater.

11 I was a little bit concerned about this, so I went and
12 looked at Google Earth and noticed that a good number of the
13 shadows that seem to be cast on Ms. Lewis's parking space in
14 Google Earth are actually cast by the building that's to the
15 south side of the alley. It's -- let's see, it's a 16-foot alley
16 and at least in the times of the year when the sun is to the
17 south, which is, you know, all but late spring to early fall,
18 that building on 17th Street South -- Northeast rather, does cast
19 shadows also. So when you look at the impact of the proposed
20 additions, it does not, in and of itself, have that substantial
21 an impact on the shadows cast on Ms. Lewis's back parking space.
22 And it certainly wouldn't have an impact on air.

23 CHAIRPERSON HILL: Okay. Does the Board have any
24 further questions for the Office of Planning? Mr. Blake.

25 BOARD MEMBER BLAKE: Yes. In listening to the

1 neighbor's concerns, it seems like it's the cumulative effect of
2 the two that create a cavernous environment. Did the Office of
3 Planning consider that as part of the evaluation, the cumulative
4 effect?

5 MR. COCHRAN: I raised that question in discussion with
6 colleagues and the regulations refer to the impact from the
7 applicant's construction, not to the cumulative impact. So the
8 impact from the applicant's proposed addition in OP's opinion
9 would not be substantially adverse, or what exists now.

10 BOARD MEMBER BLAKE: Okay, thank you.

11 CHAIRPERSON HILL: Commissioner Shapiro. Sorry, I was
12 on mute.

13 COMMISSIONER SHAPIRO: That's all right.

14 So Mr. Cochran, I just wanted to make sure I understood.
15 So the impact of this proposed addition -- forgetting about air
16 but in terms of the shadow study, it would only be for a few
17 hours in the morning depending on the season. That's what I
18 heard from you.

19 MR. COCHRAN: That's right. There would naturally be
20 shadows cast in the -- at the height of the summer on anything,
21 whether there was an addition to the applicant's property or not.
22 You know, sun coming from the north, like it would in the middle
23 of the summer, is going to cast shadows on the south.

24 COMMISSIONER SHAPIRO: All right. Okay. All right.
25 Thank you. That's all I have, Mr. Chair. Thank you, Mr. Cochran.

1 CHAIRMAN HOOD: Okay. Anyone else? Ms. John.

2 VICE CHAIR JOHN: Mr. Cochran, is the second floor with
3 the setback eight feet, so there would only be a ten-foot addition
4 on the second floor, which would reduce some of the light --
5 reduction in light at all times of the year. Because if the
6 effect of this other addition, the additional eight feet is to
7 create this claustrophobic cavern, which would it have some
8 adverse impact in terms of air, the air circulation? Was that
9 considered, do you know?

10 MR. COCHRAN: We did not look at 18-foot, 6-inch
11 addition on the first floor and only a presumably 10-foot addition
12 on the second floor. What we looked at was ten feet on both
13 floors versus 18 feet, 6 inches on both floors. And again, we
14 didn't see that much of a difference between the shadows that
15 were cast by the by right ten-foot addition and what the applicant
16 has requested at 18 feet, 6 inches.

17 VICE CHAIR HOOD: So, unless there was some sort of a
18 deck to make up for the eight feet for the neighbor, I mean, I
19 don't know how now there wouldn't be some impact in terms of air
20 circulation when the neighbor is in her backyard trying to enjoy
21 the peace and quiet of a backyard. I mean, I --

22 MR. COCHRAN: Well, I would point out that --

23 VICE CHAIR JOHN: I have difficulty with these cases
24 because, you know, the shadow studies are good. But I have to
25 tell you, I live in a rowhouse. So I am deeply appreciative of

1 situations where there are these, you know, long walls on either
2 side of somebody's, you know, backyard. So I think I would like
3 to hear more about that.

4 MR. COCHRAN: I understand your concern, but we're
5 looking at an impact on what exists now. It's completely paved.
6 There is no deck. There is just a set of steps that goes down
7 to a paved parking area. There's not one plant in that backyard.
8 There's no apparent sitting area in the backyard, so I'm not sure
9 what kind of impact it would have on a parking space.

10 VICE CHAIR JOHN: Well, are you saying that that space
11 could only be used for parking?

12 MR. COCHRAN: No, I'm only explaining what I think the
13 impact is on what exists now. I mean, it's the same hypothetical,
14 as well, what would the impact be if the applicant put an addition
15 on? You know, we're not looking at that either. I'm sorry, not
16 the applicant, but the next-door neighbor putting an addition on.
17 That's also a hypothetical.

18 VICE CHAIR JOHN: I'll leave it there for now, Mr.
19 Cochran. Thank you.

20 COMMISSIONER SHAPIRO: You're on mute, Mr. Chair.

21 CHAIRPERSON HILL: Thank you. Does anybody have any
22 more questions for anybody? Okay. All right.

23 Ms. Rogers, I'm going to go ahead and -- do you have
24 anything you would like to add at the end?

25 MS. ROGERS: I would just like to make just a few quick

1 remarks if I could.

2 CHAIRPERSON HILL: Sure, go on.

3 MS. ROGERS: I just wanted to just kind of respond to
4 some of the discussion just to kind of remind the Board of some
5 of the points we discussed at our hearing last month in terms of
6 the impacts, just to make sure that it's clear for the record.

7 What exists today, as Mr. Cochran was mentioning, is a
8 covered rear deck, which we are seeking to retain the existing
9 footprint of. It's fallen into a complete state of disrepair.
10 It's being held up by wood structural supports. It's incredibly
11 unsafe and unsightly. And the applicant is seeking to kind of
12 reinvest in the property and replace that existing deck with an
13 addition. When we did the shadow studies and we did do -- submit
14 additional comparative shadow studies at Office of Planning's
15 request to make it really clear what the impact was, there will
16 be no change in impact on the ground plane over what exists today
17 by the existing covered deck. And also, there will be -- the
18 impacts in terms of light on the rear of her -- the adjacent
19 neighbor's façade are also no different than what they would be
20 if we did a by right ten-foot addition. So as compared to what
21 we could do by right and also what exists today, we are having
22 no impact on the light in her backyard that she experiences, as
23 Mr. Cochran mentioned, which is currently used for a parking
24 space. And so we feel for those reasons, and as Mr. Cochran
25 mentioned, you are looking at this on our application and our

1 impacts, not the other existing addition on her other side, that
2 this application has no effect on her light and air.

3 MR. COCHRAN: Mr. Chair, if I may, I don't think the
4 Office of Planning wants to say that there would be no impact.
5 We're looking at the criteria in 5201, and there would be no
6 substantially adverse impact on a neighboring property. There's
7 bound to be some impact from some construction there. Our
8 determination is that it would not be substantially adverse,
9 which meets the 5201 criteria.

10 CHAIRPERSON HILL: All right, Mr. Blake, you had a
11 question.

12 BOARD MEMBER BLAKE: Yeah, is the neighbor there still
13 the -- I was looking at the photographs in Exhibit 43A, and it
14 looks like it's almost like a multipurpose space. I was just
15 curious to know how she actually did use that space, if it was
16 just for parking, if she actually used it for multiple purposes.

17 CHAIRPERSON HILL: Okay, I'll bring her in one second.
18 I just want to make sure everybody's got all their questions here
19 answered. Okay.

20 MS. ROGERS: Mr. Chair.

21 CHAIRPERSON HILL: Yes.

22 MS. ROGERS: I just would also mention that the
23 applicant is on the line. I know he's not in the hearing room.
24 If there were any other questions about his outreach efforts to
25 the adjacent neighbor over the last six or so months, he's there

1 to answer those as well.

2 CHAIRPERSON HILL: Okay. Well, I guess I have one
3 question, Ms. Rogers. You know, this was a month ago when we
4 heard this, but if you were to redesign this again with ten feet
5 at the top and 18 feet at the bottom, how would it change your
6 program?

7 MS. ROGERS: It would substantially impact the program.
8 The second level will be a master bedroom, and once you account
9 for wall thicknesses, that ten-foot addition based on kind of -
10 - without having to redo the full interior of that upper level,
11 the ten foot addition would not be enough to accommodate a master
12 bedroom with a normal size bed and a closet space and all of that
13 that's customary for a master bedroom. It would not meet the
14 applicant's needs for that space without having them -- forcing
15 them to kind of completely redo the interior of that level.

16 CHAIRPERSON HILL: Okay. All right. Thank you.

17 Mr. Young, could you please bring Ms. Lewis back in?

18 MS. LEWIS: Hello?

19 CHAIRPERSON HILL: Hi, Ms. Lewis. Can you hear me?

20 MS. LEWIS: Yes.

21 CHAIRPERSON HILL: Mr. Blake had a question for you.
22 Mr. Blake, could you please ask your question again?

23 BOARD MEMBER BLAKE: Sure. Could you tell me -- I am
24 looking at the pictures you provided in Exhibit 43A, I believe?
25 Can you please tell us how you use that space in the back of your

1 house? Is it for just for parking?

2 MS. LEWIS: Patio area. Are you talking about my
3 parking space or the patio area?

4 BOARD MEMBER SMITH: The rear section of your house is
5 what I'm talking about.

6 MS. LEWIS: Okay, so --

7 BOARD MEMBER SMITH: That would be both areas.

8 MS. LEWIS: So my parking space I use for parking, but
9 if I'm entertaining, I use it for entertaining. The patio area,
10 I also use for entertaining.

11 CHAIRPERSON HILL: Okay. Ms. Lewis, just for my
12 clarity, when you're saying, "patio area," are you talking about
13 the area in front of those double windows?

14 MS. LEWIS: The double window. Yes.

15 CHAIRPERSON HILL: Okay. That's what you're calling
16 your patio area?

17 MS. LEWIS: Yes. And then you walk up a few steps and
18 that's my driveway, which I also use my driveway when I entertain.

19 CHAIRPERSON HILL: Okay. Okay. Mr. Blake does that -
20 - I'm sorry. Go ahead, Ms. Lewis.

21 MS. LEWIS: That's okay. As far as the light and air,
22 Thurston's deck, it's open, so I get that light and I get that
23 air. If the structure goes up and it's closed in, I won't get
24 that light and I won't get that air.

25 CHAIRPERSON HILL: Okay.

1 MS. LEWIS: That's what I'm talking about. That's my
2 only concern.

3 CHAIRPERSON HILL: Okay.

4 Mr. Blake (audio interference).

5 BOARD MEMBER BLAKE: Perfect. Thank you.

6 CHAIRPERSON HILL: Does anyone have any more questions
7 for the witness? All right. Okay.

8 Ms. Lewis, thank you so much. I'm going to excuse you
9 from the hearing.

10 MS. LEWIS: All right. Thank you.

11 CHAIRPERSON HILL: Mr. Young, is Ms. Lewis there?

12 Mr. Young, could you bring back Ms. Lewis unless she
13 hung up?

14 MR. YOUNG: Yeah, it looks like she disconnected.

15 CHAIRPERSON HILL: Okay. All right.

16 Ms. Rogers, can you tell me what happened at your ANC
17 meeting, because I don't -- I'm just looking for your ANC stuff.

18 MS. ROGERS: Yes, the ANC -- and they just released our
19 formal minutes a couple of days ago, which we could resubmit it
20 to the record, if that's helpful; they took a formal vote to take
21 no position on the application.

22 CHAIRPERSON HILL: Okay.

23 MS. ROGERS: And Ms. Lewis did participate in those
24 proceedings.

25 CHAIRPERSON HILL: Okay. So Ms. Lewis was there at

1 the ANC meeting? They took no position based on that testimony.

2 MS. ROGERS: Correct. Both the applicant and Ms. Lewis
3 were there, and they took no position.

4 CHAIRPERSON HILL: Okay, all right. All right. Does
5 anybody have any more questions for anybody? Okay. I'm going
6 to close the hearing in the record. I'm going to excuse everyone.

7 Commissioner Shapiro, what's your deadline again? When
8 do you have to go? You're on mute, Commissioner.

9 COMMISSIONER SHAPIRO: I wasn't until I hit the mute
10 button. I have a hard stop at about five of one.

11 CHAIRPERSON HILL: Okay, I think we'll be okay. All
12 right. Commissioner, I'm going to you to start, because I want
13 somebody else to start. I've been talking too much now already
14 today.

15 COMMISSIONER SHAPIRO: Yeah, I'm certainly sympathetic
16 to Ms. Lewis's concerns. When I look at the regs, and I
17 especially think of this in terms of what is being proposed versus
18 the impact of the by right development. If we're really talking
19 about that one section. Even if we just think of how she
20 currently uses it. I don't see how the relief that we would be
21 granting would unduly affect light and air of the neighboring
22 property. So while I'm sympathetic to her concerns about it,
23 practically speaking, I don't see a reason to oppose this, and
24 I'll be supporting it.

25 CHAIRPERSON HILL: Okay. Ms. John, do you have

1 thoughts?

2 VICE CHAIR JOHN: May I go at the end, Mr. Chairman?

3 CHAIRPERSON HILL: Sure. I can go next. I mean, I
4 can go next, and we'll see where this goes. But I mean, like,
5 I'm going to agree with Commissioner Shapiro in that, I mean, I'm
6 very sorry about -- well, not very sorry. I am disappointed that
7 Ms. Lewis is concerned about the shadowing and the light and air
8 to her property. I'm going to agree with the Office of Planning
9 in terms of -- the by right is the ten feet. It's an additional
10 eight feet, which by looking at the shadow studies, I don't think
11 is necessarily going to unduly affect the adjoining neighbor.

12 I see that from the ANC, the ANC decided not to take a
13 position, which means to me that they, just you know, they decided
14 that they were going to punt to us, right? And so, I mean, not
15 that this would matter, but again, then you are having -- now
16 that property could then now go ahead and build out their space
17 that eventually will give them added living area, but I agree
18 that's not necessarily what we're here, as well as that as the
19 Office of Planning likes to say, a hypothetical, if they actually
20 did build out that space.

21 But I'm going to be in support of the application. And
22 so we're going to see where Mr. Blake lands at this point. Unless
23 you want to hear from Ms. John, first, Mr. Blake, or we're going
24 to see where Mr. Smith is going to be (audio interference) again.

25 BOARD MEMBER BLAKE: No, I'm comfortable speaking now.

1 I obviously, prior to having this information from the neighbor,
2 I did very much feel comfortable that the evidence presented
3 suggested that there was actually no undue impact of light and
4 air or anything like that, and it didn't unduly compromise privacy
5 or enjoyment of the adjacent properties. And I thought the design
6 was actually very attractive relative to the neighborhood and the
7 character of the community and so forth.

8 When you look at the issue that was raised recently in
9 today's call, it does seem like a very uncomfortable situation
10 for the neighbor. However, though, the law is only, as I pointed
11 out, is a cumulative effect. But in fact, that's not what we're
12 looking at here right now. We're looking at the individual
13 building and how that impacts it. And I think when you look at
14 the pros and cons, even to go back to a by right situation would
15 not help the applicant to accomplish their goals. And it wouldn't
16 materially keep the next-door neighbor better off. It wouldn't
17 help the next neighbor necessarily to do the eight, ten foot,
18 eight foot second floor. So it's kind of a lose-lose situation
19 in that case to make that adjustment. So I have to -- I would
20 give substantial weight to the Office of Planning's analysis and
21 recommendation, and I honestly would still support the
22 applicant's request for relief.

23 CHAIRPERSON HILL: Okay. Ms. John.

24 VICE CHAIR JOHN: So this is where it helps to go last.
25 So I think I'm going to give great weight to OP's analysis because

1 OP did give consideration to the light and air and any loss --
2 any adverse impact on that on the adjacent neighbor. And while
3 I understand that there will be some impact, I have to agree with
4 my colleagues and OP that the impact is not adverse. So I will
5 go ahead and support the application.

6 CHAIRPERSON HILL: Okay. And I know that we've said
7 many times, but we are obviously sympathetic to the neighbor, but
8 thin that it is falling within the regulations for us to vote in
9 favor of this.

10 I'm going to make a motion to approve Application
11 Number 20414, as captioned and read by the secretary and ask for
12 a second, Ms. John.

13 VICE CHAIR JOHN: Second.

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

16 MR. MOY: Yes, thank you, Mr. Chairman. When I call
17 your name, if you would please respond with a yes, no, or abstain
18 to the motion made by Chairman Hill to approve the application
19 for the relief requested. The motion was seconded by Vice Chair
20 John. Zoning Commissioner Peter Shapiro.

