

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 14, 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 9:30 a.m., EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSIONER MEMBERS PRESENT:

- ANTHONY HOOD, Chairman
- PETER SHAPIRO, Commissioner
- MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
JONATHAN KIRSCHENBAUM

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
JACK RICE, ESQ.

The transcript constitutes the minutes from the
Regular Public Meeting held on July 14, 2021.

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(withdrawn) 8

Case No. 20410 - Application of Mama Lucia of Chevy Chase
(postponed to September 29, 2021) 8

Case No. 20477 - Application of Bentley Hamilton
(postponed to October 27, 2021) 8

Case No. 20490 - Application of Jerry M. Carter
(administratively postponed to September 15, 2021) 8

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

(9:39 a.m.)

CHAIRPERSON HILL: Good morning ladies and gentlemen to the Board of Zoning Adjustment. Today's date is July 14, 2021. The public hearing will please come to order.

My name is Fred Hill. I'm the Chairperson of the District of Columbia for the Board of Zoning Adjustments. Joining me today is Lorna John, Vice Chair, Board Members Carl Blake and Chrishaun Smith, and Zoning Commission members Anthony Hood, Peter Shapiro, and Michael Turnbull.

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

Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we do not take any public testimony at our decision meeting session. If you're experiencing difficulty accessing Webex or with your telephone call-in, then please then call our OZ hotline number at 202-727-5471 to receive Webex login or call-in instructions. That number is also on your screen.

At the conclusion of a decision meeting session, I shall, in consultation with the Office of Zoning, determine

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1 whether a full or summary order may be issued. A full order is
2 required when the decision it contains is adverse to a party
3 including an affected ANC. A full order may also be needed if
4 the Board's decision differs from the Office of Planning's
5 recommendation. Although the Board favors the use of summary
6 orders whenever possible, an applicant may not request the Board
7 to issue such an order.

8 In today's hearing session everyone who is listening
9 on Webex or by telephone will be muted during the hearing and
10 only persons who have signed up to participate or testify will
11 be unmuted at the appropriate time. Please state your name and
12 home address before providing oral testimony or your
13 presentation.

14 Oral presentations should be limited to a summary of
15 your most important points. When you're finished speaking, please
16 mute your audio so that your microphone is no longer picking up
17 sound or background noise. Once again, if you're experiencing
18 difficulty accessing Webex or with your telephone call-in, or if
19 you've forgotten to sign up 24 hours prior, the OZ hotline number
20 is 202-727-5471.

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

1 408.7.

2 Requests to enter evidence at the time of an online
3 virtual hearing, such as written testimony or additional
4 supporting documents other than live video, which may not be
5 presented as part of the testimony, may be allowed pursuant to
6 Subtitle Y 103.13, provided that the person making the request
7 to enter an exhibit explains how the proposed exhibit is relevant,
8 the good cause it justifies allowing the exhibit into the record
9 including an explanation of why the requester did not file the
10 exhibit prior to the hearing pursuant to Y 406, and how the
11 proposed exhibit would not unreasonably prejudice any party.

12
13 The order of procedures for special exceptions and
14 variances are pursuant to Y 409. If this is an appeal, the order
15 is pursuant to Y 507.

16 At the conclusion of each case, an individual who is
17 unable to testify because of technical issues may file a request
18 for leave to file a written version of the planned testimony to
19 the record within 24 hours following the conclusion of public
20 testimony in the hearing.

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

25

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

6 Once again, after the Board adjourns the hearing, the
7 Office of Zoning, in consultation with myself, will determine
8 whether a full or summary order may be issued. A full order is
9 required when the decision it contains is adverse to a party
10 including an affected ANC. A full order maybe also needed if
11 the Board's decision differs from the Office of Planning's
12 recommendation. Although the Board favors the use of summary
13 orders whenever possible, an applicant may not request the Board
14 to issue such an order.

15 Finally, the District of Columbia Administrative
16 Procedures Act requires that a public hearing on each case be
17 held in the open before the public. However, pursuant to Section
18 405(b) and 406 of that Act, the Board may, consistent with its
19 rules and procedures and the Act, enter into a closed meeting on
20 a case for purposes of seeking legal counsel on a case pursuant
21 to D.C. Official Code Section 2-575(b)(4) and/or deliberating on
22 a case pursuant to D.C. Official Code Section 2-575(b)(13), but
23 only after providing the necessary public notice and in the case
24 of an emergency closed meeting after taking a roll call vote.

25 Mr. Secretary, do we have preliminary matters?

1 MR. MOY: Good morning, Mr. Chairman, and members of
2 the Board. We do. As has been our custom, we would call those
3 specific preliminary matters to specific cases when I call the
4 case for Board efficiency. Other than that, Mr. Chairman, I'd
5 like to state for the record, for the transcripts, the status of
6 case publications that are not on today's docket.

7 First, Application No. 20483 of 1219 Simms Place, Northeast,
8 LLC has been withdrawn by the applicant.

9 We have two cases that have been postponed and
10 rescheduled. The first is 20410 of Mama Lucia of Chevy Chase.
11 That's been postponed and rescheduled to September 29, 2021; and
12 case Application 20477 of Bentley Hamilton, postponed and
13 rescheduled to October 27th, 2021.

14 Finally, we have two case applications that were
15 administratively rescheduled to September 15, 2021. These two
16 cases are 20490, this is the application of Jerry M. Carter, and
17 application No. 20491 of Tubman Elementary School. Both these
18 two cases rescheduled to September 15, 2021.

19 Other than that, Mr. Chairman, you asked me to remind
20 you that before we move into our decision meeting and hearing
21 cases, you wanted to address another case in preliminary matters.

22 CHAIRPERSON HILL: So is that the one about the motion?

23 MR. MOY: Yes, sir.

24 CHAIRPERSON HILL: Okay. All right. So, if the Board
25 can hear me, so on June 30th, in appeal No. 20221 -- is it 20221,

1 Mr. Moy?

2 MR. MOY: It is 20402.

3 CHAIRPERSON HILL: Right. Okay. So appeal 20402, the
4 appellant submitted a motion in Exhibit 33 asking the Board to
5 stay the proceedings pending an outcome of a related proceeding
6 on the property owner's appeal of the Board's appeal of No. 20221.
7 So the appellant is asking us to wait until the previous appeal
8 that's being heard in the Court of Appeals is decided upon.

9 So there's a couple of things. One, the appellant's
10 motion, I guess, did not address the four criteria for a stay.
11 Instead, what it basically is essentially asking for is a
12 continuance of this appeal, meaning they would like us to waive
13 and continue this appeal. So they didn't really actually address
14 the four criteria that are needed for a stay. Both DCRA and the
15 property owner are opposed to the motion, are opposed to the
16 continuance of 20402 (audio interference) on 20402. So I think
17 that -- so I guess -- I've also talked with OAG. So as the as
18 the presiding officer, the chair may decide procedural motions,
19 including motions to continue a hearing without holding a hearing
20 pursuant to Y 407.5.

21 And I think that -- first of all, they didn't really
22 address the four issues in terms of it being a stay to begin
23 with. So it's not a stay, they are asking for a continuance.
24 And so I think that the appeal that is at the Court of Appeals
25 right now, that could take a year to two years. So whether or

1 not even if that ends up making this appeal moot, I don't think
2 it's fair to ask the property owner to wait a year to two years
3 for this appeal to happen. So therefore, I think we should go
4 ahead and hear the appeal next week as we were supposed to hear
5 it. Right? So I don't think -- I was listening -- I was talking
6 to OAG, so I can just go ahead and do this, I guess, on my own.
7 However, if anyone here on the Board has an issue with what I
8 just said, please raise your hand or speak up.

9 (No audible response.)

10 Okay. So that being the case, then, Mr. Moy, we're
11 going to go ahead -- and I don't know whether it's even -- I
12 guess I'm going to deny the motion for a stay or whatever we're
13 going to call it and hear the appeal next week. Okay?

14 MR. MOY: Yes, sir. So moved.

15 CHAIRPERSON HILL: Okay, great. So you can let
16 everybody know.

17 CHAIRPERSON HILL: All right. So that's that.

18 So now we're going to go ahead and move forward with
19 our meeting session. Oh, no. We're still waiting for Mr. Smith.

20 VICE CHAIR JOHN: He's having difficulty with Webex.

21 CHAIRPERSON HILL: Okay. All right. Give him a minute.
22 Well, let me call. Give me a second. I'm going to call him,
23 okay?

24 VICE CHAIR JOHN: Okay.

25 CHAIRPERSON HILL: I'm going to mute this.

1 (Pause.)

2 Mr. Young, can you hear me?

3 MR. YOUNG: Yes, I can.

4 CHAIRPERSON HILL: So do you have Mr. Smith's cell
5 phone number?

6 MR. YOUNG: I do not.

7 CHAIRPERSON HILL: Okay, that's all right.

8 Does he call that OZ hotline number if he just wants
9 to call in?

10 MR. YOUNG: Yeah. He can call me, too, if you want to
11 give him my number.

12 CHAIRPERSON HILL: Okay, I'll do that. I'll do that.
13 I'll be back in a minute.

14 (Pause.)

15 All right. Chrishaun is calling -- Mr. Smith is calling
16 Mr. Young and we'll see what happens.

17 MR. YOUNG: Mr. Smith is going to call in right now,
18 so once he's in, I'll unmute him.

19 CHAIRPERSON HILL: Okay, great. Thank you.

20 MR. YOUNG: Okay. He's on and unmuted, so he should
21 be able to talk.

22 BOARD MEMBER SMITH: Hello, everyone.

23 VICE CHAIR JOHN: Hello.

24 CHAIRPERSON HILL: Hi, Mr. Smith. Can you hear us?

25 BOARD MEMBER SMITH: I can hear you.

1 CHAIRPERSON HILL: Okay, great. All right. So for the
2 record, Chrishaun Smith has just joined us.

3 Okay. Mr. Moy, do you want to go ahead and call our
4 first meeting case?

5 MR. MOY: Yes, sir. This would be Case Application No.
6 20382 of Haider Haimus and Jessica Bachay. This is an application
7 for -- as amended for a special exception from the lot occupancy
8 requirement of Subtitle E, Section 304.1. This would construct a
9 third story addition and roof deck to an existing two-story
10 principal dwelling unit and a second story addition to an
11 accessory detached garage in the RF-1 zone. The property is
12 located at 308 11th Street, Northeast, Square 963, Lot 68.

13 The Board last heard this case at its hearing on June
14 23rd, scheduled for a decision meeting and requested supplemental
15 information.

16 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.

17 I'm trying to get a couple of things organized here, so if
18 I can ask one of my colleagues to go first.

19 Mr. Smith, would you be willing to go first?

20 BOARD MEMBER SMITH: Sure. So as far as the question
21 about the special exception, based on the information that was
22 submitted by the applicant, I am comfortable that the applicant
23 has met the request -- I mean, the criteria for us to be able to
24 grant the special request from the lot occupancy requirements.

25 One of the questions that came up, from one of my

1 colleagues, I think, Chairman Hood, was about -- showing the
2 perspective renderings along the alley. Based on what they
3 submitted, I don't think it will have a large impact on the
4 adjacent -- any of the adjacent property owners. So with that,
5 I do believe that the applicant has met the burden of proof for
6 us to be able to grant special exception from the criteria listed
7 in 5201.4, A, B, and C and D, and the general special exception
8 standard and I would be in support of this application.

9 CHAIRPERSON HILL: Okay, thanks, Mr. Smith.

10 I'm done with my notes here.

11 Well, first of all, I mean, I'm disappointed, well, I
12 shouldn't say disappointed, but I am disappointed that the
13 neighbors are not concerned about the project and the concern
14 about the impact to light and air and the surrounding area.

15 What we're really looking at, again, is the accessory
16 building, the garage, and the impacts again of the light and air
17 primarily due to that, the increased height in that garage. I
18 mean, the primary residence is matter of right, so it's not
19 something we're necessarily -- that we're looking at all.

20 I think that -- what I looked at was, I looked at the
21 alley and kind of like the other buildings that were in the alley.
22 And there seemed to me to be a lot of buildings already that were
23 of that kind of mass size. Like, it's not necessarily like
24 there's nothing else kind of this size in that alley.

25 The other is, I think that -- so basically, to cut to

1 the chase, I also agree with you, Mr. Smith, that I think that
2 they are meeting the criteria, the standard by which we should
3 be granting the special exception. I'm kind of talking about
4 some of the things that I was looking at when I was trying to
5 figure out whether I thought it was undue impact by this project.
6 And I think that, you know, the shadows that we got from the
7 matter of right versus this, the shadow studies, I didn't think,
8 you know, it's just a minimal increased shadowing due to what the
9 matter of right would have been even on the garage. Like, they
10 could have pushed it forward, pushed it back and just done a
11 matter of right accessory building. But I didn't see that the
12 shadowing was anything additional to that. The other that
13 I thought was that, you know, they did agree to frost some windows
14 in the alley. And I think that that would also help in terms of
15 the impact. They also got rid of a Juliet balcony that they were
16 going to try to do in order to help with the neighbor. I thought
17 that the neighbor, I understand what they were concerned about
18 with the ability of the new accessory building to look kind of
19 back into their home. I guess part of what I thought about their
20 home is it was all glass windows on their side, so their home is
21 looking into everybody else's backyard. And I know that it's not
22 really helpful, but we live in a very dense area, that's kind of
23 a very dense area. Unfortunately, like you do look into each
24 other's homes. But I do think that the fact that they got rid
25 of the Juliet balcony, the fact that they're frosting the windows

1 on the back alley, the fact that even the height is a little
2 lower than the matter of right. I thought that the issue with
3 the height or the concern that the neighbors are having about the
4 perspectives. I mean, you know, DCRA is going to determine (audio
5 interference). We believe that the height that's being
6 represented is accurate and, if it's not, DCRA will go ahead and,
7 you know, they're the regulatory agency that will make sure that
8 what is being proposed is accurate. And so I know that or feel
9 confident that DCRA will do what they're supposed to do so that,
10 you know, something that's not supposed to be built is built. So
11 that all being said, those are all my reasonings for why. And I
12 would also agree with the Office of Planning and their analysis
13 into how I would vote in favor of this application. So let's
14 see.