21 COMMISSIONER SHAPIRO: I vote, yes.

22 MR. MOY: Mr. Blake.

23 BOARD MEMBER BLAKE: Yes.

24 MR. MOY: Vice Chair John.

25 VICE CHAIR JOHN: Yes.

1 MR. MOY: Chairman Hill.

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: The staff would record the vote as 4-0-1 and
4 this on the motion made by Chairman Hill to approve, seconded by
5 Vice Chair John. Also in support of the motion is Mr. Blake and
6 Zoning Commissioner Peter Shapiro. We have a Board member not
7 present, not voting. So the resulting vote is 4-0-1. Thank you.

8 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

9 Mr. Moy, if you can call our next when you get a chance.

10 MR. MOY: This would be Case Application Number 20426
11 of Lia Dean, captioned and advertised for a special exception
12 from the lot occupational requirement of Subtitle E, Section
13 404.1, rear addition requirements of Subtitle E, Section 205.4,
14 guard rail back requirements of Subtitle C, Section 1502.1 This
15 would construct a one-story rear screen porch addition with a
16 roof deck to an existing attached two-story principal dwelling
17 unit, RF-2 zone. The property is located at 1415 S Street,
18 Northwest, Square 0206, Record Lot 3, Text Lot 0801. You will
19 recall you last heard this on April 7th, and then scheduled a
20 continued hearing and a decision on May the 19th. Since April
21 7th, there have been no new filings in the record. And I can
22 say with clarity now that someone called in a moment ago, no one
23 had signed up to testify.

24 CHAIRPERSON HILL: Mr. Williams, are you there?

25 Mr. Williams, I think you're on mute. Hello, hello,

1 can you hear me?

2 MR. WILLIAMS: I can hear you.

3 CHAIRPERSON HILL: Okay. Mr. Williams, could you
4 please introduce yourself for the record?

5 MR. WILLIAMS: Yes, my name is Chris Williams. I'm the
6 project designer and I represent the applicant.

7 CHAIRPERSON HILL: Okay, Mr. Williams, are you choosing
8 not to use your camera, which is fine. I just want to know.

9 MR. WILLIAMS: I'm trying to use my phone.

10 CHAIRPERSON HILL: Okay, that's all right. We'll just
11 see what happens. All right.

12 Since the last time they were here, this was again, one
13 that we heard but were unable to deliberate on, move forward on
14 due to notice reasons. Does anybody have any questions for the
15 applicant? I do not. No one is raising their hand. All right.

16 Mr. Williams, we'll put you on mute for a second.

17 Ms. Brown-Brown-Roberts, are you there?

18 MS. BROWN-ROBERTS: Yes, Mr. Chair.

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

21 MS. BROWN-ROBERTS: Hello. I'm Maxine Brown-Brown-
22 Roberts from the Office of Planning on Case Number 20426.

23 CHAIRPERSON HILL: Okay, great. Thank you, Ms. Brown-
24 Brown-Roberts. Nice to see you.

25 MS. BROWN-ROBERTS: Yes, same here.

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

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

4 MR. YOUNG: We do not.

5 CHAIRPERSON HILL: Okay, Mr. Williams, is there
6 anything you'd like to add at the end? Mr. Williams, you still
7 might be on mute.

8 MR. WILLIAMS: No, not unless you have any questions.

9 CHAIRPERSON HILL: Okay. All right, I'm going to go
10 ahead and close the hearing and the record and excuse everyone
11 from the hearing room. Thank you.

12 Commissioner Shapiro, I'm just going to keep starting
13 with you. We're just going to keep going around the table, okay?

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

15 It is worth noting that since the last time that we
16 heard this, that the ANC has weighed in, ANC 2B, there's a letter
17 of support, no issues or concerns. I have no issues or concerns
18 and I'm ready to support the application.

19 CHAIRPERSON HILL: Okay. Ms. John.

20 VICE CHAIR JOHN: I'm in support of the application.
21 It's fairly straightforward, and I have no issues and concerns.

22 CHAIRPERSON HILL: Mr. Blake.

23 BOARD MEMBER BLAKE: Yes, I, too, can support the
24 application. I'm not totally convinced that the strict compliance
25 with the zoning regulations will render the deck unusable, which

1 was an argument made, but I do think that the railings make for
2 a better design, and it is less intrusive. And, as I said, I
3 would give substantial weight to the Office of Planning and
4 support this project.

5 CHAIRPERSON HILL: Okay, thank you. I would also agree
6 with the analysis that's provided by the Office of Planning as
7 well as that, as Commissioner Shapiro has noted, the support of
8 ANC 2B, DDOT had no objections. I'm going to go ahead and make
9 a motion to approve Application Number 20426, as captioned and
10 read by the secretary and ask for a second, Ms. John.

11 VICE CHAIR JOHN: Second.

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

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

18 Zonings Commissioner Peter Shapiro.

19 COMMISSERIONER SHAPIRO: Yes.

20 MR. MOY: Mr. Blake.

21 BOARD MEMBER BLAKE: Yes.

22 MR. MOY: Vice Chair John.

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Hill.

25 CHAIRPERSON HILL: Yes.

1 MR. MOY: The staff would record the vote as 4-0-1, and
2 this is on the motion made by Chairman Hill to approve and
3 seconded by Vice Chair John. Also in support of the motion is
4 Mr. Blake and Zoning Commissioner Peter Shapiro. We have a Board
5 member not present and not voting. The motion carries on a vote
6 of 4-0-1.

7 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

8 Mr. Moy, you can call our next one when you get a chance.

9 COMMISSIONER SHAPIRO: You're on mute, Mr. Moy.

10 MR. MOY: Thank you, sir. Boy, I had finished.

11 (Laughter.)

12 MR. MOY: Okay, okay, I get where you are, Mr. Chairman.
13 All right.

14 This is Case Application Number 20434 of John F.
15 Williams and Daniel S. Williams, captioned and advertised for a
16 special exception under the residential conversion requirement
17 of Subtitle U, Section 320.2. This would convert an existing two-
18 story detached principal dwelling unit to a three-unit apartment
19 house, RF-1 zone. The property is located at 929 M Street,
20 Northwest, Square 0368, Lot 0124. The Board last heard this case
21 on April the 7th, and then you scheduled a continued hearing and
22 decision on May 19th. Since April 7th, there are no additional
23 filings in the record. Finally, I think other than the applicant
24 in the waiting room, I believe no one else has signed up to
25 testify.

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

2 MR. SULLIVAN: Yes.

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

5 MR. SULLIVAN: Yes, Marty Sullivan with Sullivan and
6 Barros on behalf of the applicant.

7 CHAIRPERSON HILL: Mr. Sullivan, could you tell us
8 what's happened since the last time you were here? And also,
9 I'm a little confused by the ANC. If you could remind me if
10 there were conditions from the ANC.

11 MR. SULLIVAN: I am not aware of any conditions from
12 the ANC. There's no addition being done at all as part of this
13 application.

14 CHAIRPERSON HILL: All right. Can you tell us what
15 happened since the last time you were here? I know we asked you
16 for some more information.

17 COMMISSIONER SHAPIRO: Mr. Chair --

18 MR. SULLIVAN: I believe we were --

19 MR. MOY: Mr. Chairman, I think I may have skipped a
20 case.

21 COMMISSIONER SHAPIRO: Yeah, I think so.

22 MR. MOY: Should I strike everything I said and start
23 over?

24 CHAIRPERSON HILL: All right. Wait a minute. Now, I
25 am confused.

1 MR. MOY: Yeah. I called 20434 when I should have
2 called 20436.

3 COMMISSIONER SHAPIRO: Thank you.

4 CHAIRPERSON HILL: Okay. So then.

5 MR. SULLIVAN: That sounds really --

6 CHAIRPERSON HILL: Is Mr. Sullivan here for 20436?

7 MR. SULLIVAN: I am here for both of those, yes.

8 CHAIRPERSON HILL: Okay, so then.

9 COMMISSIONER SHAPIRO: Why don't we do 20434
10 (indiscernible).

11 CHAIRPERSON HILL: All right. That's fine. Give me a
12 second now, because I was looking at 20436.

13 All right. So, Mr. Moy, we're going to do 20434, and
14 so you don't have to re-read it, I mean, 20434.

15 MR. MOY: All right. Sorry about that, Mr. Chairman.

16 CHAIRPERSON HILL: That's all right. So, Mr. Sullivan,
17 can you please introduce yourself for the record? Just to clear,
18 you're here for Case 20434. So please introduce yourself.

19 MR. SULLIVAN: Thank you, Mr. Chair. Marty Sullivan
20 with Sullivan and Barros on behalf of the applicant.

21 CHAIRPERSON HILL: Okay. I need to look at my notes
22 again. Okay, right, so this is a different one. All right.

23 So I don't have any questions. So we did hear this
24 previously but were unable to act upon it because of the notice
25 requirements that we had on our side. I don't have any questions

1 for the applicant. Does the Board have any questions for the
2 applicant? And if so, please raise your hand. All right.

3 Ms. Myers, are you there?

4 MS. MYERS: Yes.

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

7 MS. MYERS: Crystal Myers with the Office of Planning.

8 CHAIRPERSON HILL: Does the Board have any questions
9 for the Office of Planning? I do not. So raise your hand. No
10 one is raising their hand.

11 Mr. Sullivan, do you have any questions for the Office
12 of Planning?

13 MR. SULLIVAN: (Negative head shake).

14 CHAIRPERSON HILL: You were shaking your head "no" for
15 the record.

16 Mr. Young, is there anyone here wishing to speak?

17 MR. YOUNG: We do not.

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

20 MR. SULLIVAN: No, thank you.

21 CHAIRPERSON HILL: All right. I'm going to close the
22 record and the hearing and excuse everyone from the hearing room.
23 And Commissioner Shapiro, since you're not with us all day, you
24 can just begin everyone.

25 COMMISSIONER SHAPIRO: It'll be quick. No issues or

1 concerns. Ready to vote in support.

2 CHAIRPERSON HILL: All right. Ms. John.

3 VICE CHAIR JOHN: I have no issues and concerns and I
4 am in support of the application. I give great weight to OP's
5 analysis and ANC 2F has no issues or concerns, DDOT has no
6 objections, so I'm in support.

7 CHAIRPERSON HILL: Thank you, Ms. John.

8 Mr. Blake.

9 BOARD MEMBER BLAKE: Yes, I, too, would be comfortable
10 supporting this. I believe that the addition of a single unit
11 with one or two residents will have no adverse impact on the
12 neighboring properties with regard to parking, operation, or
13 servicing access. So I feel very comfortable with supporting
14 this.

15 CHAIRPERSON HILL: Okay? I don't have anything
16 additional to add. I'm going to go ahead and make a motion to
17 approve Application Number 20434 as captioned and read by the
18 secretary and ask for a second. Ms. John.

19 VICE CHAIR JOHN: Second.

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

22 MR. MOY: Yes. When I call your name, if you would
23 please respond with a yes, no, or abstain to the motion made by
24 Chairman Hill to approve the application, which is 20434 as
25 captioned for approval, relief requested, seconded by Vice Chair

1 John. Zoning Commissioner Peter Shapiro.

2 COMMISSIONER SHAPIRO: Yes.

3 MR. MOY: Mr. Blake.

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Vice Chair John.

6 VICE CHAIR JOHN: Yes.

7 MR. MOY: Chairman Hill.

8 CHAIRPERSON HILL: Yes, to approve.

9 MR. MOY: Staff would record the vote as 4-0-1, and
10 this is on the motion made by Chairman Hill to approve the relief
11 requested to Application 20434. The motion was seconded by Vice
12 Chair John. Also in support of the motion is Zoning Commissioner
13 Peter Shapiro and Mr. Blake. We have a Board member not present,
14 not voting. The motion carries on a vote of 4-0-1.

15 CHAIRPERSON HILL: Thank you, Mr. Moy.

16 You can go ahead and call our next one, which I think
17 is 20436.

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: Okay.

20 MR. MOY: Application Number 20436 of Schmidt
21 Development, LLC, captioned and advertised for a residential
22 conversion requirements of Subtitle U, Section 301.2(b). The
23 rooftop and upper floor restrictions of Subtitle E, Section
24 206.1. This would construct a third story with rear and side
25 additions and to construct six residential units to an existing

1 two story detached building in the RF-1 zone. The property is
2 located at 1300 I Street, Northeast, Square 1026N, Lot 0802.
3 Again, this application was also last heard on April 7th. Then
4 the Board continued the hearing and decision to May 19th. The
5 Board requested supplemental information from the applicant and
6 allow responses from OP and ANC 6A, and I believe no one has
7 signed up to testify.

8 CHAIRPERSON HILL: All right, great.

9 Mr. Sullivan, could you introduce yourself for the
10 record, please?

11 MR. SULLIVAN: Yes. It's Marty Sullivan with Sullivan
12 and Barros on behalf of the applicant.

13 CHAIRPERSON HILL: Okay, so back to (audio
14 interference). I see a bike rack which you guys are providing
15 the bike rack. So that was the condition, correct?

16 MR. SULLIVAN: Yes, that's correct. And there was also
17 some question about whether or not we could provide it where we
18 were providing it, inside the fence line, in public space.

19 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, I guess if
20 you can just tell us what's happened since the last time you were
21 here. Mr. Sullivan, did you have to put the whole bike parking
22 guide in the record?

23 MR. SULLIVAN: So here were three things that the Board
24 asked for: Clarify or strengthen the bike rack proposal, because
25 we did agree with the ANC to provide bike racks, and so we did.

1 We provided two bicycle racks inside the fence line. They are
2 in public space because there's -- the building is on the property
3 line on the west side. So, and we confirmed then that does comply
4 with DDOT's guidance, that they would be permitted there.

5 Also, the Board asked -- so that takes -- question 1
6 and 2 from the Board's follow up memo.

7 The third item says follow up regarding DDOT's
8 position. And I believe what that was about was the curb cut.
9 And we are proposing a curb cut in a location that DDOT will
10 approve on 13th Street.

11 We continue to ask the Board, if the Board is willing
12 to do this, to provide flexibility for the possibility that DDOT,
13 after a hearing, would prefer Florida. So -- because -- the
14 applicant seems to think that when the full curb cut application
15 is submitted, that it's possible that, frankly, that DDOT would
16 change their mind or that a more formal review would -- might
17 prefer Florida. And so we want to leave that up to the option
18 of DDOT subject to our application for that curb cut, if that's
19 possible.

20 CHAIRPERSON HILL: Can you can you tell me again, Mr.
21 Sullivan, where is it that they're saying they want the curb cut?

22 MR. SULLIVAN: So right now -- we originally proposed
23 Florida Avenue on the north side where there's an existing curb
24 cut, and they would prefer to not have a curb cut on Florida --
25 and so on 13th. And so we have gotten to the point where -- and

1 we have an email that we submitted to staff at DDOT.

2 CHAIRPERSON HILL: That's fine, Mr. Sullivan. I just
3 wanted to make sure I understood it, because I'm looking at your
4 exhibit, or one of your exhibits. I can see the Florida; I can
5 see where 13th is. That's all I wanted to ask.

6 Okay, does the Board have any questions of the
7 applicant? Mr. Shapiro.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Yes, I
9 am wondering on how we provide you flexibility on where the curb
10 cut would go, but make sure that's contingent upon DDOT and not
11 you -- your applicant. Because I (indiscernible) provide you
12 with flexibility.

13 MR. SULLIVAN: So, you know, I guess -- I mean, the
14 flexibility. Well, one way to say it is we are required to
15 provide parking. So we are required to have a curb cut because
16 we have to get onto the property somehow and DDOT is required to
17 approve that curb cut. We can't use an existing curb cut when
18 we're changing the use. So one way to give flexibility would
19 just be to give the flexibility and say that BZA is approving a
20 curb cut in either location and we could say subject to DDOT's
21 approval, but it obviously is subject to DDOT'S approval,
22 regardless of whether you condition it so or not. But that's
23 what I would say.

24 COMMISSIONER SHAPIRO: Okay, so right. If we grant you
25 that, right. That's right. They're going to decide anyhow,

1 because you're not building in (audio interference).

2 CHAIRPERSON HILL: Mr. Sullivan, just to be clear, that
3 doesn't change the design of the building, nor does it change any
4 of the zoning relief, correct?

5 MR. SULLIVAN: Correct. It's -- we're still -- parking
6 will still be provided on site in the same way.

7 CHAIRPERSON HILL: Is parking still going to be in the
8 same -- I'm sorry to speak over you. The parking is still going
9 to be provided in the same place, it's just that the curb cut is
10 either going to be on Florida or on 13th.

11 MR. SULLIVAN: The same number of spaces, and the
12 building doesn't change as well.

13 CHAIRPERSON HILL: Okay. Does anybody have any other
14 questions for Mr. Sullivan? I don't have any problem with the
15 flexibility, but let's see if anybody else does so. Ms. John.

16 VICE CHAIR JOHN: So are we saying that we would vary
17 the location of the required parking based on where DDOT requires
18 the curb cut to be? Because it seems to me you would have to
19 reconfigure that parking. I think the condition could be stated
20 a bit more accurate.

21 CHAIRPERSON HILL: Mr. Sullivan, would you change the
22 location of the parking if it was either on Florida or on 13?

23 MR. SULLIVAN: I'm looking at the exhibit right now,
24 because I want to make sure that. Okay. So I see where the
25 parking location is on -- I'm looking at Exhibit 35C. And we

1 may have -- this plan may have both.

2 CHAIRPERSON HILL: I see where you're doing the curb
3 cut --

4 MR. SULLIVAN: I'm sorry. So it does -- the parking
5 spaces themselves are in a slightly different location, but we've
6 submitted both plans in 35C.

7 VICE CHAIR JOHN: What slide is that?

8 MR. SULLIVAN: I believe it's slide 2 and 3. And Ryan
9 Amons is with the property owner. Ryan, if you want to weigh in
10 on this as well, let me know.

11 CHAIRPERSON HILL: I think -- before we move on, Mr.
12 Sullivan, I'm going to ask Mr. Amons if we need a question. I
13 mean, I see on your slide 2, the curb cut on 13th and where the
14 parking is. Can you show me where in your exhibit you're saying
15 -- if the curb cut is on Florida where the parking is?

16 MR. SULLIVAN: It's on the next page, page 3, on the
17 left side of that.

18 CHAIRPERSON HILL: I see. So you are shifting the
19 parking slightly.

20 MR. SULLIVAN: The parking spaces shift, but the size
21 and the number remain the same.

22 CHAIRPERSON HILL: Okay, so if the Board were willing,
23 we could, as Ms. John suggests, specify a little bit more clearly
24 the flexibility to allow for the parking to be shifted dependent
25 upon the curb cut being approved either on 18th or Florida,

1 because the design is not changing in the building at all nor is
2 the zoning relief requested.

3 COMMISSIONER SHAPIRO: I think that makes more (audio
4 interference), Mr. Chair.

5 CHAIRPERSON HILL: Does the Board have any further
6 questions of the applicant? Okay, Ms. Vitale, are you there?

7 MS. VITALE: Good morning, Mr. Chair, and members of the
8 Board. Elise Vitale with the Office of Planning.

9 CHAIRPERSON HILL: Okay, Mr. Blake, you had a question.

10 BOARD MEMBER BLAKE: Yeah, I'm sorry. There was one
11 other area that Mr. Sullivan was to address on the design
12 characteristics for the community, I believe.

13 MR. SULLIVAN: Yes, that's true. The fourth item was
14 address how the proposed design is in compliance with character,
15 scale. I don't think it's character of the community. It's
16 character, scale, and pattern of houses in the community. It's
17 important that it applies to the buildings. And then we submitted
18 information on that and discussed in our cover letter that
19 compliance and submitted Exhibit 38C. This is -- first of all,
20 it's an end unit and it's a matter of right structure, of course.
21 If it was four units, it could be built in the same way. And
22 there are several other properties in this area. It's a mix of
23 heights and styles. So we believe that submission illustrates
24 how the proposal is in compliance with the character, scale, and
25 pattern.

1 CHAIRPERSON HILL: Okay. Does anybody have any
2 questions for the Office of Planning? And, if so, raise your
3 hand. Okay. Commissioner Shapiro.

4 COMMISSIONER SHAPIRO: Yeah, Mr. Chair. I'm satisfied
5 with this and I'm okay with granting the flexibility, and I with
6 Vice Chair John that if we were to grant the flexibility, that
7 we should be specific about what the two options are, that it's
8 two different versions of parking configuration. I'm satisfied
9 with that, that the applicant has addressed the questions that
10 we have. The first round there were issues around that, the bike
11 rack and the location. I do note that Capitol Hill Restoration
12 Society is in opposition, they are -- you know, noted. But I
13 don't have any concerns and I'm happy to support the application,
14 Mr. Chair. (Audio interference) the flexibility question.

15 CHAIRPERSON HILL: Okay. Does anybody have any further
16 questions of the applicant or the Office of Planning?

17 COMMISSIONER SHAPIRO: Oh, I'm sorry. I thought you had
18 (audio interference).

19 CHAIRPERSON HILL: That's all right, Mr. Shapiro. I
20 thought you had a question. I apologize. I thought you had your
21 hand up for a second.

22 Mr. Sullivan, the only thing I guess is that DDOT --
23 DDOT is the ones that want it -- DDOT wanted it moved to 13th
24 Street, as far as away from the intersection as Florida as
25 feasible, but you're just waiting to see what happens, right?

1 MR. SULLIVAN: Yes. I suspect that's where it will end
2 up, but they wanted to leave the possibility that that would
3 change.

4 CHAIRPERSON HILL: Okay, "they" your client. Okay.

5 MR. SULLIVAN: Correct.

6 CHAIRPERSON HILL: Okay. All right. Okay, I'm going
7 to -- Mr. Young, is there anyone here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay. I'm going to close the hearing
10 and the record and excuse everyone from the hearing room.

11 COMMISSIONER SHAPIRO: Mr. Chair, now that the hearing
12 is closed, I think I've changed my mind.

13 (Laughter.)

14 CHAIRPERSON HILL: All right, so let's see. Okay. So
15 we've heard from Commissioner Shapiro. I would agree with
16 Commissioner Shapiro in terms of the applicant's argument as to
17 how they're meeting the standard for us to grant the relief that's
18 being requested. I also would be fine with the flexibility. The
19 applicant seems to think that they'll still end up on 13th Street.
20 However, I'm comfortable with the language that Vice Chair John
21 has suggested concerning the specificity of where the parking
22 spots would be located. And also, I would agree with the ANC,
23 and that the ANC is getting their condition met, which is the
24 bike racks. And we've had, you know, now more information about
25 the bike racks to satisfy. I remember I had some questions about

1 it. So I'm also going to be voting in favor of the application
2 with the flexibility requested. And I would ask Ms. John, her
3 opinion, please.

4 VICE CHAIR JOHN: I'm in agreement with what's been
5 recommended so far. I support the application with the
6 clarification of the location of the parking based on DDOT's
7 approval of the curb cut.

8 CHAIRPERSON HILL: Mr. Blake.

9 BOARD MEMBER BLAKE: I just want to say, I remember the
10 Board Member Smith really did emphasize the importance of the
11 character of this as it related to everything else in the area.
12 And I wanted to just elaborate. I thought about that quite a
13 bit. And I would actually agree, it's a very unusual circumstance
14 with, you know, accommodation of MU and NC zones, R-2-A across
15 the street. That's a triangle. It's got all sorts of size,
16 small buildings -- none of which actually would fit the minimum
17 requirement for a lot today. This is the only building on the
18 entire square, which is a rectangle, that actually would fit
19 today's standards for development. And it would be very different
20 than the rest. But I have to say that the current situation is
21 an eyesore, and this is a great improvement over that. So I will
22 give substantial weight to the recommendation of the Office of
23 Planning, and I would be very supportive of this relief.

24 CHAIRPERSON HILL: Okay, thank you. I'm going to go
25 ahead and make a motion to approve Application Number 20436 as

1 captioned and read by the secretary, including flexibility of
2 where the curb cut is to be located based upon further discussion
3 with DDOT on either 13th Street or Florida and flexibility to
4 shift the parking according to the applicant's PowerPoint
5 presentation or architectural drawings in Exhibit 35C, for again,
6 either the 18th Street or Florida curb cut location and ask for
7 a second, Ms. John.

8 VICE CHAIR JOHN: Second.

9 CHAIRPERSON HILL: The motion has been made and
10 seconds. Mr. Moy, if you could take a roll call, please.

11 MR. MOY: Thank you, Mr. Chairman. When I call your
12 name, if you would please respond with a yes, no, or abstain to
13 the motion made by Chairman Hill to approve the application for
14 the relief requested. The motion was seconded by Vice Chair
15 John, and the motion included the conditions as cited by the
16 Chairman in his motion.

17 Zoning Commissioner Peter Shapiro.

18 COMMISSIONER SHAPIRO: Yes.

19 MR. MOY: Mr. Blake.

20 BOARD MEMBER BLAKE: Yes.

21 MR. MOY: Vice Chair John.

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Chairman Hill.

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: All right. Staff would record the vote as

1 4-0-1, and this is on the motion made by Chairman Hill to approve
2 along with the conditions as cited in his motion. The motion
3 was seconded by Vice Chair John. Also in support of the motion
4 is Zoning Commissioner Peter Shapiro and Mr. Blake. We have a
5 Board member not present and not voting. The motion carries on a
6 vote of 4-0-1.

7 CHAIRPERSON HILL: Thank you, Mr. Moy.

8 Commissioner Shapiro, you're here for one more with us,
9 correct?

10 COMMISSIONER SHAPIRO: No, that was it.

11 CHAIRPERSON HILL: Oh, that was it?

12 COMMISSIONER SHAPIRO: Yeah, that's it.

13 So, thank you all. Enjoy your day colleagues.

14 CHAIRPERSON HILL: Commissioner Shapiro.

15 COMMISSIONER SHAPIRO: Yes, sir.

16 CHAIRPERSON HILL: Of course, I heard that, Chairman
17 Hood -- and he's going to be on later -- he copied one of my
18 things. "Does anybody have any questions? Raise their hand.
19 And, if not, move on." Is that accurate? Has that been adopted
20 by the esteemed colleagues of the Zoning Commission?

21 COMMISSIONER SHAPIRO: I think we call it "The Hill
22 Rule." Yes.

23 CHAIRPERSON HILL: Oh. Ha! All right. Bye-bye.

24 COMMISSIONER SHAPIRO: With my hand raised.

25 CHAIRMAN HOOD: There you go.

1 Okay. Mr. Moy, I guess my question for my fellow Board
2 members is, there was one more -- there's a possibility that --
3 is our next case possibly going to be postponed or we don't know.

4 MR. MOY: If you're referencing 20333 of Matthew
5 Pickner, that's correct. There was a request to postpone in that
6 application.

7 CHAIRPERSON HILL: Okay, and then we have Chairman
8 Hood. I'm just trying to gauge lunch as to where we -- do we
9 want to go ahead and do the postponement and see whether we agree
10 to postpone or not, and then have lunch, or what do we want to
11 do? Just see what happens? Okay. All right.

12 Chairman Hood, welcome.

13 CHAIRMAN HOOD: Good afternoon, now, to everybody.

14 CHAIRPERSON HILL: You got to say good morning and good
15 afternoon. We're blessed today.

16 All right. Mr. Moy, if you could call our next case,
17 please.

18 MR. MOY: All right. So this would be Case Application
19 Number 20333 of Matthew Pickner, captioned and advertised for
20 special exceptions under Subtitle E, Section 5201 from the lot
21 occupancy requirements of Subtitle E, Section 304.1, from the
22 rear yard requirements of Subtitle E, Section 306.1, this would
23 construct -- sorry, that was my -- I had to plug in my charger.
24 Where was I? Oh, so this would -- this relief would allow for
25 construction of a three-story rear addition to an existing

1 attached dwelling unit in the RF-1 zone at premises 1165 3rd
2 Street, Northeast, Square 773, Lot 270. And the Board last heard
3 this application on February 10, 2021, where you addressed
4 preliminary matters. The merits were not heard. Other than
5 that, Mr. Chairman, there is a request for a postponement from
6 the applicant under Exhibit 75, or rather 74 that's dated May the
7 17th.

8 CHAIRPERSON HILL: All right, Mr. Pickner, can you hear
9 me?

10 MR. PICKNER: Yes.

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

13 MR. PICKNER: My name is Matthew Pickner. I'm the he
14 applicant.

15 CHAIRPERSON HILL: All right, Mr. Pickner. You are
16 requesting a postponement; is that correct?

17 MR. PICKNER: Yes.

18 CHAIRPERSON HILL: Why are you requesting a
19 postponement?

20 MR. PICKNER: We discovered some discrepancies in site
21 survey documentation, so we want to rectify that, so we have
22 accurate information.

23 CHAIRPERSON HILL: Okay. When are you trying to get
24 back before us?

25 MR. PICKNER: I think by the end of June, if you have

1 a date somewhere near the end of June.

2 CHAIRPERSON HILL: All right. I'll let Mr. Moy work
3 that out with you, if that's all right with you, Mr. Moy. Unless,
4 you know now, Mr. Moy, where you went to try to place this.

5 MR. MOY: I think it would be best if I get back in
6 touch with the applicant and then have a concurrence from you as
7 to where to reschedule this to because -- as you and the Board
8 are well aware, the agendas through July are (audio interference)
9 season, let's put it that way.

10 CHAIRPERSON HILL: Okay. All right, Mr. Moy.

11 Mr. Pickner, Mr. Moy is going to reach out to you,
12 okay?

13 MR. PICKNER: Very good. Thank you.

14 CHAIRPERSON HILL: Give me one. Don't leave me, Mr.
15 Pickner.

16 Mr. Young, is there anyone here wishing to speak?

17 MR. YOUNG: We do not.

18 CHAIRPERSON HILL: Does the Board have anything they'd
19 like to add or ask of anyone? If so, please raise your hand.
20 No? Okay.

21 Then I assume that the Board is going to be fine with
22 the postponement. I'm going to go ahead and agree to the
23 postponement. Mr. Rice, I don't have to take a vote for a
24 postponement, correct?

25 MR. RICE: No, sir.

1 CHAIRPERSON HILL: Okay. All right. So we'll go ahead
2 and postpone this. We haven't it heard yet, so I don't even
3 think Chairman Hood needs to be on it, if he doesn't want to.
4 And then we'll see you when we see you, Mr. Pickner. Thank you.

5 MR. PICKNER: All right. Thank you.

6 CHAIRPERSON HILL: And I'll take everyone out of here.
7 And we have 1, 2 -- we have 3 left. Are you all in -- and I'm
8 sorry, Chairman Hood that you're getting kind of bumped around a
9 little bit here today.

10 Do you all want to take lunch? Okay, I see a nod from
11 Ms. John. So that's all I need. I only need one. Okay. We're
12 going to go ahead and take lunch. It is 12:15. Do you think we
13 can do it in half an hour? Okay, let's come back at 12:45. Okay,
14 thank you.

15 (Whereupon, the matter recessed for lunch and
16 reconvened at 12:53 p.m.)

17 We're just going to move up one thing for everybody
18 who's listening. The last case we're going to do today is to
19 20347. r five seven. And I'm a little -- Mr. Blake is going to
20 be unable to join us for this one, so I'm going to go ahead and
21 just put it last so that he can leave for the day. If this was
22 -- was this an expedited review at some point, Mr. Moy, 20457?

23 MR. MOY: I do not believe so.

24 CHAIRPERSON HILL: Okay.

25 MR. MOY: I think the one you're referring to may have

1 been 20459.

2 CHAIRPERSON HILL: Well, that's not expedited either,
3 right?

4 MR. MOY: Not now, I don't believe. (Audio
5 interference) Ms. Cain.

6 CHAIRPERSON HILL: I might have done something. What's
7 the order now, Mr. Moy? I just confused my paperwork. What's
8 the next one? If we called 20457 last, what was the next one?

9 MR. MOY: So the next one would be 20339.

10 CHAIRPERSON HILL: Okay. Yeah, that's right. Okay.
11 You can call it when you like.

12 MR. MOY: All right. The Board is back in session.
13 The hearing is back in session and the time is at or about 12:53
14 p.m.

15 The next case application before the Board is
16 Application 20339 of Lee, L-E-E Street Development, LLC as
17 amended for special exception under the voluntary inclusionary
18 development requirements of Subtitle D, Section 5206.2 and for a
19 use variance from the use permissions of Subtitle U, Section
20 201.1(b). This would construct three two-unit flats in the R2
21 zone at premises 4404 Lee Street, Northeast, Square 5125, Lots
22 868 and 869.

23 The Board last heard this on March 3rd where the Board
24 granted the request for postponement. The merits were not heard.
25 In terms of preliminary matters, sir, there are a number of

1 filings in the record where the Board may need to address the
2 waiver of the 21-day rule. The documents include submission of
3 plans, self-certification, and burden of proof.

4 CHAIRPERSON HILL: Okay. Mr. Bello, are you there?

5 MR. BELLO: Good afternoon, Mr. Chair. Yes, I am.

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

8 MR. BELLO: Olutoye Bello, representing the applicant.

9 CHAIRPERSON HILL: Mr. Bello, so you have new plans;
10 is that correct?

11 MR. BELLO: Well, the plans are not new per se, but
12 the areas of relief has changed. The applicant has decided to
13 drop the use variance and, on the limits, the relief to the
14 special exception, to create three record lots. And we have
15 submitted Form 135 to that effect. But the envelope on the
16 location of the buildings remained the same on the lot. Nothing
17 changes there. The second unit at this point will be an accessory
18 unit. So, we have talked to the Office of Planning. There is
19 some cleaning up to do, so we understand that the case is not
20 likely to be heard today and will need to be continued.