15 Chairman Hood, do you have any thoughts?

16 CHAIRMAN HOOD: Yes, Mr. Chairman. I am still of the
17 mindset that I think that this addition, accessory structure
18 should be reduced. I'm not sure if I'm ready to vote against
19 this project, but I think -- I agree with most of what Mr. --
20 what Board Member, what you said, and also what Board Member
21 Chrishaun -- I'm forgetting Chrishaun's last name, Smith, because
22 I'm so focused on trying to figure out this intrusion issue. And
23 I heard what Board Member Smith mentioned and I agree with him,
24 except for C. And fundamentally, for me, it goes to the fact of
25 visual intrusion. And I don't know if

1 -- to me, I think it could be reduced to help satisfy the visual
2 intrusion. I think that, as Board Member Smith mentioned, the
3 north -- the north and south rear alley of the applicant that is
4 proposing the false windows, I think all that's fine. The shading
5 really comes from the existing structure. But from my standpoint,
6 I believe that we have a fundamental flaw. And I think the Board,
7 when you look at adverse impacts, we need to continually look at.

8 And I'm going to read what he mentioned in E5201.4(c).
9 "The proposed addition or accessory structure, together with the
10 original building, or the new principal building, as viewed from
11 the street, alley, or other public way, shall not substantially
12 visually intrude upon the character, scale, and pattern of houses
13 along the street or alley frontage."

14 And I don't see where we get over the hurdle of
15 frontage. And I wonder if enough stuff is covered, where the
16 visual intrusion, I could kind of pass on that, but I don't think
17 I can. So right now, Mr. Chairman, unless -- I want to hear from
18 the Vice Chair, but right now, I think I'll be voting in
19 opposition of this case because I don't think we're exercising
20 all of the ability that we have to minimize the impacts. And
21 that's just where I am.

22 CHAIRPERSON HILL: Okay.

23 Mr. Blake, do you have an opinion?

24 BOARD MEMBER BLAKE: Sure. I believe that the criteria
25 for a special exception has been met. With regard to the light

1 and air, I agree with your analysis. And certainly, looking at
2 the shadow studies and the detailed analysis by the Office of
3 Planning, it does appear that the impact of the accessory building
4 will be minimal on the abutting and adjacent properties.

5 When we look at the issue of privacy and enjoyment, it
6 does fit within the criteria of the development standards. And
7 the window treatments and adjustments that the applicant has made
8 has done a lot to actually mitigate some of the impact, and I
9 don't know that there's a lot more that could actually be done
10 to further mitigate that. And as the report said, in relation
11 to C, with regard to the character, I do think that it is a little
12 bit different, but there are a number of other properties in the
13 alley that are two-story, on that particular site, it is
14 different. But I'd indicate that Capitol Hill Restoration
15 supports it, and the project is still subject to HPRB review. So
16 if they would -- actually, to my opinion, HPRB will -- if it
17 really is out of character, they're going to address that issue.
18 So I am prepared to support the relief request.

19 CHAIRPERSON HILL: Thank you, Mr. Blake.

20 Vice Chair John.

21 VICE CHAIR JOHN: Thank you, Mr. Chairman.

22 I didn't have -- I mean, I don't have a lot to add. I
23 thought that -- and I appreciate Commissioner Hood's concerns
24 that even though the project does meet the development standards,
25 there could be some additional impact. But in this case, I don't

1 think that there is any undue impact on light and air or privacy
2 for the reasons that, you know, Mr. Chairman, Chairman Hill has
3 already articulated, and of course, Board Member Blake -- Board
4 Members Blake and Smith.

5 So, you know, with respect to the neighbor who is
6 particularly concerned about residents in the accessory structure
7 looking into her yard, I believe the record is full and quite
8 clear in terms of the fact that that neighbor also had floor to
9 ceiling windows that would offer a clear view of the neighbors'
10 yards as well. I think the applicant has tried and shown some
11 consideration for the neighbor by changing the design in response
12 to the neighbor's concerns. And so I agree with everything that's
13 been said, as I mentioned earlier, and I will also give great
14 weight to OP's analysis. And so I would be able to support this
15 application.

16 And I agree with you, Chairman Hill, that the issue
17 about the height of the accessory structure, I believe this is a
18 self-certified application. So if it does not meet the height
19 that's represented in the drawings, then that will be corrected
20 at the time of permitting.

21 There was also a question about the Heritage tree. I
22 don't think there was any information to indicate one way or the
23 other whether that tree was protected. And I believe -- if I
24 remember correctly, that the applicant is willing to take steps,
25 whatever steps that are necessary to protect the Heritage tree.

1 So those are my comments.

2 CHAIRPERSON HILL: Okay. Thanks, Ms. John.

3 Ms. Cain, are you there?

4 MS. CAIN: Yes, I'm here.

5 CHAIRPERSON HILL: Is there is a motion to accept late
6 filings in 93, 93A, and 93B?

7 MS. CAIN: Yes, so that was a filing by a party-opponent
8 in response to the elevations that were submitted in response to
9 the Board's questions at the last hearing. So this is just the
10 party opponents concerns with those additional elevations.

11 CHAIRPERSON HILL: And so that's not something -- so
12 we asked for some information and then the party opponents.

13 MS. CAIN: So you asked for information at the June
14 23rd hearing which the applicant submitted so that's at Exhibit
15 90A. The party opponents did submit a response to that, so that's
16 Exhibits 91 and 91A, and they're also -- the party opponents have
17 submitted an additional response as well.

18 CHAIRPERSON HILL: But it was filed late.

19 MS. CAIN: Yes.

20 CHAIRPERSON HILL: Okay. Hang on one second, I want
21 to print out something.

22 (Pause.)

23 Okay, can anybody hear me?

24 VICE CHAIR JOHN: Yes, we can hear you.

25 CHAIRPERSON HILL: Thanks. Chairman Hood, Mr. Blake.

1 Mr. Smith, are you on video with us now again?

2 BOARD MEMBER SMITH: Not yet.

3 CHAIRPERSON HILL: Okay. But you can hear us?

4 BOARD MEMBER SMITH: Yes, I can hear you.

5 CHAIRPERSON HILL: Okay. All right.

6 So I'm kind of unclear as to where I am with this, so
7 that's why I'll let you all help me. Right.

8 So there's a motion to accept late filings. Right.
9 And that's in 93, 93A and 93B. So I don't know -- and Ms. Cain,
10 can you hear me? Ms. Cain, can you hear me?

11 MS. CAIN: Yes.

12 CHAIRPERSON HILL: Okay. So I don't know how I feel
13 about letting these things in and I'll tell you why. Like, either
14 you guys -- we can either decide -- I mean, they're in there now.
15 That's the other part (audio interference). They're in the
16 record. Like, you can read them and see them. Right. So what
17 happened was, we, the Board, asked for some things. We then gave
18 the opponents an opportunity to respond to those things we asked
19 for. They did. And now it seems to me they're having kind of a
20 second bite at the apple, but basically repeating kind of the
21 same stuff. So since it seems as though this is going in the
22 direction of a yes vote, even if Commissioner Hood is opposed, I
23 don't -- I want to make sure that this doesn't burden the Board.
24 And this where I am asking Ms. Cain, one way or the other, whether
25 we let this in or don't let this in, meaning if this now gets

1 appealed, if this turns into a longer process, if it's better to
2 have this in the record or not. And so either -- and I'm looking
3 at my Board members and you all can let me know, either you all
4 can take a look at this because there's another thing that has
5 to -- Commissioner Shapiro has to -- has a hard stop, I think,
6 at 11:00. And so I can bring in -- you guys, I can bring in
7 Commissioner Shapiro. We can go ahead and do the hearing. You
8 all can look at this stuff because it's already in the record
9 and determine whether we should let it in the record and then
10 move on. And let -- Ms. John.

11 VICE CHAIR JOHN: Mr. Chairman, I reviewed those
12 documents and I -- so I would be in favor of letting them in the
13 record. I don't know if any of my other fellow Board members
14 reviewed the documents, but I will withhold my thoughts on them
15 until I hear from the others.

16 CHAIRPERSON HILL: So that's great. I mean, I looked
17 at it just at this break. I reviewed the documents. It didn't
18 change any of my opinions about what I had said before. And
19 you're saying, Ms. John, it is not changing any of your opinions
20 also of what you had said before, right?

21 VICE CHAIR JOHN: So that's what I'm saying, because
22 what I said before was based on my review of all of the documents
23 in the record, but I should have said that I reviewed the
24 perspectives and that I did not find them particularly helpful
25 either way, because the issue really is in terms of light and

1 air and privacy. And the dispute about the height, there seems
2 to be, as Board Member Smith said, a dispute about the height of
3 the accessory structure. And it's -- I think it's a one-foot
4 discrepancy or less than that. So I didn't find it very
5 persuasive. Because in looking at the shadow studies, I believe
6 that was in Exhibit 80, I was persuaded that there would not be
7 any undue impact on any of the adjacent properties. So that's
8 how I came to my decision.

9 CHAIRPERSON HILL: Okay. So, Mr. Smith, are you
10 comfortable with allowing them in the record and moving forward
11 with a vote?

12 BOARD MEMBER SMITH: Let me try this. I can be seen.
13 I agree with Ms. John. When I looked at the information
14 submitted by the applicant, it was Exhibit 91A, I didn't have any
15 issues with, I mean, not to say I didn't have any issues. It
16 did not change my opinion on this particular case. So I recommend
17 we can -- we can add it. I'm fine with that.

18 CHAIRPERSON HILL: Mr. Blake.

19 BOARD MEMBER BLAKE: Yes. I, too, have reviewed the
20 documents and I did factor that into my analysis. So I feel very
21 comfortable in admitting the document and continuing with the
22 vote.

23 CHAIRPERSON HILL: Okay. Mr. Hood.

24 CHAIRMAN HOOD: I guess it doesn't matter what I say,
25 because I'm outnumbered. Even before the documents, from a

1 procedural standpoint, whether it's appealed or not, I think we
2 have to let it in because we've already reviewed it. So that to
3 me is a moot point.

4 The other point is that I had my same issue -- I agree
5 with everything else, with the exception of intrusion. I had my
6 same issue before the document. So we are where we are. Those
7 are my comments.

8 CHAIRPERSON HILL: Okay. Ms. Cain, can you hear me?

9 MS. CAIN: Yes.

10 CHAIRPERSON HILL: All right. I wish that the applicant
11 were here, and I could ask the applicant what they want to do.
12 But like, you know, then we should allow the applicant an
13 opportunity to respond to what is now in the record. Is that
14 what you think?

15 MS. CAIN: I mean, the applicant has the burden of
16 proof. You know, they have final say, the final word in the
17 application, so that might be something that the Board wants to
18 consider. That being said, you have sort of gone through and
19 explained how it is not really impacting your decision. So I'll
20 leave it to the Board. I would just raise that as a note of
21 caution, I guess, that the applicant does have the final word.
22 So you may want to allow them the chance to respond if you would
23 like additional information from them on this point.

24 CHAIRPERSON HILL: Okay. I don't think any of us want
25 additional information from them on this point. I just want to

1 make sure we're clean about this. And so I think we'll go ahead
2 and take a vote. And if the applicant wants us to reopen the
3 records so that they can respond, then they can go ahead and ask
4 us to reopen the record so they can respond. Does that sound
5 like a clean way?

6 MS. CAIN: (Affirmative head nod.)

7 CHAIRPERSON HILL: Okay. All right. You're nodding
8 yes. All right.

9 I'm going to go ahead and make a motion to approve
10 Application No. 20382 as captioned and read by the secretary, and
11 ask for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion has been made and
14 seconded.

15 Mr. Moy, could you take a roll call?

16 MR. MOY: Yes, thank you, Mr. Chairman.

17 When I call each of your names, if you would please
18 respond with a yes, no, or abstain to the motion made by Chairman
19 Hill to approve the application for the relief requested. The
20 motion was seconded by Vice Chair John.

21 Mr. Smith.

22 BOARD MEMBER SMITH: Yes.

23 MR. MOY: Mr. Blake.

24 BOARD MEMBER BLAKE: Yes.

25 MR. MOY: Vice Chair John.

1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Zoning Commission Chair Anthony Hood.

3 CHAIRMAN HOOD: No.

4 MR. MOY: Chairman Hill.

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would the vote as 4-1-0 and this is on
7 the motion made by Chairman Hill to approve. The motion was
8 seconded by Vice Chair John in favor of approving. Also in
9 support of the motion to approve was Mr. Smith, Mr. Blake, and
10 opposed to the motion is Zoning Commission Chair Anthony Hood.
11 The motion carries on a vote of 4-1-0.

12 CHAIRPERSON HILL: Okay, great. Chairman Hood, we'll
13 see you later again, all right? Okay. Thank you.

14 (Whereupon, the Board of Zoning Adjustment hearing
15 session commences.)

16 All right, Mr. Moy. We are now in our hearing session.

17 We got -- Commissioner Shapiro, can you see us?

18 Commissioner, can you hear me?

19 COMMISSIONER SHAPIRO: I can hear you.

20 CHAIRPERSON HILL: Great. You have a hard stop at 11?

21 COMMISSIONER SHAPIRO: I can go a little bit longer.

22 CHAIRPERSON HILL: Okay.

23 Okay. Mr. Moy, can you go ahead and call our case,
24 please?

25 MR. MOY: All right. The first case in the Board's

1 hearing session is Case No. 20442 of Paul DeYoung. This
2 application is captioned and advertised, well actually is amended
3 for variance from the parking access requirements of Subtitle C,
4 Section 711.7, and special exception from the rear yard
5 requirements of Subtitle E, Section 306.1. This would construct
6 a rear deck on an existing attached two-story flat in the RF-1
7 zone. The property is located at 78 R Street, Northwest, Square
8 3101, Lot 72. And that's it for me, Mr. Chairman.

9 CHAIRPERSON HILL: Okay, great. Thank you.

10 Mr. Blake.

11 BOARD MEMBER BLAKE: I don't believe I'm on this case;
12 is that correct, Mr. Moy?

13 MR. MOY: I believe you are correct, unless you reviewed
14 the record.

15 CHAIRPERSON HILL: Okay. All right, Mr. Blake. We'll
16 see you in a little bit.

17 Mr. Bello, can you hear me?

18 MR. BELLO: Yes, Mr. Chairman, good morning.

19 CHAIRPERSON HILL: Good morning. Could you please
20 introduce yourself for the record?

21 MR. BELLO: Olutoye Bello, 1917 Benning Road, Northeast,
22 representing the applicant.

23 CHAIRPERSON HILL: Okay, great.

24 And who is here today with you, Mr. Bello?

25 MR. BELLO: I believe the owner is online.

1 CHAIRPERSON HILL: Okay, I see Mr. DeYoung.

2 Mr. DeYoung, could you introduce yourself for the
3 record, please?

4 MR. DeYOUNG: Yes, Paul DeYoung of 78 R Street, and I
5 am the applicant.

6 CHAIRPERSON HILL: Okay, great. Thank you. And I see
7 a Karla Lewis, Mr. Bello.

8 MR. BELLO: That is the ANC member.

9 CHAIRPERSON HILL: Okay. Great.

10 Commissioner Lewis, can you hear me?

11 COMMISSIONER LEWIS: Yes, I can. Can you hear me?

12 CHAIRPERSON HILL: Yes. Could you introduce yourself
13 for the record, please?

14 COMMISSIONER LEWIS: Yes, my name is Karla Lewis, and
15 I am the commissioner for ANC 5E06, and this address is in my
16 Single Member District.