21 CHAIRPERSON HILL: Okay. All right. Mr. Young, is
22 there anyone wishing to speak here today?

23 MR. YOUNG: We do not.

24 CHAIRPERSON HILL: Okay. Ms. Fothergill, are you
25 there?

1 MS. FOTHERGILL: I am. Good afternoon, Chairman Hood
2 (sic).

3 CHAIRPERSON HILL: Good afternoon. I'm Chairman Hill,
4 but thank you.

5 MS. FOTHERGILL: Well, good afternoon, Chairman Hood
6 too, and Chairman Hill.

7 CHAIRPERSON HILL: There you go.

8 MS. FOTHERGILL: All members of the Board.

9 CHAIRPERSON HILL: Ms. Fothergill, could you introduce
10 yourself for the record, please?

11 MS. FOTHERGILL: Yes, I am Anne Fothergill for the
12 Office of Planning for BZA Case 20339.

13 CHAIRPERSON HILL: Do you know what it is that this
14 applicant trying now start to do? Have you had a chance to look
15 at it or not yet?

16 MS. FOTHERGILL: So the applicant did recently file
17 something. We haven't had a chance to look at it in detail. We
18 are happy to do so and file a supplemental. At first glance, I
19 discussed with Mr. Bello a few things that -- some additional
20 relief that they may need to request, and so he is going to look
21 into that. And then once that is finalized, since it is self-
22 certified now, we can file a supplemental report and make a
23 recommendation.

24 CHAIRPERSON HILL: All right. Mr. Bello, are you going
25 to present to the ANC?

1 MR. BELLO: Well, I have provided notice to the ANC but
2 if the ANC wants us to re-present, we will be glad to do that,
3 but the relief sought here is a reduction, so there is no
4 substantive change from to what they have had.

5 CHAIRPERSON HILL: I don't see a report from the ANC,
6 that's why I'm asking. Oh, wait a minute. I do see one. Maybe
7 I was mistaken. Did they -- so they voted to approve, Mr. Bello?

8 MR. BELLO: That's correct. They voted to approve the
9 project in its previous form of application, including the use
10 variance, but the applicant is dropping the use variance at this
11 point and just limiting the application to a special exception.

12 CHAIRPERSON HILL: Okay.

13 MR. BELLO: No change from the envelope of the building
14 or the location.

15 CHAIRPERSON HILL: Okay, I guess, Mr. Bello, if you do
16 not present to the ANC, when you do come to present to us, if
17 you could show us the difference between what you presented to
18 the ANC and what you're presenting to us. Okay?

19 MR. BELLO: Will do.

20 CHAIRPERSON HILL: Mr. Moy, let me let you work with
21 Mr. Bello to figure out when we can get them back before us,
22 because I know that you know that our schedule is really jammed
23 up this summer. And so we'll just have to see what happens.

24 MR. MOY: Yes, I can do that. Thank you.

25 CHAIRPERSON HILL: Okay. All right, Mr. Bello, then

1 we'll go ahead and see what you and Mr. Moy can work out.

2 MR. BELLO: Thank you.

3 CHAIRPERSON HILL: Okay. So we're going to have to
4 postpone this. I'm going to close this portion of the hearing
5 and we'll see where we get in terms of when the postponement
6 takes place again. Thank you, Mr. Bello. Thank you, Ms.
7 Fothergill.

8 All right. Mr. Moy, you can call the next one, when
9 you get a chance.

10 (Pause.)

11 MR. MOY: Sorry, Mr. Chairman, I was shuffling my
12 paperwork.

13 I believe you said that you wanted to hear the last
14 case. The last case would be to 20457. So in that case, the
15 next application before you is Application No. 20459 of Nicholas
16 Davis. This is a special exception request from the minimum rear
17 yard requirements of Subtitle F, Section 305.1, which would
18 construct a rear second story deck to an existing semi-detached
19 two-story with first floor garage principal dwelling unit in the
20 RA-1 zone. This would construct -- well, yeah, that's what it
21 would construct -- this is a special exception from the minimum
22 rear yard requirements, Subtitle F, Section 305.1. Property is
23 located at 3249 Fort Lincoln Drive, N.E., Square 4325, Lot 1018.

24 CHAIRPERSON HILL: All right. Ms. Davis, are you there,
25 or is it Mr. Davis?

1 MR. DAVIS: Yes, I'm here.

2 CHAIRPERSON HILL: Mr. Davis, could you introduce
3 yourself for the record?

4 MR. DAVIS: Hi, my name is Nicholas Todd Davis. I'm
5 at 3249 Fort Lincoln Drive. I'm a resident (indiscernible.)

6 CHAIRPERSON HILL: All right. Mr. Davis, are you
7 choosing not to use your camera? That's fine. I just want to
8 know.

9 MR. DAVIS: Oh, I can turn it on if you want. Can you
10 guys see me?

11 CHAIRPERSON HILL: Thank you. Yes, thank you. Ms.
12 Cain, did you have something you wanted to add?

13 MS. CAIN: Just going to say this is on the agenda as
14 an expedited (indiscernible), which it does qualify for as an
15 application to (indiscernible) lot subdivision. Just wanted to
16 make the Board aware of that fact.

17 CHAIRPERSON HILL: So I'm confused. Is this on
18 expedited review?

19 MS. CAIN: I believe the last (indiscernible) that I
20 saw had an expedited review. I believe it is what it is
21 advertised as.

22 CHAIRPERSON HILL: Okay. So if it's expedited review,
23 we can't do it in the -- in the hearing session, right?
24 (Indiscernible) we do it in the meeting session. I mean, would
25 it (indiscernible) take any testimony.

1 MS. CAIN: That's correct.

2 CHAIRPERSON HILL: Okay. So, well, now I'm confused.
3 So but if we wanted to, we could have this in the hearing session.
4 And now Mr. Davis is here. Is that also correct?

5 MS. CAIN: So Mr. Davis wishes to provide testimony and
6 proceed with it based as a hearing, he may do so, but he would
7 need to basically give his consent to do that.

8 CHAIRPERSON HILL: Okay. Hold on a second.

9 MS. CAIN: Board can also, on its own motion, remove
10 it from the expedited hearing docket and just say that's
11 currently, I believe, what it has been advertised as and what has
12 proceeded (indiscernible) to this point.

13 CHAIRPERSON HILL: That's fine. The reason why I'm
14 going to ask the Board if we, well, for a couple reasons I'm
15 going to ask the Board if it's okay if we pull this off an
16 expedited review and put it in as a hearing, in which case we'll
17 go ahead and hear that hearing now. The reason why is there was
18 something that was put into the record about, I guess, a neighbor
19 that had some concerns. And I just wanted to be able to hear
20 from the Applicant some of the comments that were in Exhibit 53
21 about the proposed relief.

22 So, Ms. Cain, you can tell me if this is, if I'm doing
23 this the right way. I mean, does the Board mind if we pull this
24 off expedited review and have a hearing? And if so, please raise
25 your hand.

1 Okay. So Ms. Cain, can can I just ask you that? Can
2 we just do that?

3 MS. CAIN: Yes. Yes.

4 CHAIRPERSON HILL: Okay. All right. Mr. Davis, well,
5 welcome, you're in a hearing now. So let's see. So Mr. Davis,
6 you want to go ahead and tell us about your project and why you
7 think that you're meeting the criteria for us to grant the relief
8 requested? There was, I guess, a filing from a neighbor.

9 MR. DAVIS: Yes, Mr. (indiscernible).

10 CHAIRPERSON HILL: Yes. And I don't know if you want
11 to speak to that. Why don't you first speak to your project and
12 the criteria and then we'll kind of work through this hearing.
13 Okay?

14 MR. DAVIS: Sure thing. Good afternoon, Board. Thank
15 you for allowing me to brief in regards to my zoning variance
16 request, simply requesting a separate back variance to allow me
17 to construct the 18 by 10 deck as specified in the drawings that
18 have been submitted.

19 As stated in my burden of proof, no air or privacy will
20 be intruded upon by any of my neighbors. The deck is an open
21 air (indiscernible) typical of all decks in Tera (phonetic) home
22 communities. Four of my neighbors have already built decks with
23 the same design to include Case No. 20225, which the Zoning Board
24 approved last year. Her name was Ms. Melkite. She lives
25 approximately ten houses down from me.

1 In regards to Ms. Nathalie's issues, the community, as
2 in the (indiscernible) community, voted to allow decks to be
3 built on the rear of the homes. Ms. Ford also personally voted
4 to allow to have decks added to the community. Ms. Ford also
5 told me that she was interested in having a deck built on her
6 home. So I really don't understand why she -- you know, I want
7 you to address these concerns.

8 But either way, the deck will not be attached to her
9 property, only to my property as depicted in the drawings. The
10 cars in the carports, the deck will be constructed on my property
11 and all materials will be on my property. The builder that I
12 had is licensed and insured in DC, so any accident would happen,
13 we would take care of that.

14 I'd also like to say that traditionally when people
15 have construction on their homes, whether it's doing a roof, or
16 solar panels, or decks, typically the neighbors will move their
17 cars out of courtesy. We have two-car garages, so we have the
18 option to park your cars in the garage. We have off-street
19 parking, and we have ample public parking, if she really felt the
20 need to move her vehicle.

21 Construction date and times have not been set yet
22 because we have to go through this zoning process as well as an
23 additional permit process. And my builder said that the deck
24 will probably take maybe two weeks to build, depending on how the
25 permit process works.

1 The materials used will be made out of Trex composite
2 and pressure treated wood, so they will be resistant to termites.
3 And I think that was it in regards to all of her issues that she
4 laid out in the letter.

5 CHAIRPERSON HILL: Okay. How did your ANC go -- how
6 did your ANC meeting go, Mr. Davis?

7 MR. DAVIS: The ANC wrote a letter of support, which
8 is attached in the case.

9 CHAIRPERSON HILL: Okay. Let's see. Does the Board
10 have any questions for the Applicant?

11 CHAIRMAN HOOD: Mr. Chairman, I will say that this is
12 exactly, I don't think I've mentioned this before, especially in
13 the COVID process, and we decided this on the Board some years
14 back. The question was, as Mr. Baker's already mentioned,
15 (indiscernible) or decks (indiscernible). Vice Chair Miller of
16 the Zoning Commission would appreciate this. I think at some
17 point, and I'm sure (indiscernible) because at some point, we
18 (indiscernible) swap.

19 So people will have to continue to do what Mr. Davis
20 is doing. I'm not sure exactly why some years ago, we didn't
21 make that a part of drawing's. I'm not -- I could speculate on
22 that.

23 I think this case met the expedited review, but I
24 know the Board chose to take it off. I understand this force
25 concerns. But as Mr. Davis has already explained the point, I

1 think that there will be no impacts, especially with the type of
2 treatment and (indiscernible) that he's using. And I'm sure
3 others will come forward as well to do decks in this area. So
4 those are my comments. Thank you, Mr. Chairman.

5 CHAIRPERSON HILL: Thank you, Chairman Hood. Does
6 anybody have any questions or comments before I move on to the
7 Office of Planning?

8 All right. I'll hear from the Office of Planning,
9 please.

10 MS. ROBERTS: Good afternoon, Mr. Chairman. And
11 members of the BCA, Maxine Brown-Brown-Roberts, from the Office
12 of Planning BZ 20459. The proposal is for the addition of a rear
13 deck, which does not meet the rear yard requirement. And so it
14 is being reviewed under Section 52.

15 One of the relief that is permitted under
16 (indiscernible) for yards and in this case, in particular for the
17 rear yard. It's an open deck. And so the proposal will not
18 substantially affect the light and air to the neighborhood
19 properties. Again, it's over a driveway. And so it's not --
20 again, it's open, so should not impact the airflow.

21 Regarding the privacy of use use, the use of the of the
22 deck will be seen from the from the adjacent properties as a real
23 house community. This is something that is just as prevalent in
24 areas like this. And so but it shouldn't affect the use of the
25 adjacent properties.

1 Again, a structure would be visible from from the alley
2 or Robert Crane (indiscernible) weight of the rear of the house.
3 But should be visible from Fort Lincoln Drive, which is the main
4 -- the main driveway.

5 Then the the the proposal would meet a requirement.
6 The Office of Planning is not recommending any special treatment
7 and the house would continue to be used as a single-family
8 residence.

9 Regarding the special exception, the general special
10 exception requirements, the proposal is in harmony with the with
11 the zoning regulations (indiscernible). The properties are 1A
12 (phonetic that accommodates road dwellings. And so -- and the
13 addition with the rear deck is allowed under Section
14 (indiscernible)and, therefore, it meets the general purpose and
15 intent of the zoning regulation.

16 Again, it would not be inconsistent with the size of
17 the decks in the neighborhood and does not appear to adversely
18 affect the light and air. And, therefore, the Office of Planning
19 continues to recommend approval of the proposal.

20 Thank you, Mr. Chairman. And I'm available for
21 questions.

22 CHAIRPERSON HILL: Thank you Ms. Brown-Brown-Roberts.

23 Does the board have any questions for the Office of
24 Planning? No?

25 Mr. Davis, you have any questions for the Office of

1 Planning?

2 MR. DAVIS: No, sir, I don't.

3 CHAIRPERSON HILL: Is there anyone here wish to speak,
4 Mr. Young?

5 MR. YOUNG: Yes, we do. We have one person.

6 CHAIRPERSON HILL: Okay. Could you please allow that
7 person into the room?

8 Ms. Ford, can you hear me?

9 MS. FORD: Yes, I can. Thank you, Mr. Ford.

10 CHAIRPERSON HILL: Ms. Ford --

11 MS. FORD: If you --

12 CHAIRPERSON HILL: -- Ms. Ford? Ms. Ford?

13 MS. FORD: Yes.

14 CHAIRPERSON HILL: I'm sorry. Just a couple. If you
15 could first introduce yourself for the record. And then second,
16 you'll have three minutes to give your testimony and you can
17 begin after you introduce yourself, please.

18 MS. FORD: Okay. My name is Natalie Ford. I currently
19 reside at 3251 Fort Lincoln Drive, Northeast Dakota Crossing.
20 Good afternoon, Mr. Chairman and Board.

21 My current concerns as a homeowner/neighbor
22 representing my own rights and interests within a homeowners'
23 association, I recently found out the potential deck construction
24 by walking around the perimeter of my neighbor's home just
25 recently, a week before I went on vacation. Unfortunately, I

1 received nothing in the mail with regard to the design projections
2 timeline of the project.

3 My three-level town home is attached directly next to
4 the Applicant's end unit townhome. I have a neighboring townhouse
5 also on my right. I bought my home pre-construction, as I said,
6 and I specifically chose maximum sunlight, best exposure, quiet
7 location for my home. And the rear configuration of my home has
8 the living room/master bedroom facing the rear of the home.

9 I understand the objective of the Zoning Commission is
10 to decide whether zoning relief exception are allowed the
11 regulations not allowed as a matter of right. In this case,
12 equally apply to a homeowner within a home association community
13 bound by certain regulations with strict patterns of scale,
14 distinct predesigned homes, unlike a freestanding home.

15 I have substantial worries about the future value of
16 my home comprised by right to (indiscernible) property,
17 diminished privacy due to market value in comparison to a home
18 that does a visual variation in scale and pattern against the
19 background of surrounding townhomes, a sheltered and obstructed
20 view with diminished, dried sunlight, shadows cast, limited
21 breeze and air flow circulation, potential noise concerns and the
22 future use of my small carport driveway, which is my only sense
23 of backyard, and outside entertainment, given the design of my
24 home and are very limited with shared 3-foot grass access for
25 planting shrubs and flowers.

1 As I said, there are few people -- I think Nick agreed,
2 there are just -- I've only noticed two people that have the deck
3 and are our top tier of our townhome. I am attached to both
4 Nick's side of the house in addition to my neighbors. We have a
5 vinyl siding on the back, concerns about the fracturing of my my
6 existing structure or any other concerns which are beyond, you
7 know, normal settling issues.

8 When we bought our own, we were told that the
9 construction layout would not support a deck and the homes were
10 not initially constructed to support such a configuration since
11 we're only just a few feet from one another and there's no direct
12 access from the current rear structure of the home.

13 I have concerns about the reduced sunlight, the
14 circulation, the structural integrity of my home. And as I said,
15 the facade is covered with vinyl siding. I'm concerned about the
16 uniform scale design and pattern along the rear alleyway. We
17 both face an alley between the two surrounding homes. You know,
18 I wasn't surprised, unfortunately, of this project in any way in
19 terms of scope, timing, and while I support every homeowner's
20 desire to make existing upgrades to their home, I also feel, as
21 someone who has entered the community, has lived there for 12
22 years, I did change my mind about having a deck, and it's within
23 my right to do so.