17 CHAIRPERSON HILL: Okay, Commissioner. Thank you so
18 much for joining us today.

19 COMMISSIONER LEWIS: You're welcome. Thanks for having
20 me.

21 CHAIRPERSON HILL: Mr. Bello, can you tell us what
22 happened since the last time you were with us?

23 MR. BELLO: Not much, really. The records remain the
24 same, with the exception of what the Board wanted us to confirm,
25 that the ANC in fact reviewed the same project and that will

1 stand in the revisions to the areas of relief requested. I think
2 the ANC submitted a supplemental report, that will be Exhibit 57
3 to that effect.

4 CHAIRPERSON HILL: Okay. So, Mr. Bello, do you have
5 anything more for us then?

6 MR. BELLO: No, sir, other than to present the
7 application.

8 CHAIRPERSON HILL: Okay. All right. Well, you can go
9 ahead and do that whenever you like.

10 MR. BELLO: If Mr. Young would bring up the PowerPoint,
11 please.

12 Next page, please.

13 So, as advertised, the current relief that the
14 applicant seeks is two area variances, one for lot occupancy and
15 the other for the setback from the centerline of the alley to a
16 parking space. The special exception is for the rear yard. So,
17 two area variances and one special exception.

18 Next page, please.

19 This basically just describes the general neighborhood
20 that is full of row dwellings, flats, and conversions. Seventeen
21 of the 85 lots in that square have what the Office of Planning -
22 - as a term of reference is by the Office of Planning, "alley-
23 loaded" accessory structures. Those will be structures that are
24 constructed right to the rear property line.

25 Next page, please.

1 Now, with respect to the variance requests, these are
2 the three areas of -- the three points that the applicant needs
3 to make for the granting of the variance, which is the burden of
4 proof. So the applicant cites two case laws, Monaco and
5 Gilmartin. Basically, Monaco, in the case there, the Board may
6 take into account the uniqueness factors of the variance, the
7 zoning history of a property. And Gilmartin essentially says
8 that those difficulties must be unique to the property.

9 Next page, please.

10 So the applicant cites two BZA applications. BZA
11 application 18865, which is for 21 Quincy Street, Northeast,
12 which incidentally is in the same square as this application. In
13 approving that property, the BZA found that the two points the
14 Board relied on was the fact that the property had the right to
15 reconstruct an accessory structure, even though in that
16 application it was expanding that structure, and then the
17 narrowness of that property combined -- constituted an
18 extraordinary situation or condition for that property.

19 The applicant notes the following similarities between
20 21 Quincy Street and the property of application. One, both
21 properties are located in the same square, share the alley, which
22 splits the square running north-south; both properties are
23 narrow. In fact, 78 R Street is slightly narrower than that in
24 (audio interference); 16.66 feet as opposed to 16.67, that 21
25 Quincy Street was, and also is a smaller lot than 21 Quincy

1 Street.

2 Both properties have accessory structures which predate
3 the adoption of the 1958 Regulations, and we will see that on a
4 plat on this next page.

5 Both are affected by a confluence of factors which
6 constitute the extraordinary situation or condition of property
7 and result in the practical difficulties upon the owner.

8 The areas of relief sought are relatively identical.

9 Next page, please.

10 78 R Street is affected by a confluence of factors
11 unique to the (indiscernible) and much of the general
12 neighborhood as follows: the fact of the construction of the
13 deck prior to obtaining a building permit and prior to request
14 for relief before the BZA. In other words, the deck exists and
15 predates this application. The construction of the deck
16 constitutes the zoning history that the Board can into
17 consideration on the uniqueness facets of the (audio
18 interference) as cited by those two case laws, and the fact of
19 the narrowness of the existing law, a condition which predate the
20 adoption of the 1958 regulations.

21 So the applicant submits that these two factors
22 actually combine to constitute an extraordinary situation of
23 conditional property for the applicant. Next page, please.

24 The clear and practical difficulties upon the owners
25 of the property. The BZA finding and the conclusion of law in

1 BZA 18665, which is the 1421 Quincy Street, is applicable to the
2 instant application. 78 R Street exhibits two factors which
3 coupled constitute extraordinary situation of conditional
4 property. The lot is narrow, condition which predate the 1958
5 zoning regulations, the zoning history of the existence of the
6 constructed deck, absent the granting of the relief sought by the
7 owner of this application, the owner would have to be at a
8 logistical financial burden of demolishing of the construction
9 of the existing deck, and that is the practical difficulty upon
10 owner. Next page, please.

11 Substantial detriments and probability (phonetic). The
12 subject property will continue to be used and occupied as a flat,
13 which is a use permitted in the RF-1 Zone District as a matter
14 or right. The constructed deck is not enclosed and is open.
15 Therefore, it is not likely to adversely affect the light and air
16 of adjoining properties. Both immediate adjoining properties
17 south and north feature existent decks, with that of the adjoining
18 properties to the south constructed to the rear of the property
19 line, and the privacy of the user immediately adjoining property
20 are not unduly affected. The immediately abutting properties
21 west of subject property, which are separated by a twenty-foot
22 alley, actually face North Capitol Street and are zoned MU-4,
23 which is a mixed-use zone with much greater density than the RF-
24 1 zone.

25 Subject property abuts the twenty-foot alley whereas

1 the zoning regulations deems ten-foot alley with sufficient width
2 to access required parking. The subject property is served by
3 and has access to both north and west alley network, which
4 mitigates any potential adverse impact deriving from the location
5 of the deck and proximity to the alley. The two-foot margin of
6 relief from the provision of Subtitle C 711.7 is de minimus. An
7 accessory structure existed at the rear of the subject property
8 as of May 12, 1958. So the assumed net change in density is de
9 minimus. Next page, please.

10 Mr. Young can expand this to me. This is the 1958 base
11 map that shows exactly the existing condition of this property
12 and the alley that is shared.

13 Can you expand it a little please, Mr. Paul?

14 CHAIRPERSON HILL: Mr. Bello?

15 MR. BELLO: Yes?

16 CHAIRPERSON HILL: We can zoom in our on our own map.

17 MR. BELLO: Okay. Okay, that's fine. So if you zoom
18 in and you look at Square 3101, and if you look at the alley,
19 the alley that is shared by Quincy and 78 8th Street, you can
20 see the number of accessory structures that existed in that alley
21 as of that date, including 78 R Street and 121 R Street (sic).
22 So the point of the applicant is just to point out the
23 similarities of the conditions under which 21 Quincy Street was
24 granted the same relief. Next page, please.

25 So these plats represent -- these three plats represent

1 starting from the left 78 R Street, and the middle one is -- I
2 believe it's 21 Quincy, and the third is another application
3 which is BZA 20178 of Church Street. The intention here is just
4 the illustrative comparison of the relief sought by 78 R Street
5 that has been granted to these same two properties, not only in
6 areas of relief sought, but in also the density and the conditions
7 for granting those reliefs. Next page, please.

8 Again, an illustration of what was approved for 21
9 Street (sic) and Church Street, which is pretty similar to what
10 the request has been. Next page, please.

11 It's a photograph of the existing deck and the
12 adjoining property to the south of 78 8th Street, so the existing
13 condition are pretty similar, so, with the exception that the
14 property on the south is actually an enclosed garage. The
15 applicant's would not be enclosed, but would have a garage door
16 similar to what exists next door. Next page, please.

17 So with respect to the special exception for the rear
18 yard, the applicant basically needs to show three factors: that
19 the proposal will be in harmony with the general proposal in
20 terms of the zoning regulations/zoning maps; the proposed rear
21 deck does not change the character of the existing row structure
22 on subject property, nor its use, which is the predominant type
23 of structure in the neighborhood.

24 The General Provisions Chapter set forth under Subtitle
25 E 100.1 states that residential flat zones are residential zones

1 which provide for area of development primarily with row
2 dwellings, but within which there have been limited conversions
3 of dwellings or other buildings into more than two units. The
4 applicant's property is two units and does have a certificate of
5 occupancy. Next page, please.

6 The project would not tend to affect adversely the use
7 of neighboring property in accordance with zoning regulation and
8 maps. The surrounding neighborhood which is predominantly
9 characterized by row dwelling with low density commercial use,
10 zoning west of subject property in close proximity to North
11 Capitol Street. The applicant seeks special exemption from the
12 minimum rear yard setback provision set forth on the 306.1 and
13 subject to the conditions of Chapter 52, 5201.1(a).

14 Both immediately adjoining property owners support the
15 application, and each feature a rear deck and accessory structure
16 with a rear deck. The deck is unenclosed and the wall of the of
17 the accessory structure and lot line fence on adjoining lots
18 provide security screening on the underneath of the deck. The
19 row of properties west of the location are separated by a 20-
20 foot public alley. And those properties at the rear of the
21 commercially zoned properties that face North Capitol and run
22 perpendicular to the real property line, those properties can be
23 developed up to 50 feet in height with (indiscernible) to be 17
24 feet away from -- 27 feet away from the real property lot line.
25 So you add that to the alley, we're talking about almost 47, 50

1 feet away. Next page, please.

2 The special conditions that need to be satisfied as
3 specified under 5201.4 through 5201.7. A) the light and air
4 available to neighboring properties shall not be unduly affected.
5 The constructed deck is an open deck, the underneath of which
6 serves the dual function of a secure parking space. The two
7 adjoining properties south of subject property have access to
8 garages with roof decks, while immediately adjoining to the north
9 features an existing open deck. Both of the immediately adjoining
10 properties to the north and south, and are the most affected,
11 support the application. Next page, please.

12 Will meet such special conditions as need to be
13 specified. They are specified as follows: the privacy of use
14 and enjoyment of neighboring properties shall not be unduly
15 compromised. The most affected adjoining properties do not
16 object to this application. In fact, they're in support.
17 Constructed deck overlooks the roof of an accessory garage
18 located on the property south of subject property. The row
19 structures are located in an east-west orientation, hence the
20 deck does not result in a net change of the existing condition
21 with respect to privacy of use of neighboring properties. Next
22 page, please.

23 The proposed addition and accessory structure, together
24 with the original building, or the new principal building as
25 viewed from the street alley of public way shall not substantially

1 visually intrude upon the character, scale, or pattern of houses
2 along the street or alley front. The constructed deck as visible
3 from the rear alley at approximately eight feet does not
4 substantially visually intrude upon the character, scale, and
5 pattern of houses along the alley front. As aforementioned, 17
6 of 85 lots comprising (indiscernible) and as of 2014 121 Quincy
7 Street was approved. Alley (indiscernible) structures are
8 similar to the one which abuts up to the south properties facing
9 North Capitol West of subject property and located in MU as on
10 this street, which (indiscernible) higher density. Next please.

11 In demonstrating compliance with paragraphs A, B, and
12 C of the subsection (indiscernible) graphic representation such
13 as plans. Applicant has filed such documents for relief. Next
14 page, please.

15 The Board may require special treatment in the way of
16 design screening. Applicant is (indiscernible) to any
17 recommendations of the Board. Next page, please.

18 This section shall not be used in the reduction or
19 expansion of non-conforming use. A lot of things that beyond
20 what is authorized in this section is not applicable to the
21 application because the applicant exceeds 70 percent lot
22 occupancy. Next page, please.

23 Requesting leave from the unessential line setback.
24 You know, we've adjusted the application here on reliance of the
25 guidance provided by OAG, relief from the provisions of setbacks

1 for (indiscernible) with alleys set forth (indiscernible). This
2 is part of the revision that the applicant made upon guidance by
3 the OAG. Next page, please.

4 Applicant submits that their application has met the
5 burden of proof for the granting of the relief in respect to the
6 request of the relief granted for the following reasons:
7 consistent with case law cited and with the finding of BZA and
8 BAZ number 18865, subject property is (indiscernible) situation
9 of additional property as a result of a confluence of factors,
10 the narrowness of the lot, the zoning history of the current
11 existence of a deck resulting in retractable difficulty of the
12 prohibitive logistics and costs of the construction of
13 demolishing -- the demolishing of the deck in entirety. Applicant
14 cites two previously approved projects: one within the same
15 square as the subject property, similar in scope and area of the
16 relief applied for. Those two BZA cases are cited. As in 21
17 Quincy, the subject property also had a previously existing
18 (indiscernible) structure as of May 12, 1958, although Applicant
19 did not find a record of when it was demolished. The application
20 comprises of written proof of the variances sought and meets all
21 the conditions for granting a special exception. The two most
22 affected immediately adjoining neighbors support the application
23 as does the ANC. And that is the applicant's presentation. I
24 think that the owner may have -- wants to speak the issue of the
25 existence of the deck, how it came to be constructed

1 (indiscernible).

2 MR. DEYOUNG: Commissioners, can you hear me?

3 CHAIRPERSON HILL: Yeah, please go ahead and tell us
4 how the deck was already constructed and how it was there. And,
5 Mr. DeYoung, I just want to let you know the commissioner has to
6 get out of here at 11:20, so I have to kind of hurry this along.

7 MR. DEYOUNG: Absolutely. And I will try to be very
8 brief. We constructed the deck near the beginning of the COVID-
9 19 pandemic. The objectives there were to provide some security
10 for the home. We had actually been robbed three times. The deck
11 or the rear yard was not secured at that point in time. We also
12 wanted to provide some space for this. You know, I will confess
13 that we are new here and we hired a contractor that was also
14 unfamiliar with what needed to be done in order to make this
15 legal. So we are doing this the wrong way, but trying to correct
16 that at this time.

17 The deck is again intended to really provide an
18 opportunity for us to secure that rear line with the alley. And
19 I'm sure you're familiar with these styles of row homes; they
20 really don't have any outdoor space to speak of as originally
21 built. And so those were the objectives there. I'm certainly
22 happy to answer any additional questions that you may have.

23 CHAIRPERSON HILL: Okay, great. Does any - Mr. DeYoung,
24 you know, we have no -- none of us here would want to deny you
25 the thing of the deck. We're just trying to figure out whether

1 you work out with the regulations, you know. And so, you know,
2 we don't have any problems with decks and people enjoying the
3 outdoors. And so, but you have a tough a hill right now you're
4 trying to climb. Does anybody have any more questions for the
5 applicant or does anybody have any questions for the applicant
6 or the property owner before I turn to the Office of Planning?
7 If so, raise your hand. Okay. Can I turn to the Office of
8 Planning, please?