24 I've been working from home for the past four years and
25 it's a pleasure to be able to open my windows. It's very loud,

1 unfortunately, with an amplified alleyway. And I, I mean, what
2 is to prevent another deck being built on the other side of me
3 where I have no airflow, no sunlight? I mean, I will be severely
4 impacted. And to say that I'm not when someone does not live in
5 my home currently is is a misstatement.

6 And I hope that I have the Board's consideration, given
7 this very short timeline that I had to address this issue. I
8 consider myself a kind and communitive neighbor, but I wasn't
9 given any opportunity to address my concerns and I hope that I'm
10 allowed to do so. Thank you.

11 CHAIRPERSON HILL: Thank you, Ms. Ford. Were you not
12 -- did you not go to your ANC meeting?

13 MS. FORD: No, I recently, I was on disability. I had
14 a injury to my left wrist. And with COVID, I just recently got
15 my vaccine. I've been homebound. I have asthma.

16 CHAIRPERSON HILL: I'm sorry.

17 MS. FORD: I've not been out of my home with the
18 exception of going to the doctor.

19 CHAIRPERSON HILL: I mean, first of all, I'm sorry to
20 hear about that, but the ANC meetings are now all virtual. So
21 they're all like you're all all virtual, but just just a bunch.

22 Does the Board have any questions for the witness?

23 Chairman Hood?

24 CHAIRMAN HOOD: I'm supposed to raise my hand.

25 CHAIRPERSON HILL: You can raise your hand

1 (indiscernible.)

2 CHAIRPERSON HILL: I have (indiscernible.)

3 Ms. Ford, I hear your concerns and let me just say that
4 I actually voted on this case some years back. We call this the
5 famous Wedding Cake, because of the way it (indiscernible).

6 Anyway, I will tell you that one of the things that I
7 want to make sure you understood my comments earlier, one of the
8 things that we looked at when we first looked at this was whether
9 or not decks should be already there and we wouldn't do --
10 residents would not be coming, do what they do in front of the
11 Board.

12 But to your point, it sounds to me like, and help me,
13 let's walk through this, and I understand your concerns. First,
14 let me say this, though. The Supreme Court has said that we do
15 not buy a view. So we got this debate out the way, so --

16 MS. FORD: Sorry I couldn't hear you.

17 CHAIRMAN HOOD: The Supreme Court has said we do not
18 get a view. We don't buy a view. So I just wanted to make sure
19 that's off the table. So I do hear your concerns, which I take
20 to heart. Let me ask, have you been have you spoke with Mr.
21 Davis? Have you all had a conversation -- seems like you haven't
22 had a conversation.

23 MS. FORD: We didn't. And I was surprised because I
24 thought we were very close. No.

25 CHAIRMAN HOOD: Okay. So it sounds like some of this

1 possibly, Ms. Ford, could be worked out to where it could be a
2 win/win for both of you all. That's what it sounds like. I'm
3 just putting that out there because I'm not sure that the Board
4 is going to (indiscernible). That's where I am kind of going,
5 because I believe neighbors -- I always call it the good neighbor
6 policy. (Indiscernible.)

7 MS. FORD: Yes, and I pride myself on being a good
8 neighbor. I found out about this project initially -- I mean,
9 we had all talked about potential decks in the past that was --
10 you know, I bought my home 12, 15 years ago. I don't know the
11 exact date. And, obviously, I'm older and my needs have changed.
12 As I said, I work from home. I helped -- and doing home-based
13 work for the past 14 months.

14 Prior to that, I was home for two years. I understand
15 the sanctity of our home and I disagree with you in the sense
16 when I bought my home, I bought it pre-construction. I went --
17 I looked at the ground, I looked at the stakes, I knew exactly
18 where my house was in terms of where it be located. I looked at
19 the future maps of what potential vendors, construction, Cosco.
20 I was active on the board. They were many of us that had concerns
21 about traffic, about Costco coming, a gas station being in our
22 neighborhood.

23 I pride myself on being a good neighbor and looking out
24 for the benefit of my community. So, yes, I was very deliberate.
25 And where I bought my home, I was very deliberate in terms of

1 what I could afford. I was a very deliberate in terms of my
2 view, my, my, my privacy, all of that. And I'm not saying that
3 Nick is not a great person and not a great neighbor, but once
4 you start having deviations from initial -- initial design
5 project, I mean, it compromises the integrity and the value of
6 everyone else's home.

7 I would love to be able to add additional things to my
8 home at some point. Unfortunately, not everybody has those
9 resources. And given COVID, most people have been living strictly
10 in their homes, working diligently. And I would have liked to
11 have some time to talk and understand what the scope of the
12 project was. I'd like to know what the ramifications are for
13 construction within a block -- a few -- like two, if I could show
14 you. This is my --

15 CHAIRPERSON HILL: Ms. Ford, --

16 MS. FORD: -- part of my (indiscernible) --

17 CHAIRPERSON HILL: -- Ms. Ford. Ms. Ford, you can't
18 do that. You can't do that.

19 MS. FORD: Oh, I'm sorry. I'm sorry.

20 CHAIRPERSON HILL: (Indiscernible.)

21 MS. FORD: I'm so sorry.

22 CHAIRPERSON HILL: I'm sorry --

23 CHAIRMAN HOOD: Ms. Ford, let me just stop you there.
24 I appreciate it. I don't think we had (indiscernible) mode. I
25 think because you're the one that live there; I don't. But I

1 will tell you, I know about that area, Costco and all that. I
2 know about the people who didn't want the Costco who now in the
3 Costco when I go over there. So I know all about that. But I
4 will say this. I think when I'm, out of all of this, I think
5 the discussion should be between you and Mr. Davis. That's what
6 I (indiscernible).

7 Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: You're welcome, Mr. Hood.

9 Does anyone else have any questions for the witness?

10 Ms. John.

11 VICE CHAIR JOHN: Just a quick question. So were you
12 able to look at the plans in the record at Exhibit, I believe
13 it's Exhibit 4?

14 MS. FORD: No, none of those were shared with me.

15 VICE CHAIR JOHN: All right. Because the deck is set
16 off from your property --

17 MS. FORD: I understand what the deck will look like.
18 But as I said, it's within 2 feet of my home. We share, we all
19 have car parks. We're literally like 3, like, 3 feet from each
20 other with a stretch of grass on each side. The beams will be
21 going into our shared grass space on the right side. And you
22 know that the the shadow of the deck is directly going to be on
23 my carport. If I open my windows, basically, we can look into
24 each other's faces. Well, I just wanted to show you the exhibit
25 because I'm looking at the exhibit now. So if you haven't had a

1 chance to look at it, you should look at it.

2 MS. FORD: Is it possible I could be given some time
3 to look at the scope. I haven't had any, any, any idea of --

4 VICE CHAIR JOHN: Yes --

5 MS. FORD: -- of the scope --

6 VICE CHAIR JOHN: -- if you can (indiscernible) --

7 MS. FORD: -- of the project --

8 VICE CHAIR JOHN: -- you -- you should --

9 MS. FORD: -- that's -- it's impact -- sorry.

10 VICE CHAIR JOHN: -- you should have --

11 CHAIRPERSON HILL: That's okay. You should have gotten
12 notice. I mean, I know that all the mailings go out to the 200-
13 footers. And there should have been a placard that showed that
14 this was happening, meaning you had notice. And the ANC also
15 had their meeting. So they also had -- you had an ANC meeting.
16 I'm just saying that what we're supposed to do, per the law and
17 the regulation, you did receive the mail.

18 VICE CHAIR JOHN: Right.

19 MS. FORD: I did not receive the mail, sir. I'm sorry.
20 I did not. We've had problems with our mail. Our mail is at
21 the end of the --

22 CHAIRPERSON HILL: Okay. So it --

23 MS. FORD: -- cul-de-sac.

24 CHAIRPERSON HILL: I understand.

25 MS. FORD: I -- I -- I have no reason to lie, but I

1 didn't receive it.

2 CHAIRPERSON HILL: I'm not saying --

3 MS. FORD: I have no reason.

4 CHAIRPERSON HILL: Okay. All right. So -- all right.

5 Does anybody have any questions of the witness?

6 UNIDENTIFIED MALE SPEAKER: (Indiscernible), I'd just
7 like to --

8 CHAIRPERSON HILL: Okay.

9 MR. DAVIS: That was me, but if you're not addressing
10 me, that's fine.

11 CHAIRPERSON HILL: Okay. Well, I mean, all I was going
12 to address you, Mr. Davis, in the (indiscernible) here, if this
13 is to move forward, if this does move forward today, which it
14 may, you know, please go ahead and reach out to your neighbor
15 and let her know about the construction plans and things that are
16 going on.

17 That's what Chairman Hood was talking about, like just
18 letting people know, you know, and if it didn't happen before
19 now, at least you can let the person know when construction is
20 going to happen and all of those things just, again, to be a good
21 neighbor. And you don't know when it's going to happen because,
22 as you said, you haven't gotten this approved yet, so you don't
23 know, right. So the only comment is that, you know, try to keep
24 communications up. All right?

25 MR. DAVIS: Yeah, I --

1 MS. FORD: I'd like to say (indiscernible) --

2 CHAIRPERSON HILL: Ms. Ford, you -- now, Ms. Ford, you
3 had your time to testify.

4 MS. FORD: Oh, I'm so sorry.

5 CHAIRPERSON HILL: That's okay. What is it that you
6 want to say, Ms. Ford?

7 MS. FORD: I was just saying that -- that, you know,
8 there's no ill intent on my behalf to bring this up. This is
9 only as a homeowner within association, or I feel I have a right
10 to address these --

11 CHAIRPERSON HILL: Okay. No, you do. You do and this
12 is --

13 MS. FORD: Okay.

14 CHAIRPERSON HILL: -- this is the forum, as well as the
15 forum of the ANC. If I --

16 MS. FORD: And I have no mal intent on doing so.

17 CHAIRPERSON HILL: Okay.

18 MS. FORD: I just want to make sure my interests as a
19 homeowner are recognized and are not impacted adversely.

20 CHAIRPERSON HILL: I understand. Okay. All right.
21 Unless anyone has any more questions of the witness, I'm going
22 to excuse the witness.

23 All right. Ms. Ford, you have a good day.

24 All right. Let's see, Office of Planning. Okay. Does
25 the Board have any further questions of the witness -- I mean,

1 I'm sorry, of the Applicant or the Office of Planning?

2 I mean, I'll just address you real quick, Ms. Maxine
3 Brown-Roberts. I mean, again, it seems like a normal deck that,
4 in fact, Chairman Hood is speaking, and they they are confused
5 as to why they didn't even allow these in this development to
6 begin with, right.

7 So the Office of Planning does not have concerns about
8 light and air concerning this deck, correct?

9 MS. ROBERTS: That's correct, Mr. Chairman. And we
10 have (indiscernible). I mean, it's a open deck. You know, it's
11 about 6 -- I don't think, I mean, you know, 4 or 5, 6 feet off,
12 you know, the gradings (phonetic). So I don't think that that
13 will cast shadows or will it cause any -- any effect on her light
14 and air. Yes, if people are in the deck, as she said, that, you
15 know, if you've (indiscernible) up, they be able to look up at
16 her windows.

17 Again, you know, that's normal city living. And so we
18 don't think that's going to, you know, really adversely affect
19 her privacy.

20 CHAIRPERSON HILL: Okay. All right. Thank you, Ms.
21 Brown-Roberts.

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

24 MR. DAVIS: No. I pretty much said everything. The
25 mailings went out. I filled out the 200-yard radius map. I

1 received at least three mailings of that, and I pay my post for
2 more than a month. So I wanted to make sure everyone had ample
3 opportunity to supply feedback. And I didn't get this letter
4 'til, what, 9:29 yesterday, so --

5 CHAIRPERSON HILL: Okay.

6 MR. DAVIS: -- I don't have a lot else to say.

7 CHAIRPERSON HILL: Okay. All right.

8 Anybody else for the Board? Okay.

9 All right. I'm going to go ahead and close the
10 hearing and the record. Davis, thank you. Have a good day.

11 Okay. I can begin the deliberations, I mean, I thought
12 this -- I guess what is interesting is that, (indiscernible), is
13 would it be or could have been an expedited review case. There
14 was someone who had issues with (indiscernible) and someone who
15 has issues that's right next door. So then we would have probably
16 pulled it off of the expedited review at that point, just so we
17 can hear from the people that live next door.

18 To me, and I actually know where this neighborhood is
19 as well, and, like, all of those townhouses, to me, look like
20 they should have decks. I mean, they're like -- it's a normal
21 back of a townhouse thing that has decks.

22 So but I agree with the Office of Planning and
23 they're light and air issues. I do understand Ms. Ford, you
24 know, is concerned about the deck, but I don't think that -- I
25 think that the Applicant is meeting the regulations for us to

1 approve the relief that's being requested. So that's where I am.

2 Chairman Hood.

3 CHAIRMAN HOOD: I would agree, Mr. Chairman. The only
4 thing the only difference that I would say that I didn't think
5 that the letter from Ms. Ford warranted to come off anything
6 special. But I think any time that happens, you have to take it
7 off away. But I think that the, for the 15201 as well as
8 (indiscernible) 1.2, the General Special Exception Standards, I
9 think this application meets all that.

10 My only hesitation, and it depends on the Board, I
11 don't have a problem moving forward, is I always like to move
12 forward knowing that Ms. Ford and Mr. Davis have had a
13 conversation and it gives me a better comfort level that her
14 issues have been resolved.

15 So that's kind of where I am. I don't think a week
16 hurts. I don't think two weeks hurts. But I know Mr. Davis
17 wants to move forward to get approval here, but I think it's
18 better, always say it's better to be good neighbors, because Mr.
19 Davis and Ms. Ford are going to be living there and we'll be just
20 coming over there and choosing going to Costco.

21 So it will be good if they can have a conversation and
22 try to help Mr. Davis come closer. Not that they're going to
23 agree 100 percent, but at least come closer together so they can
24 (indiscernible) in their neighborhood. Thank you, Mr. Chairman.

25 CHAIRPERSON HILL: Okay. And Chairman Hood, I'm going

1 to I guess rebut that for a second real quick and then we can go
2 ahead and see what others say.

3 Mr. Davis, he put up his placard over a month ago.
4 He's gone to the ANC. He, and I'm not trying to, I mean, I'm
5 encouraging them to speak, but I don't want -- I don't want -- I
6 don't want Ms. Ford to put your -- to use your thing on Promised
7 Land, but her on Promise Land, right. Like this deck is something
8 that I think should be, like I don't think that (indiscernible),
9 oh, gosh, the Applicant, right, should change his deck, or make
10 it smaller, or do anything different other than coordinate with
11 Ms. Ford so she knows when the time of things starts.

12 So, I mean, I mean, I appreciate and understand. I'm
13 just slightly pushing back with you. You know, I respect you
14 very much in that I don't think it's fair to Mr. -- the Applicant
15 -- I'm blanking on his name -- Mr. Davis, that, you know, he has
16 done everything he's supposed to do. And he definitely needs to
17 continue to work with Ms. Ford, which I'm sure he will. But so
18 I'm not in favor of pushing it off. But but you are or would be
19 interested in it. So I understand that. I can ask the other
20 Board members what they think. But I do appreciate what you're
21 saying.

22 CHAIRMAN HOOD: Mr. Chairman, I would take a point of
23 personal privilege of responding to what you said. I'm not asking
24 that -- I'm not asking Mr. Burns to change anything. It just
25 seems to me that there was not a conversation had. And I would

1 agree the placard was there, but sometime we don't look at
2 placards. Sometime I noticed that even my mail, I live in the
3 area too. Even my mail comes two days after a meeting.

4 So, you know, I know we're having a problem over here
5 on this side of NE about mail. I think that's going over
6 nationwide. I just wanted to make sure that we show some respect
7 to both, who are going to be neighbors living next to each other
8 long after this Board has moved on to other cases, and give them
9 a week to hash it out because they may come back and they're
10 holding hands. I'm not asking Mr. Davis to change anything. But
11 let's hear from other Board members. I can go either way as
12 well. Thank you, Mr. Chairman, for that debate.

13 CHAIRPERSON HILL: Thank you.

14 Ms. John, do you have an opinion on everything?

15 VICE CHAIR JOHN: So Mr. Chairman, I'm terrified to go
16 against the Chairman of the Commission, but, Mr. Chairman, I kind
17 of agree with my other chairman, Chairman of the BZA, because
18 basically this is a simple deck and the homeowners association
19 has already said that they approve having decks in the community.