9 MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and
10 members of the commission. This is Maxine Brown-Roberts,
11 representing the Office of Planning on Case 20442 regarding the
12 variances for the lot occupancy and the added centerline. OP
13 disagrees with that. They propose 91 percent of the occupancy
14 is necessary due to the exceptional narrowness of the area of the
15 lot. The lot has a width of 16.66 feet, and which is just 1.3
16 three feet less than the required 18 feet. And the lot is similar
17 in size to lots -- other lots on the south side of R Street to
18 the east and some of the lots to the west. The properties on
19 the north side of R Street range between 1,500 and 1,800 square
20 feet. But most are in the 1,500 square feet range. Therefore,
21 the addition of a lot is not an exceptional situation because
22 it's similar to the other lots. Prior to the addition of the
23 deck, the structure had a lot occupancy of 64 percent, which is
24 greater than the 60 percent allowed by the RF-1 zone, but is
25 below the 70 percent allowed by special exception. The relief

1 from the required added setback is a direct result of that 91
2 percent lot occupancy.

3 The applicant has not demonstrated that there's an
4 exceptional situation that would result in practical difficulty
5 in meeting the required lot occupancy and the setback from the
6 alleys. In fact, the difficulty in meeting the requirement is
7 created by the applicant in constructing such a large deck. They
8 have not demonstrated the inability to use the property without
9 the deck, with a smaller -- or with a small deck which would meet
10 the required setback from the alley.

11 The proposed increase in the lot occupancy and a
12 reduction in the setback from the centerline of the alley does
13 not appear that it would cause any substantial detriment to the
14 public good. The added setback requirement provision of the
15 zoning regulation is intended to minimize potential impacts on
16 the parking spaces on adjacent property, pedestrian movement, and
17 public spaces. The 91 percent lot occupancy of the
18 (indiscernible) have not been justified and they are directly
19 related to the requested relief from the setback from the alley
20 center line. So collectively we believe that the requested
21 reliefs would be -- would harm the intent of the zoning
22 regulations.

23 Regarding the special exception for the rear yard,
24 again the deck addition resulted in a significant increase in the
25 lot occupancy, which eliminates the rear and (indiscernible)

1 which OP has and we are recommending denial. The proposed deck
2 has open railings and therefore we do not believe that it would
3 affect the -- or unduly affect the light and air to the adjacent
4 properties. The deck would allow views onto adjacent decks on
5 either side, but the same views would be allowed from the decks
6 from the adjacent properties. Therefore, we do not think that a
7 deck would affect the privacy from the adjacent neighbors.

8 The deck is visible from R Street, but -- it's not
9 visible from R Street, but it is visible from the alley. Again,
10 it is similar in size to other decks on -- to the east and to
11 the west. As stated by the applicant, there are other decks
12 within the neighborhood, but I think the -- just the adjacent
13 property has a large -- has larger deck that's been on this
14 property, and so the visibility along the alley is not consistent
15 with the general pattern along the alley. The house will continue
16 to be used as a flat, which is conforming use; however, the
17 excessive lot occupancy has resulted in structure and not having
18 a rear yard.

19 Regarding the general special exception relief, the
20 (indiscernible) of a rear yard and to reduce it back from the
21 center line are a result of the 91 percent lot occupancy. Before
22 we wrote our report, the applicant did not provide OP any reasons
23 why the deck was constructed in a manner and as to why a reduced
24 deck, possibly similar to a deck on adjacent property to the
25 west, would not be functional. The proposed relief would result

1 in addition that in form and (indiscernible) would be
2 inconsistent with the intent of the regulations.

3 So thank you, Mr. Chairman, and I'm available for
4 questions.

5 CHAIRPERSON HILL: Okay. Ms. Brown-Roberts, so if they
6 were here for a special exception for the 70 percent lot
7 occupancy, that means that that the center line setback thing
8 would be gone and the area things would be gone, correct?

9 MS. BROWN-ROBERTS: Possibly.

10 CHAIRPERSON HILL: Possibly.

11 MS. BROWN-ROBERTS: Yes. So we haven't done the
12 measurements, but possibly, yes.

13 CHAIRPERSON HILL: Okay. And then how far back -- how
14 much of that deck would they have to remove, do you know, to get
15 to 70 percent?

16 MS. BROWN-ROBERTS: I don't know.

17 CHAIRPERSON HILL: Okay. All right. Does anybody have
18 any questions for the Office of Planning? No? Ms. John? No?
19 Mr. Smith, do you have any questions of the Office of Planning?

20 MR. SMITH: No.

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

23 MR. BELLO: Just a couple, sir.

24 Thank you, Ms. Brown. In reading OP's report, is it
25 safe to assume that you did not come (indiscernible) the

1 confluence of factors as they are cited in the application?

2 MS. BROWN-ROBERTS: I read what was written and
3 submitted. I did look at some of the cases you reference.
4 However, I found that they were different circumstances. I don't
5 think that they were doing a 91 percent lot occupancy, and so I
6 found that there were differences in the cases.

7 MR. BELLO: Okay. So assuming that the case law is
8 what it says, right, so the Office of Planning's position would
9 be that they don't consider preexistence of the deck as zoning
10 history?

11 MS. BROWN-ROBERTS: We -- I did consider the zoning
12 history about the addition that was there, the 64 percent lot
13 occupancy that that was there, but again there was no
14 demonstration that an increase up to 70 percent would work or not
15 work or that --

16 MR. BELLO: No -

17 MS. BROWN-ROBERTS: Pardon?

18 MR. BELLO: I was actually talking about the
19 preexistence of the deck. We understand that the existing
20 footprint is (indiscernible) of non-conforming structures, so any
21 addition require some kind of relief and --

22 MS. BROWN-ROBERTS: Correct.

23 MR. BELLO: So the applicant's submission was that in
24 the context of the (indiscernible) and in the context where the
25 preexistence of the deck constitutes a zoning issue, so Office

1 of Planning's position can only be we don't agree with that as a
2 zoning history or we do agree with that as a zoning history?

3 MS. BROWN-ROBERTS: We didn't take into consideration
4 the case law.

5 MR. BELLO: Thank you. Just one last question. And
6 you may not be familiar, but in BZA 20214, which involved a
7 somewhat of a similar case of a preconstructed deck, the Board
8 found in that BZA that the issue of preconstruction of a deck
9 was an enforcement issue, not an issue before the Board. So
10 would you say that then that the existence of a deck, you looked
11 at it as (indiscernible) needed to be constructed because it
12 exists (indiscernible)?

13 MS. BROWN-ROBERTS: No. We -- our analysis looked --
14 as if there wasn't a deck there and how we would analyze that.
15 Again, we -- there was no information in the record as to why
16 the deck was built.

17 MR. BELLO: Okay. Just one last point and that's it.
18 In that case, the BZA 20214, Office of Planning in fact
19 recommended approval for the retention of the deck. And it also
20 involved a rear yard relief.

21 MS. BROWN-ROBERTS: Right.

22 MR. BELLO: Thank you very much.

23 MS. BROWN-ROBERTS: Thank you.

24 CHAIRPERSON HILL: Okay. Maybe I'm a little confused.
25 Ms. Brown-Roberts, the 64 percent lot occupancy, that's without

1 a deck or you don't know?