20 So we had a case where we hadn't even gotten that far
21 and we had to go through the whole issue of whether or not the
22 homeowners' association would allow decks. Now, we have upfront
23 a statement from the Association saying that decks are permitted.

24 I understand, you know, that Ms. Ford did not receive
25 the notice and it's possible she didn't. But the big red notice

1 should have been there for a month. And I agree also with you,
2 Chairman Hood, that the neighbors need to have a conversation to
3 explain for Mr. -- I forget his name too -- for the Applicant,

4 CHAIRMAN HILL: Davis.

5 VICE CHAIR JOHN: Mr. Davis, to explain the process and
6 why he doesn't think that there should be any structural damage
7 to the neighbor's house. Because looking as I look at the
8 diagram, the deck is set off from both neighbors. It's not even
9 close to both neighbors, looking at Exhibit 4. So that would
10 concern me if this was a situation where the deck was going to
11 be attached to the adjacent, you know, wall. So I think that
12 takes care of some of the neighbor's concerns.

13 And other than that, I agree with the Office of
14 Planning, and I'm mindful that this is a single homeowner who is
15 just trying to build a deck to get some fresh air. And so I'm
16 not really, you know, sympathetic to postponing the case for a
17 week because the design shouldn't change. And basically, there
18 just needs to be an explanation of the design and to, you know,
19 discuss how the construction would take place, maybe a meeting
20 with the contractor and, you know, provisions for the notice to
21 the neighbor.

22 So that's how I would like to proceed, Chairman Hood,
23 if that works for you.

24 CHAIRMAN HOOD: (Indiscernible), I kind of figured you
25 would go with Chairman Hill, even though you're my good friend,

1 but I think -- I think, though, either way, though, either way,
2 what we have, and I think we'll work out either way, I appreciate
3 you and the piece about them working together, because I think
4 that, to me, was key. And I wanted to show some some setback, I
5 mean, some pull back a little bit from Ms. Ford.

6 But I true -- if you watch me, I've also said that
7 whole area should have been able to put decks when it was built.
8 So I believe that I stand by that. But I want to make sure that
9 we respect the rights of Mr. Ford, as she mentioned. So that's
10 kind of where I am. But I'll follow the Board's lead.

11 CHAIRPERSON HILL: Okay. And I did get some
12 confirmation here in the record here that Ms. Ford was listed on
13 the 200-footers and we didn't get the return, any return. I
14 mean, she might have missed it, certainly, but we did everything
15 we were supposed to do.

16 Okay. So unless Mr. Blake -- do you have anything
17 you'd like to add?

18 MR. BLAKE: I don't want to add anything to this
19 conversation. I think that it's been -- everything's been covered
20 thoroughly. Thank you.

21 CHAIRPERSON HILL: Okay.

22 MR. BLAKE: (Indiscernible) support.

23 CHAIRPERSON HILL: Okay. All right. Okay. In terms
24 of deliberation, so it looks like we are going to vote now. So
25 in terms of deliberation, again, I would agree with the analysis

1 the Office of Planning has provided concerning the regulations.
2 I would also agree with the support that the ANC has given, and
3 also the argument that the Applicant has given, and would further
4 encourage, as I'm sure we are going to do as we go round table,
5 further encourage Mr. Davis to continue conversations with both
6 of his neighbors, all of his neighbors, to let them know when
7 things are going to be going on. But I'm going to be voting in
8 support.

9 Chairman Hood.

10 CHAIRMAN HOOD: Thank you, Mr. Chairman. I'm certainly
11 not going to vote against this as we're moving forward. I would
12 -- I think it meets the merits and meets the requests, I think
13 that's of the HOA and of law regulation 5201 and 901, the General
14 Special Exception. It meets that. So I don't see -- I don't
15 have any legal reason to vote against this.

16 Again, though, the good neighbor policy, I would ask
17 Mr. Davis to reach out to Ms. Ford and at least have a
18 conversation and consider some issues. I'm not saying change the
19 design, but I'm just saying let's continue to be good neighbors
20 because we all have to live around together. Thank you. That's
21 all I have, Mr. Chairman.

22 CHAIRPERSON HILL: Thank you, Chairman Hood.

23 Ms. John.

24 VICE CHAIR JOHN: I'm fine with supporting the
25 application.

1 CHAIRPERSON HILL: Mr. Blake.

2 MR. BLAKE: Yes, I (indiscernible) support the
3 application as well,

4 CHAIRPERSON HILL: All right. I'm going to make a
5 motion to approve Application No. 20459 as captioned and read by
6 the secretary and ask for a second, Ms. John.

7 VICE CHAIR JOHN: Second.

8 CHAIRPERSON HOOD: The motion made and second. Mr.
9 Moy, could you take a roll call vote.

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

14 Zoning Commission Chair Anthony Hood.

15 CHAIRMAN HOOD: Yes.

16 MR. MOY: Mr. Blake.

17 MR. BLAKE: Yes.

18 MR. MOY: Vice Chair John.

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Mr. Hill.

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Staff will record the vote as 4-0-1 and this
23 is on the motion made by Chairman Hill to approve, seconded by
24 Vice Chair John. Also in support of the motion to approve is
25 Mr. Blake and Zoning Commission Chair Anthony Hood. We have a

1 Board member not present, not voting. The motion carries on a
2 vote of 4-0-1.

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

4 All right. Mr. Blake, we're excusing you for the day;
5 is that correct? All right.

6 MR. BLAKE: Yes, sir.

7 CHAIRPERSON HILL: You have a good rest of your day.

8 MR. BLAKE: Thank you.

9 CHAIRPERSON HILL: And this has not been a fun day. I
10 don't know what, today is just not been, you know.

11 Mr. Hood, you missed out on a long day already.

12 CHAIRMAN HOOD: Believe me, I don't usually miss out
13 on anything. If I don't get it today, I'm going to get it another
14 day.

15 CHAIRPERSON HILL: This is true.

16 All right. Mr. Moy, you can call our last when you get
17 a chance.

18 CHAIRMAN HOOD: Yes, sir. This would be Case
19 Application No. 20457 of S5 District, LLC, captioned and
20 advertised for a special exception from the new rear additional
21 requirements of Subtitle E, Section 205.4. This would construct
22 a three-story semi-detached two flat residential building in the
23 RF-1 zone. The property is located at 2718 4th Street, NE. Square
24 3515, Lot 26.

25 CHAIRPERSON HILL: All right. Great. Thank you, Mr.

1 Moy.

2 Mr. Sullivan, are you there? Could you introduce
3 yourself for the record?

4 MR. SULLIVAN: Yes. Thank you, Mr. Chair, members of
5 the Board. Marty Sullivan with Sullivan & Barros on behalf of
6 the Applicant.

7 CHAIRPERSON HILL: Okay. Who's here with you today,
8 Mr. Sullivan?

9 MR. SULLIVAN: We have two representatives from the
10 owner of the property and the architect.

11 CHAIRPERSON HILL: Okay. All right. Mr. Sullivan, I'm
12 going to go ahead and let you walk us through your presentation
13 and how you believe you're meeting the standard for us to grant
14 the relief requested. I guess if you could speak to how you --
15 how your hearing was at the ANC and then, also, if you've had an
16 opportunity, there was a letter in opposition and I can't tell
17 just yet if it's the adjoining -- I mean, the immediate next door
18 neighbor or not. So you could possibly speak to some of that
19 and you can begin whatever you like.

20 MR. SULLIVAN: Thank you. Mr. Young, if you could load
21 the PowerPoint presentation, please. This is a request for relief
22 from the 10-foot rule. It's not a conversion. It's just a two-
23 unit flat. New construction at 2718 4th Street, NE.

24 You go to the next slide, please.

25 In the RF-1 zone, it's a vacant lot. You can see the

1 property there in the photo. There's a large four-story apartment
2 building on the right and a four-unit building on the left --
3 four or five-unit, and there's five meters there. But there's
4 a, see about four units to the building on the left.

5 So proposing to construct a building which will go 22.3
6 feet past the building to the south. It won't be past the
7 building to the right, the apartment building, because that goes
8 almost to the back of that property line.

9 To the ANC, we've been to several meetings. We've been
10 two full ANC meetings, as this Agency requires two meetings for
11 most applications. Been to the Edgewood Civic Association. And
12 we've had a zoning committee meeting with the ANC as well with
13 their ANC zoning committee. So we've been to four community
14 meetings.

15 The ANC is in support and the 10-foot rule is the only
16 relief. Otherwise, it complies with all the development
17 standards. Next slide, please.

18 We include this area to give you some context of the
19 area. You see the subject property of 2718 4th Street, a four-
20 story large building to the right. And there are several other
21 large apartment buildings in this area and including the building
22 to the left. Now, before I turn it over to the architect to just
23 briefly go through the the plan, the immediate owner to the left
24 is the person that submitted the letter. I don't know if they're
25 here today or not, but I have representatives from the owner here

1 and they can talk about their efforts of outreach.

2 It's they don't live in the place because it's an
3 apartment building. They're just the landlord, but they have
4 tried to reach out. And I believe they have spoken to this person
5 a while back, but then haven't had much response from them since
6 then. So I'll turn it over them to talk about that after the
7 architect talks about the plans.

8 So if we could go to the next slide, please, or two
9 slides, and I'll turn it over to Mr. Toha to talk about the plans.

10 Jose.

11 MR. TOHA: Hi. This is --

12 MR. SULLIVAN: He'll describe that.

13 MR. TOHA: -- this is Jose Toha, principle at Google
14 Seminar Architectural Interiors (phonetic). This what you
15 looking at here is the front of the property (indiscernible) 4th
16 Street on the left side, the east elevation. And then the north
17 elevation facing the taller building immediately to the north.

18 The property, the new building will encompass two
19 units, one in the front of the property and one in the rear. The
20 property in the rear would be the one that that would be
21 encroaching into the 10-foot rule.

22 If you go to the next slide, I think you can see the
23 profile of the building -- and it's not in there. Currently,
24 there is a shadow study that has been submitted to also show the
25 impact that it would have to the property to the south. I don't

1 think that that -- that they should --

2 MR. SULLIVAN: (Indiscernible.)

3 MR. TORA: Sorry?

4 MR. SULLIVAN: Sorry, Jose.

5 MR. TORA: Yeah.

6 MR. SULLIVAN: Paul, can you go -- yeah, there we go.
7 Okay.

8 MR. TORA: As you can see here, the shadow study depicts
9 the differences between if we were going to not encroach into the
10 rear yard (indiscernible), or whether we went according to the
11 plan. And there's no impact to the property to the south, which
12 is the one that fired the letter. So at this point, I don't
13 think that we are impacting at all the neighbor to the south.

14 And and we don't see a reason why this wouldn't be
15 allowed. We're within the setback. This is a 10-foot rule and
16 we are asking exception also. We hope that this --

17 MR. SULLIVAN: (Indiscernible.)

18 MR. TOHA: -- is going to be considered, so --

19 MR. SULLIVAN: Thanks, Jose. I will --

20 MR. TOHA: Sure.

21 MR. SULLIVAN: I will -- can you go back two slides,
22 Paul? And we'll go through the general special exception criteria
23 for the 10-foot rule. Granting relief will be in harmony with
24 the purpose of the RF-1 zone. Proposed use is in accordance with
25 our RF-1 regulations as a flat, and all other aspects of the

1 building are permitted as a matter of right, and granting relief
2 will not tend to affect adversely the use of neighboring property.

3 The use is, of course, the use is permitted as a matter
4 of right. The -- because the building to the south that will
5 have the addition or the new construction extending more than 10
6 feet past is to the south, there's no impact on the sunlight from
7 that as shown in the shadow study. And as to shadow to the north
8 and to the west, it's the alley and a four-story building that's
9 on the other side of that. So there's no impact on them as well.

10 Next slide, please.

11 The specific criteria is light and air, and privacy.
12 There's no windows on the addition facing the south and the
13 building to the north runs (indiscernible) is much larger both
14 in footprint and in height. Privacy is not impacted as there's
15 no windows facing south. And as stated on the and are shown,
16 illustrated on the aerial photo, the proposed edition. And this
17 is new construction, new principal building as viewed from the
18 street and alley, and other public way does not substantially
19 visually intrude upon the character, scale, and pattern of houses
20 along the street or alley frontage.

21 And that's all we have. I'd like to ask the owners, I
22 don't know, Amir or Mark, if you want to talk briefly about your
23 interactions with the immediate neighbor to the left, please.

24 CHAIRPERSON HILL: And whoever speaks, if you could
25 introduce yourself for the record.

1 MR. SALIM: Oh, yes, I am Amir Salim (phonetic). Thank
2 you for having me here, Mr. Chairman.

3 So I'm the owner of S5 District, and we had purchased
4 this property in 2019. So as we were conducting some of the
5 studies with Group of Seven (phonetic), we noticed that there was
6 a Pepco meter that was actually on the buildings. We were trying
7 to a hold of the building owner at 20717 for about eight months.
8 It was hard for me to find the information. I looked up D.C.
9 property tax, found the information for the person, looked at the
10 white pages, got some numbers, tried calling. Couldn't get a
11 hold of any of those numbers and found out that he had, through
12 Google, that construction company, found a different number. I
13 started calling in the month of December 2020. I called probably
14 weekly, left one voicemail, one detailed voicemail, and sent an
15 email as well to to the construction company.

16 Received a call on January 14, which was about a month
17 later, and spoke with the individual who owned the property. Let
18 them know what we were trying to do and gave him the number of
19 my architect who would talk to him further about what was going
20 on and what was being detailed, and did not hear anything further
21 from him since that time, which would be up 'til now, which is
22 until May.

23 And when we received the letter last week, my current
24 construction manager was also on the call, has been trying to
25 reach him for the last week and (indiscernible) all of them.

1 UNIDENTIFIED MALE SPEAKER: Yeah, my name is Mark, I'll
2 jump in and and second that. I've been trying to reach him as
3 well, even as recently as the (indiscernible).

4 CHAIRPERSON HILL: Hold on a second. Okay. Can you
5 introduce yourself for the record, please.

6 MR. MOGENSEN: I'm sorry. This is Mark Mogensen. I
7 am the project manager for the owner.

8 CHAIRPERSON HILL: Okay. Go ahead, please.

9 MR. MOGENSEN: I just echo what Amir said. I've been
10 trying to reach the owner as well. And even as recently as
11 yesterday, I left him a voicemail, left him my coordinates, just
12 just radio silence. Hadn't heard anything.

13 CHAIRPERSON HILL: Okay. Mr. Sullivan, I got a couple
14 of questions for you and then we can go around to the other Board
15 members as well. And you might want to pull up, Mr. Young, the
16 the slide deck again.

17 So the thing that I'm curious, Mr. Sullivan, I'm
18 looking at, at least what I got here on Google Earth, like, is
19 the large apartment building that's to the north and then there's
20 the 2716 to the south. And I don't know which slide that you
21 want to bring up. I mean, you guys are saying that there's no
22 impact. But I guess what you're saying is that due to that large
23 apartment building to the north, there isn't any shadowing that's
24 already happening.

25 So the impact that's going to happen, and this where

1 I'm just clarifying, there is impact. You're going back 12 feet,
2 12.3 inches, is that right, passed what you're supposed to be
3 able to do. So therefore, the impact is just that there's going
4 to be a bigger wall there is what you're saying. There's not
5 shadowing, correct?

6 MR. SULLIVAN: That's correct. And the the shadowing
7 is -- remember the lack of shadow going to the south is because
8 of the relative location of the sun south of that point. So it's
9 actually regardless of the building to the north, it's not that
10 there's already shadow coming south, it's that the sun is already
11 south of that location. So even if -- even if there wasn't a
12 four-story building to the north of us, there wouldn't be any
13 shadow impact.

14 CHAIRPERSON HILL: Okay. So we're just talking about
15 the 12 feet past the 10 feet, right?

16 MR. SULLIVAN: Correct.

17 CHAIRPERSON HILL: And so you're saying there's no
18 windows on that side so, therefore, the privacy won't be affected,
19 correct?

20 MR. SULLIVAN: That's correct.

21 CHAIRPERSON HILL: And what's to the -- and that
22 apartment building to the north, what have they said about your
23 project?

24 MR. SULLIVAN: We haven't had, I don't believe we've
25 had any feedback from them throughout our community meetings.

1 And we're not going to be blocking any windows there. It's going
2 to be set off of their property line.

3 CHAIRPERSON HILL: Right. I mean, you're not going to
4 be blocking the windows, but now how much distance is there,
5 again, between your building and their building?

6 MR. SULLIVAN: Jose, if you know that offhand, if you
7 could --

8 CHAIRPERSON HILL: (Indiscernible.) Then you can --
9 I'll let my fellow Board members ask other questions while -- Mr.
10 Sullivan, (indiscernible), if you could use somebody's last name.
11 I don't want to call the person by their first name. Who's Jose?
12 Oh, Mr. Toha. Okay. Great.

13 So Mr. Toha, why you look at that, does my fellow Board
14 members have any questions of the Applicant with the slide deck
15 up.

16 And now, actually, Mr. Young, if you can drop the slide
17 deck a second. Okay.

18 Now, I can see my fellow Board members. All right.
19 Chairman Hood, Ms. John, do you have any -- I know my brain is
20 completely off now. Okay. So who has a question? If so, raise
21 your hands.

22 CHAIRMAN HOOD: I'll let the Vice Chair. I'll yield
23 to the Vice Chair.

24 CHAIRPERSON HILL: Okay. Go ahead, Ms. John.

25 VICE CHAIR JOHN: Thank you. I was going to yield to

1 the Commissioner.

2 So Mr. Sullivan or Mr. Toha, what is the distance
3 between the property to the south and the project? Is it -- are
4 you all building lot line to lot line?.

5 MR. SULLIVAN: So, yeah, And I just realized that.
6 Well, it is lot line to lot to line. The opening is on the other
7 side. The apartment building itself to the north is set back
8 from their property line at this sense of I think something like
9 5 to 8 feet.

10 VICE CHAIR JOHN: Okay. So the lot --

11 MR. SULLIVAN: But from the south, it's we're on the
12 property line, yeah.

13 VICE CHAIR JOHN: (Indiscernible) --

14 MR. TOHA: If I could jump in. Sorry. I just scaled
15 it from drawings. It's 11 feet from the property line. The
16 neighbor to the north. There's 11-foot setback from our property
17 line.

18 CHAIRPERSON HILL: Okay.

19 VICE CHAIR JOHN: Okay. But to the south, you're on
20 the property line?

21 MR. SULLIVAN: Yes.

22 VICE CHAIR JOHN: Okay. Thank you.

23 CHAIRPERSON HILL: Chairman Hood.

24 CHAIRMAN HOOD: And excuse me. (Indiscernible) the
25 same lines as the Chair, I think was going, adverse impacts.

1 Mr. Sullivan, you had mentioned previously about the
2 shadow study as a matter of right. Is it fair assessment what
3 you're asking for any more of a shadow set -- more of shadowing
4 on what's being proposed as opposed to matter of right? Is that
5 a fair assessment?

6 MR. SULLIVAN: No, I think, I believe it's -- well,
7 where we're showing the red line showing the difference, it's the
8 difference between the 10 feet and the 23 feet.

9 CHAIRMAN HOOD: So what you propose has more of a
10 shadow?

11 MR. SULLIVAN: Sure, it would to the north, yeah,
12 because there's no building there at all now.

13 CHAIRMAN HOOD: So given the general provisions, we're
14 looking at adverse impacts. Not saying you started off, but just
15 all I'm saying they are going to be some adverse impacts to what
16 you're proposing.

17 MR. SULLIVAN: (Indiscernible) Yes, objectively, I
18 don't know, I mean, it's a -- it's a -- it's a vacant lot that's
19 entitled to have a building built on it and so --

20 CHAIRMAN HOOD: Okay.

21 MR. SULLIVAN: I mean, I don't know if the neighboring
22 building would see a new building there as opposed to the vacant
23 lot being adverse or not. They might -- they might want a
24 building there as opposed to a vacant lot as well. So I think
25 it's a subjective question.

1 CHAIRMAN HOOD: Okay. All right. I saw, and I don't
2 want to open up too many (indiscernible) crash. But let me ask,
3 I thought the building to the south would have windows?

4 MR. SULLIVAN: (Indiscernible) to the south has
5 windows, yes.

6 CHAIRPERSON HOOD: Okay.

7 MR. SULLIVAN: There's an (indiscernible) windows and
8 meters that need to be --

9 CHAIRMAN HOOD: Okay. Okay. I thought I heard somebody
10 say the building to the south didn't have windows. Okay.
11 (Indiscernible) I get that wrong.

12 All right. That's all the questions right now, Mr.
13 Chairman.

14 VICE CHAIR JOHN: Mr. Sullivan, can you follow up on
15 that thought which you started to express about the meters and
16 the windows and the impact of the construction on them?

17 MR. SULLIVAN: Well, the windows to the south are
18 windows that are at risk windows, and the meters are actually
19 encroaching onto the subject property.

20 VICE CHAIR JOHN: I see. And -- here I go again. How
21 would that be removed if you're not able to speak with the owner?

22 MR. SULLIVAN: I don't actually know how DCR handles
23 that. I know as it is an encroachment, I imagine, that would
24 involve Pepco and DCRA, and there are another -- DCRA has its
25 methods for resolving situations like that and events and other

1 such things are encroaching on a property. And then typically
2 the property owner who is doing the encroaching is responsible
3 for resolving that issue.

4 But you're right, it certainly is imperative that the
5 Applicant and that owner be in communication. That will certainly
6 make that easier to resolve. I don't know exactly what Pepco
7 does in this situation.

8 VICE CHAIR JOHN: Okay. Thank you.

9 CHAIRPERSON HILL: Mr. Sullivan, I'm just -- could you
10 point me where in the record are the shadow studies about the
11 project?

12 MR. SULLIVAN: Well, there in the PowerPoint, so if you
13 want to see that.

14 CHAIRPERSON HILL: Yeah, we don't have the --

15 MR. SULLIVAN: That's where they are.

16 CHAIRPERSON HILL: I mean, normally we have the
17 PowerPoint, but we don't have PowerPoint.

18 MR. SULLIVAN: We just had the PowerPoint up.

19 CHAIRPERSON HILL: No, no, no, I know, but I mean, I
20 don't have it in the record.

21 MR. SULLIVAN: This would be Exhibit 32, I think.

22 UNIDENTIFIED FEMALE SPEAKER: Exhibit 9, Shadow study.

23 CHAIRPERSON HILL: Okay. Seems --

24 MR. SULLIVAN: (Indiscernible)--

25 CHAIRPERSON HILL: -- (indiscernible) and then, and I

1 see -- so 32 has some shadow studies. I'm going to go back to 9
2 again. I'm on the, like, A-904. I got you. So the red line
3 you're pointing out is to the property to the north --I'm sorry,
4 to the west?

5 MR. SULLIVAN: Bending a little bit to the west across
6 the alley to -- there's another apartment building across the
7 alley.

8 CHAIRPERSON HILL: Got it. So you're saying the
9 addition, a 12-foot addition, that red line is the 10-foot
10 addition, correct?

11 MR. SULLIVAN: Correct.

12 MR. TOHA: That's correct.

13 CHAIRPERSON HILL: Got you.

14 MR. TOHA: (Indiscernible.)

15 CHAIRPERSON HILL: Okay. I got it. Right. And so
16 the additional shadowing is on the properties to the west and the
17 north, correct?

18 MR. TOHA: Correct. Simply the alley and the property
19 to the north that sits 10 feet north of the property line or
20 below on the (indiscernible).

21 CHAIRPERSON HILL: So this is where I'm a little
22 confused, Mr. Sullivan. I want to make sure I understand. You're
23 saying that even the 10 doesn't have any additional shadowing to
24 the property to the south?

25 MR. SULLIVAN: Well, it couldn't possibly because the

1 sun's on this side of that (indiscernible) building.

2 CHAIRPERSON HILL: I just want to make sure I
3 understand. All right. And you're saying that the property to
4 the south, whether it's 10 feet or 22 feet, there's no shadowing
5 to the property to the south, correct?

6 MR. SULLIVAN: (No audible response.)

7 CHAIRPERSON HILL: Okay. Then the only thing we're
8 going to end up talking about is just the addition of 12 feet of
9 wall to the property itself, if, in fact, we end up talking about
10 the property to the south. And as far as the at-risk windows,
11 and I'm just being (indiscernible), you're just going to wall up
12 -- the adverse windows just means they go away. They're going
13 to get walled up, correct?

14 MR. SULLIVAN: That's correct. The --

15 CHAIRPERSON HILL: Okay.

16 MR. SULLIVAN: -- the property owner's responsible for
17 that -- the property -- the owner with at-risk windows is
18 responsible for fire code closing those windows.

19 CHAIRPERSON HILL: Got it.

20 MR. SULLIVAN: And DC -- DCRA would get involved with
21 that.

22 CHAIRPERSON HILL: Got it. All right. I have your
23 PowerPoint now up in front of me, so I can see the shadows sites.

24 Does anybody have any more questions of the Applicant
25 before we turn to the Office of Planning?

1 Chairman Hood.

2 CHAIRMAN HOOD: I just have a comment to Mr. Sullivan.

3 Mr. Sullivan, when I was 24, I probably could see that
4 red line. But not that I'm a little older, I'm over 50, so that
5 will be helpful to us. Now, I missed that red line. If you
6 didn't say anything about it, I didn't get up close on it, I
7 would have never seen it. So for future reference, we are, well,
8 not everybody, but I am over 50, so if you could help me out.
9 Thank you.

10 MR. SULLIVAN: I need to work on that because sometimes
11 it shows up differently in the PowerPoint, too, than when we look
12 at it as well. So I noted and I definitely need to -- that can
13 be improved.

14 CHAIRPERSON HILL: If over 50 is the cutoff that I
15 think there's a lot of people on this call that, you know, might
16 qualify. Let them know.

17 Okay. All right. Let's see anybody else?

18 All right. Continue, Office of Planning.

19 S2: I

20 MS. ELLIOTT: Hello. Good afternoon, Mr. Chairman,
21 members of the Board. I'm Brenda Elliott. Representing the
22 Office of Planning for (indiscernible). (Indiscernible) 20457.

23 The Office of Planning --

24 CHAIRPERSON HILL: Ms. Elliott --

25 MS. ELLIOTT: -- is recommending --

1 CHAIRPERSON HILL: -- Ms. Elliott, you all got to give
2 me two seconds. I apologize. Somebody's at my door.

3 MS. ELLIOTT: No problem.

4 (Pause.)

5 CHAIRPERSON HILL: Okay. I'm in an office building and
6 nobody's here with me. Okay. All right. Go ahead, Ms. Elliott.

7 MS. ELLIOTT: All right. Let's see. So the Applicant
8 has requested relief from the rear addition provisions and the
9 Office of Planning is recommending approval of the relief that's
10 been requested.

11 They would be permitted as a matter of right to extend
12 10 feet beyond the property, beyond the building to the south.
13 But they are actually extending 22 feet, 22.3 feet. They're
14 proposing to extend 22.3 feet. So it's just over 12 feet more
15 than what's permitted as a matter of right.

16 The special exception criteria does go through, you
17 know, issues of light and air, and privacy, and neighborhood
18 character, as we've already sort of just discussed. But in terms
19 of light and air, the Applicant has provided a shadow study and
20 there are some teeny red lines on there showing what the
21 difference is between a matter of right development versus what's
22 being proposed.

23 And there is the slightest difference of shadowing that
24 would occur with the proposal versus a matter of right
25 development. Most of that impact would be to the north or to

1 the west. And that's that's just as we would expect it to be
2 given how the property is oriented. But none of that shadowing
3 is continuous. It's for, you know, certain periods of the day
4 and it varies depending on the season. And so because it's not,
5 you know, continuously shading the same areas, we don't find that
6 the impact to light and air to neighboring properties would be
7 unduly affected.

8 The issue of privacy has also been discussed as it
9 relates to windows. There would be windows along the north
10 building elevation that they would be separated from the
11 apartment building to the north. The apartment building to the
12 north, it sounded like it's providing a rear setback of about 11
13 feet. We, in our report, estimated that it was 4 to 10 feet.
14 But regardless, there is a distance provided between the
15 apartment building to the north and the windows on this property.
16 So we don't -- those windows would not unduly impact the privacy
17 to that apartment building.

18 As it relates to the apartment building to the south,
19 there would be no windows on the south building elevation, so we
20 wouldn't expect that the privacy would be compromised to the
21 south.

22 And then there is the issue of neighborhood character.
23 The rear addition would have -- it would feature more break
24 materials. And then, of course, there would be a fence along
25 the property line sort of screening a portion of the lower floor.

1 So we wouldn't -- we think that the character is compatible with
2 what's existing in that rear alley and comparable to what you see
3 on some of the adjacent buildings. So with that, I'll go ahead
4 and conclude my report, but I'm happy to answer any questions
5 that you have.

6 CHAIRPERSON HILL: Okay. Thank you. Does the Board
7 have any questions for the Office of Planning?

8 Okay. Ms. Elliott, just to clarify, again, would you
9 agree that the that there's no shadowing caused to the property
10 to the south by the development at all?

11 MS. ELLIOTT: Well, we would not expect shadowing to
12 be caused by the development based on it's the sense -- based on
13 where -- it's, sort of, based on where D.C.'s located on the
14 latitude.

15 CHAIRPERSON HILL: That's okay. I just needed --

16 MS. ELLIOTT: (Indiscernible) --

17 CHAIRPERSON HILL: -- I needed somebody other than the
18 Applicant who's trying to sell me, tell me that this is correct.
19 So you're saying it's correct?

20 MS. ELLIOTT: I'm not an expert. But what I have
21 learned in our evaluation of shadow studies is that you --
22 shadowing will predominantly occur to the north and then to the
23 west with some of the morning sun. So that's -- that's the
24 general workings of shadow studies.

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

1 Elliott.

2 Mr. Sullivan, just as far as, like, the design, the
3 north elevation, it doesn't look like there's a lot of windows
4 even on your building, correct, on the north side.

5 Is that correct, Mr. Toha?

6 MR. TOHA: Yeah, there's no windows on the upper levels,
7 only on the first level, which is set in. So there's a breezeway
8 on the first level that transfers east to west, you know, to
9 access the units.

10 CHAIRPERSON HILL: Yeah.

11 MR. TOHA: So there's no windows on the property line
12 facing north.

13 CHAIRPERSON HILL: Right. Facing that apartment
14 building.

15 MR. TOHA: Right.

16 CHAIRPERSON HILL: That's not (indiscernible) sun, it
17 looks like, but just not a lot.

18 MR. TOHA: (Indiscernible.)

19 CHAIRPERSON HILL: All right. Okay. I'm going to turn
20 to the, if nobody else has anything, is anybody here wish to
21 speak, Mr. Young?

22 MR. YOUNG: We do. You also have the ANC in here if
23 you --

24 CHAIRPERSON HILL: Oh.

25 MR. YOUNG: -- wanted to hear from them first.

1 CHAIRPERSON HILL: Where is the ANC?. Ms. Hobaugth?
2 Commissioner?

3 (Pause.)

4 CHAIRPERSON HILL: Commissioner, can you hear me?

5 MS. HOBAUGH: Yes, I can. I'm sorry about -- I'm the
6 commissioner for 5E-10 (phonetic), the SMD for this project. And
7 just to follow up on what the Applicant already said, they did
8 come and attend a civic association meeting, our zoning committee
9 meeting, and two ANC meetings as we have them present at the
10 first and we vote at the second.

11 Our zoning committee and the Civic Association
12 supported the project and the full Commission supports the
13 project as well. In addition, for outreach, I also included the
14 project on my April newsletter, which is handed out door-to-door.
15 I didn't receive any feedback from residents one way or the other.

16 So as I said, we voted at our April meeting in support.
17 so happy to answer any questions.

18 CHAIRPERSON HILL: Okay. Commissioner, I'm sorry I
19 didn't see you there before. Commissioner, do you have any
20 questions for anyone?

21 MS. HOBAUGH: Nope. We're in support.

22 CHAIRPERSON HILL: Okay.

23 MS. HOBAUGH: (Indiscernible.)

24 CHAIRPERSON HILL: Okay. Does the Board have any
25 questions for the Commissioner?

1 CHAIRMAN HOOD: I just want to applaud the Commissioner
2 Hobaugh for doing newsletter door-to-door. I hadn't seen it done
3 in a long time. So want to applaud (indiscernible). Thank you,
4 Mr. Chairman.

5 CHAIRPERSON HILL: Thank you, Chairman.

6 Does the Applicant have any questions for the
7 Commissioner?

8 MR. SULLIVAN: No, thank you.

9 CHAIRPERSON HILL: Okay. Mr. Young, you said there's
10 somebody here wishing to speak.

11 MR. YOUNG: Yes, we do, and they're calling in, Mr.
12 Clairken (phonetic). So I will unmute them now.

13 CHAIRPERSON HILL: Mr. Clairken, can you hear me?

14 MR. CLAIRKEN: Yes, I can.

15 CHAIRPERSON HILL: Okay. Mr. Clairken, as a member of
16 the public, you'll have three minutes to give your testimony.
17 However, just, you know, I'll let you know when you're over your
18 three minutes, but you can begin whenever you like. If you can,
19 please introduce yourself 1st for the record.

20 MR. CLAIRKEN: Sure. My name is Patrick Joseph
21 Clairken. I own the building just south of the proposed
22 construction.

23 CHAIRPERSON HILL: Okay.

24 MR. CLAIRKEN: Yes. I'd like to state my objections
25 to the additional footage at the rear of the building over the

1 10-footrule. I do feel that it's going to negatively impact my
2 property. I know some of my tenants have voiced concerns over
3 it. It's going to be a three-story-plus with the extra distance,
4 you know, a 5-foot wall for the brick wall that's there now and
5 a 5-foot difference in elevation, approximately.

6 It's going to be this massive structure that extends,
7 you know, 23 feet back (indiscernible) my building. I know
8 they've spoken of the studies done with the light, in which I'm
9 in agreement with. But it will, I think, negatively impact air
10 flow and just a general feel of the backyard. There's this
11 massive structure not to speak of, but not to mention any heat
12 radiating off this thing or sunlight reflecting off of it, things
13 of that nature.

14 So I do feel it negatively impacts me. They have not
15 -- and I just would like to stay quickly, it may have seemed as
16 if they're really working hard to contact me. I don't believe
17 that's the case. At least it doesn't appear from my end. I did
18 speak to Amir. I returned his call back in end of 2019, I guess
19 it was, right around Christmas maybe. I don't have the exact
20 date.

21 He said that an architect, his architect would be
22 contacting me. I had not received anything from them, so I did
23 send them an email and make a phone call to them and they said
24 somebody would be in contact, which they did not do. I didn't
25 hear from them until I received their plans several months ago,

1 at which time I called DCRA.

2 And I'm a contractor here in the City, a roofing
3 contractor. I don't live in the City and it's -- unfamiliar with
4 this process. It's first time I'm, you know, that I'm going
5 through it. I was told to fill out this notification form, which
6 I am familiar with those, and state my objections. I sent that
7 in and I was told at that time that everything would be taken
8 care of and that I would have time to speak and, you know, be
9 made aware of this hearing date.

10 I did not realize that there would be value to going
11 to ANC meetings, or it appears that that's highly valued or
12 appreciated. I would have done that if I had known that. But I
13 have not made, beyond the contact with the DCRA after receiving
14 the plans, the only other call that I received was one from Pepco,
15 which they just notified me that this is going to happen and that
16 the meter would be moved, and that somebody would contact me at
17 a future date.

18 And then I did receive a call from his project manager
19 yesterday. I didn't have time to get back to him. I was in the
20 process of putting my dog down. It was a rough day.

21 But so that's kind of the history of the communication.
22 I've not been trying to kind of lay low on this. I've been
23 wanting to interact with them. I just have not had the
24 opportunity. And, again, I just want to state my objections. I
25 do feel negatively impact me and my property. And wish that

1 somebody would have reached out more aggressively and kind of
2 went over this with me in the beginning.

3 CHAIRPERSON HILL: Okay. Okay. Mr. Clairken, we're
4 going to see where we get with all this. And I'm sorry about
5 your dog. I have dogs. Sorry about him.

6 MR. CLAIRKEN: Thank you.

7 CHAIRPERSON HILL: So, okay, so does anybody have any
8 questions for the witness? Sure. Chairman Hood.

9 CHAIRMAN HOOD: Mr. Clairken, I do join the Chairman,
10 as well, as about your dog as well. But I do have a question.
11 In your correspondence, it says "it will also impact air flow,
12 which I got that, and would visually (phonetic) spacious quality
13 and feel of the area." Could you expound on that for me, please?

14 MR. CLAIRKEN: Sure. Thank you. Yeah, if it would, I
15 feel that it will give it a very restricted -- to have this
16 immense wall just to lower, would give it a very kind of almost
17 a claustrophobic restricted feeling back there just towering
18 above us and extending so far backwards, that I think that beyond
19 the airflow restriction, which it definitely will do that, will
20 affect greatly. I just feel that it will change the feel of the
21 backyard completely.

22 CHAIRMAN HOOD: Okay. So what I'm trying to do is is
23 posture that, the last comment, airflow, I won't take that for
24 granted. It will take some air flow. But the visual spacious
25 quality and the feel of the area, I'm trying to sanitize and what

1 to look at, and this impacts. So anyway, that's that's where I
2 am. Okay. Thank you, Mr. Clairken.

3 MR. CLAIRKEN: Thank you, sir.

4 CHAIRPERSON HILL: Ms. John, do you have any questions
5 of the witness?

6 VICE CHAIR JOHN: No questions, Mr. Chairman.

7 CHAIRPERSON HILL: Mr. Clairken, do you have -- does
8 everybody have -- you guys have each other's phone numbers?

9 MR. CLAIRKEN: I believe -- I'll have to recheck the
10 voicemail again, I believe I have -- the property manager may
11 have left his number yesterday on the voicemail.

12 CHAIRPERSON HILL: Okay. Mr. -- is it Mogensen? Did
13 you --

14 MR. MOGENSEN: Yeah, (indiscernible) --

15 CHAIRPERSON HILL: -- leave a number?

16 MR. MORGENSEN: I did. I'll reach back out again after
17 this.

18 CHAIRPERSON HILL: Okay. Okay. I (indiscernible) you
19 put your number at the bottom of the letter in opposition; is
20 that correct?

21 MR. CLAIRKEN: I'm sorry, Mr. Chairman, I don't have
22 that in front of me. I don't -- I don't recall that it's there
23 or not. I have that back at the office.

24 CHAIRPERSON HILL: Okay. That's all right.

25 MR. CLAIRKEN: It be at the office.

1 CHAIRPERSON HILL: I guess Mr. Mogensen is going to be
2 in touch with you after this as well. But I'm going to remove
3 you from the hearing room for a minute and then we might bring
4 you back up. Okay?

5 MR. CLAIRKEN: Okay. Thank you.

6 CHAIRPERSON HILL: Thank you. All right. Okay. So,
7 Mr. Sullivan, do you have anything to add?

8 MR. SULLIVAN: No. Just, well, I guess I would just
9 say in regard to the building to the south, the decisions by the
10 Board on these kind of cases have traditionally focused on the
11 shadow and/or the lack thereof. And in determining adverse
12 effect, I'm not sure how to measure air flow, but but this, the
13 23 feet certainly not out of the the range of what the Board has
14 approved in cases, especially when the shadow is not impacting
15 it.

16 And, of course, as far as feel and look, I don't think
17 that's before the BZA. And other than that, just to note that
18 the --

19 CHAIRPERSON HILL: Okay.

20 MR. SULLIVAN: -- (indiscernible) are going to continue
21 to reach out to this --

22 CHAIRPERSON HILL: I know.

23 MR. SULLIVAN: -- neighbor (indiscernible) --

24 CHAIRPERSON HILL: So (indiscernible) one thing, and
25 this is from the, I guess, the architect or someone, how come

1 you guys decided 22 feet 3 inches? How did that program come
2 about?

3 MR. TOHA: We just assigned to the rear yard limit, you
4 know, the setback, you know --

5 UNIDENTIFIED MALE SPEAKER: Right. You (indiscernible)
6 the rear yard. You (indiscernible) --

7 (Cross-talk.)

8 MR. TOHA: Just like what would happen on every property
9 down the street. I think a development is very likely that that
10 will happen eventually, even to the property to the south, you
11 know, so.

12 CHAIRPERSON HILL: Yeah, you never know, Mr. Toha.

13 Let's see. Okay. I don't know where I am, and I know
14 where the fellow Board members want to be. (Indiscernible) Mr.
15 Sullivan. So Mr. Sullivan you're here a lot. And I know when
16 we've been working together a long time, every now and again, Mr.
17 Sullivan, when you start to say something, it almost feels like
18 it's like a Jedi mind trick. Like you like the, "Well, the Board
19 usually doesn't do, or the Board usually doesn't do that."

20 I'm, like, I'm, like, I've been here long enough to
21 know what the Board does. Right. But, right I understand what
22 the Board usually --

23 MR. SULLIVAN: Sir, I'm not that good at it, I don't
24 think. I don't feel like it has power.

25 CHAIRPERSON HILL: Well, every time you do, antenna

1 just goes right up. And I'm like, oh, is that what the Board's
2 supposed to do? So I see my fellow Board member, John, because
3 she's with me all the time. Laugh a little bit. I don't know
4 what to do. I mean, I kind of want to hear them -- and now I'm
5 back to Mr. -- Chairman Hood and the good neighbor thing, right.

6 I mean, I don't know. I'm kind of having a deliberation
7 right here with the people in the room, because I don't know
8 whether we want them to talk to the neighbor for one week and
9 just see if they can at least communicate, because some of the
10 things it seems like is even things that, I mean, doesn't seem
11 to be like, like there's foundation questions or there's footer
12 questions, things that can actually maybe just be answered,
13 right.

14 I know that Ms. John also doesn't -- isn't a big fan
15 of anything past the 10 feet, right. So, you know, anything past
16 the 10 feet, and this is going 12 feet back, right, past the 10
17 feet. But also, I also think that I'm kind of good with it. So
18 I don't know what you all think I'm -- and the reason why I'm
19 having this deliberation right now is just to see where you,
20 Chairman Hood, is, or where you, Ms. John, is and then -- and we
21 can see how it goes.

22 Chairman Hood. Ms. John.

23 CHAIRMAN HOOD: I'm going to appeal to Ms. John.

24 VICE CHAIR JOHN: So I was a little concerned about the
25 -- we're not deliberating, right? Are we? No.

1 CHAIRPERSON HILL: Well, I don't know what we're doing
2 exactly. This is confusing because it's the video thing. I
3 mean, I can -- I can close the hearing. I can close the hearing
4 and bring back Mr. Sullivan.

5 VICE CHAIR JOHN: Mr. Sullivan is still here.

6 CHAIRPERSON HILL: I know. I'm saying --

7 VICE CHAIR JOHN: So I would like to see the Applicant
8 and the neighbor have a conversation, because it seems to me,
9 they have not talked at all. Not that -- well, it would be good
10 if Mr. -- Commissioner Hood's good neighbor policy could be
11 applied. It seems as if the neighbor didn't even know
12 that Pepco was going to come and move its meters, if that's the
13 case. So I don't see how it hurts. And, you know, it's not
14 germane to the decision we would make because we look strictly
15 at the regulation and how the application meets the criteria.
16 And basically, I was concerned about the neighbor to the south
17 and the impact of the shadow --

18 CHAIRPERSON HILL: Let me -- let me -- let me stop one
19 second, Ms. John. I'm going, Mr. Sullivan, I'm going to close
20 the hearing on the record. We're going to talk for a little
21 while, but I'm going to keep you around, okay, Mr. Sullivan.

22 MR. SULLIVAN: Okay. That's great. And I think, I
23 mean, we're happy to, you know, take another shot with talking
24 to the neighbor, if the Board goes that way. I think that's a
25 good idea, as well.

1 CHAIRPERSON HILL: Okay. All right. I'm closing the
2 record and excuse everybody, Mr. Young, but keep everybody
3 around, please.

4 (Pause.)

5 CHAIRPERSON HILL: Okay. So now that everybody's gone,
6 wherever they went, I'm actually kind of okay with the project,
7 right? I was worried about the light and air from the the
8 additional 12 feet, but I don't think that much shadowing is
9 actually occurring to that south lot to the south.

10 I'm a little concerned about the additional 12 feet of
11 wall, right, but it's just, I'm not that opposed to it, I suppose.
12 I mean, you know, the apartment building to the north, it doesn't
13 seem like it's getting affected too much by it. The Office of
14 Planning seems to be okay with the analysis that they're giving
15 or not. Well, not "seems to be," are okay with the analysis
16 they're giving of the additional 12 whatever, 12 feet 3 inches,
17 and then the ANC is in support. And the ANC went through
18 everything, right.

19 So I, again, I don't know, like you know, whether we
20 put it off a week and see if the Applicant would be willing to
21 just speak to the neighbor and put something into the record that
22 they spoke to the neighbor and they kind of addressed some of
23 the concerns.

24 But I'm also going to go the other way, which is like
25 whatever you all want to do.

1 And now I'm going to go back to Ms. John.

2 VICE CHAIR JOHN: So it's hard for me to say that the
3 application doesn't meet the criteria. I thought OP did a good
4 analysis of the shadow studies, which is what had concerned me
5 when I looked at the record. I'm always concerned about the
6 walls that, you know, as in the previous case with that neighbor
7 who was going to be boxed in on two sides. I'm always concerned
8 about that. But it's hard to deny applications where there is
9 no adverse impact in terms of light and air. And how do you how
10 do you measure air flow? I don't know, Mr. Chairman.

11 CHAIRPERSON HILL: I'm also happy to vote today. So,
12 I mean, it seems like this, John, seems that we should want vote
13 today. And I'm certainly happy to vote today.

14 Chairman Hood.

15 CHAIRMAN HOOD: Well, I'm actually glad to hear you all
16 talk about the good neighbor policy in this case, because I would
17 like to be the last case. Actually, this is one of the first
18 cases that I actually agree with the presentation a hundred
19 percent of Mr. Sullivan.

20 I mean, I haven't said I voted against someone, but
21 this time I think I think there's a clear-cut case. I do
22 understand the concerns of the neighbor. I think the case is
23 sewed up to the point where I think it warrants our approval.
24 Now, the only issue that I have, Mr. Chairman and Vice Chair
25 John, is whether or not we allow that week for the gentleman --

1 don't have his name in front of me --

2 CHAIRPERSON HILL: Clairken.

3 CHAIRMAN HOOD: Oh, Clairken, that's it, yeah. Mr.
4 Clairken to be able to have that opportunity. And I heard both
5 of our colleagues see that one week. So if I couldn't get in
6 the last case, maybe they can get it this time. But know we'll
7 see. I think this is this is flavor-ready, right, for our
8 approval. I think all of us certain studies have been done.

9 And when I look at the relief asked for, there really
10 are some adverse impacts. That's what I was trying to give Mr.
11 Sullivan. But of the adverse impacts to the point that it does
12 not warrant our approval, I don't believe they are. So that's
13 fine, Mr. Chair.

14 CHAIRPERSON HILL: Okay. Well, then I will hope -- I
15 will hope that the Applicant reaches out to Mr. Clairken, as they
16 said they would. And sometimes people get back to us again and
17 we find out that they didn't do what they said they were going
18 to do. So I hope they do what they said they're going to do,
19 and they, at least, try to work with Mr. Clairken so he
20 understands everything that's happened.

21 So I'm going to go ahead and make a motion then to
22 approve Application No. 20457 as captioned and read by the
23 secretary and ask for a second, Ms. John.

24 VICE CHAIR JOHN: Second.

25 CHAIRMAN HILL: Motion made and seconded. Mr. Moy,

1 could you take a roll call, please?

2 MR. MOY: Yes, when I call your name, if you would
3 please respond with a yes, no, or abstain to the motion made by
4 Chairman Hill to approve the application for the relief
5 requested. The motion was seconded by Vice Chair John.

6 Zoning Commission Chair Anthony Hood.

7 CHAIRMAN HOOD: Yes, to the motion.

8 MR. MOY: Vice Chair John.

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill.

11 CHAIRMAN HILL: Yes, to the motion.

12 MR. MOY: Staff would record vote as 3-0-2, and this
13 is on the motion made by Chairman Hill to approve. The motion
14 was seconded by Vice Chair John. Also in support of the motion
15 to approve is Zoning Commission Chair Anthony Hood.

16 We have two Board members not present, not voting.
17 Motion carries 3-0-2.

18 CHAIRPERSON HILL: Okay. Thank you. All right. Mr.
19 Moy, is there anything left for us today?

20 MR. MOY: Not from the staff, sir.

21 CHAIRPERSON HILL: Okay. Well, Chairman Hood, we won't
22 see you for a while maybe, I guess. So you have a nice time --

23 CHAIRMAN HOOD: Probably a couple weeks. All right.
24 Thank you.

25 CHAIRPERSON HILL: Okay.

1 CHAIRMAN HOOD: You all take care. Keep up the good
2 work.

3 CHAIRPERSON HILL: You, too, as well, sir.

4 VICE CHAIR JOHN: Good day, Chairman Hood.

5 CHAIRMAN HOOD: You do the same, Vice Chair John, my
6 good friend. See you all later.

7 CHAIRPERSON HILL: All right.

8 (Whereupon, the above-entitled matter went off the
9 record at 2:31 p.m.)

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C E R T I F I C A T E

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3 This is to certify that the foregoing transcript

4
5 In the matter of: Public Hearing

6 Before: DCBZA

7
8 Date: 05-19-2021

9 Place: Teleconference

10 was duly recorded and accurately transcribed under my
11 direction; further, that said transcript is a true and
12 accurate record of the proceedings.
13
14
15
16

17 _____
KRISTIN NEMIRO

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