2 MS. BROWN-ROBERTS: That is without a deck, yes.

3 CHAIRPERSON HILL: The building itself is at 64
4 percent?

5 MS. BROWN-ROBERTS: Yes. Yes, there's a rear addition
6 that -- yes, so the existing -- before the deck was built, it
7 was like 64 percent, yes.

8 CHAIRPERSON HILL: So 6 percent lot occupancy, that's
9 a pretty small deck probably?

10 MS. BROWN-ROBERTS: Possibly.

11 CHAIRPERSON HILL: Right. Okay. I like the possibly
12 part. All right. Does anybody got anything more? Because now
13 I'm going to ask Mr. Bello what you want to do and you can talk
14 to your applicant or whatever. Like I guess if you came back
15 here with trying to get to 70 percent by special exception, Mr.
16 Bello can you -- try and get to 70 percent by special exemption,
17 that means you change this application, you don't have to go
18 through the process again, and you can try a special exception.
19 I mean, I don't think you have the votes here for it, but I don't
20 know. And so I guess you can talk to your client or, Mr. Bello,
21 do you have an idea as to what you want to do?

22 MR. BELLO: I'll have to talk to the client, Mr.
23 Chairman.

24 CHAIRPERSON HILL: Okay. Why don't we give you five
25 minutes, okay?

1 MR. BELLO: Thank you much. We'll come back. All
2 right.

3 (Recess.)

4 CHAIRPERSON HILL: Okay. Are we all back?

5 MR. BELLO: Yes, Mr. -- I'm back, Mr. Chairman.

6 CHAIRPERSON HILL: Okay. Commissioner Lewis, are you
7 there?

8 COMMISSIONER LEWIS: Yes, I am and I have been waiting
9 to testify. I think that you all forgot about me.

10 CHAIRPERSON HILL: (Indiscernible). We didn't forget
11 about you, sorry. There's your -- and I'm sorry, I got kind of
12 caught up in a bunch of stuff. The testimony -- if you would
13 please give us your testimony and then also if you have any
14 questions for the applicant and/or the Office of Planning. But
15 please go ahead and give us your testimony.

16 COMMISSIONER LEWIS: As previously stated, I am the
17 commissioner for ANC 5E06 and this project is in my
18 (indiscernible) in the District. I actually -- can you hear me?

19 CHAIRPERSON HILL: Yeah, we can hear you. I could see
20 you a second ago, but --

21 COMMISSIONER LEWIS: Okay. Something just happened
22 with my network. Sorry about that.

23 CHAIRPERSON HILL: That's all right.

24 COMMISSIONER LEWIS: Okay. And I'm not only the
25 commissioner, but I'm also a neighbor. I actually live in the

1 same lot, 3101, and my square is 100. So I live about five doors
2 down from where Mr. DeYoung currently lives. I have lived in
3 the neighborhood for over 35 years. And I am familiar with the
4 fact that there are other neighbors that have similar structures.
5 I don't know why my video keeps stopping.

6 CHAIRPERSON HILL: That's all right, Commissioner, we
7 can hear you.

8 COMMISSIONER LEWIS: Okay. Well, I just wanted to say
9 that the Bloomingdale Civic Association voted to support this
10 application as well as the Advisory Neighborhood Commission ANC
11 (indiscernible). Mr. DeYoung appeared before us in March, I
12 think (indiscernible) had sent him a letter stating that he gave
13 a present -- his first presentation, we require all zoning
14 applications to come before the agency twice. So they give a
15 preliminary -- a first presentation and therefore if we have any
16 questions, they can go and seek answers to our questions and come
17 before us a second time to do a presentation at which time we
18 normally take a vote. So he did appear before us on March 16th
19 of this year, as well as April 16, and the ANC voted to support
20 his application.

21 He has had several letters of support from the
22 neighbors and I've heard from several of the neighbors as well.
23 They came to talk to me about this application to let me know
24 that they were in support of it.

25 As previously mentioned by Mr. Olutoye Bello, there are

1 similar structures all along the alley, so this is not different
2 and it does not change the character of the neighborhood. I
3 mean, the Bloomingdale District is now a historic district, but
4 it certainly does not change the character of the neighborhood.
5 And we have seen many projects coming before the ANC because of
6 the pandemic. People realize that they want more outdoor space.
7 They need more outdoor space. If you're going to be subject to
8 staying home, you know, with the stay at home order, you would
9 like to have a place where you can go and be free to outdoors.
10 And such is the case here.

11 Not only that, in this particular district, there is
12 certainly an issue with parking we have. It's a nice area. We
13 have plenty of restaurants to go to and we have plenty of people
14 coming here to park. So having a space in which you can have a
15 garage is -- that's like gold around here, because parking is
16 certainly an issue. And I myself suffer because my square and
17 my lot does not have a garage in the back of it. In back of my
18 house is just a little egress. So I'm always fighting for the
19 public parking on the front side of the house, which is on R
20 Street and Bless (phonetic).

21 So I do support this. And I would also like to note
22 that this particular project came before the Board because of the
23 stop work order, because I was the one that noted it. I noted
24 that there was illegal construction going on. So I was the one
25 that called in the complaint because it was a new construction.

1 So I don't have any problem with the construction of the deck,
2 but I do have a problem with illegal construction going on. So
3 I'm totally in support of it. And Mr. DeYoung explained that he
4 was new to the neighborhood and the construction crew I suppose
5 that not -- wasn't aware of the permitting process, but I'm hoping
6 that this can now be corrected.

7 CHAIRPERSON HILL: Okay. Thanks, Commissioner.
8 Commissioner, did you read the Office of Planning's report?

9 COMMISSIONER LEWIS: I did read their report.

10 CHAIRPERSON HILL: Okay. So you understand the
11 standard and the criteria that we have to jump through in order
12 to get to a variance?

13 COMMISSIONER LEWIS: I understand the standard, but the
14 thing is there are so many exceptions already along that alley
15 line and alleyway.

16 CHAIRPERSON HILL: Okay. Do you have any questions for
17 the Office of Planning?

18 COMMISSIONER LEWIS: I do not. Well, I would like to
19 know what -- I would like to know in the future how these things
20 will be handled when you have so many projects along the same
21 alleyway it's not fair that some people are allowed -- you have
22 the have and have nots situation. So if seven people are, you
23 know, able to have it, why aren't others? And they need to remedy
24 this situation because it's just not fair.

25 CHAIRPERSON HILL: I mean, it's not that -- well, it's

1 due to the regulations that we're here, right? It's because
2 they're already at 64 percent lot occupancy and they're trying
3 to go to basically 91 percent lot occupancy. And so the
4 regulations don't allow that. So, therefore, that's why --

5 COMMISSIONER LEWIS: But the regulations -- but you
6 have houses that are along this alley, I mean, I have one of my
7 neighbors that have been there over 40 years and she has such a
8 structure.

9 CHAIRPERSON HILL: Ms. Brown-Roberts, are you there?

10 COMMISSIONER LEWIS: Pardon?

11 CHAIRPERSON HILL: I'm trying to ask the Office of
12 Planning a question.

13 MS. BROWN-ROBERTS: Yes, Mr. Chairman?

14 CHAIRPERSON HILL: So -- and I'm cognizant of
15 Commissioner Shapiro's schedule.

16 COMMISSIONER LEWIS: I'm not Commissioner Shapiro. I
17 -- oh. Oh, I see, Peter Shapiro. I kept saying Peter --

18 CHAIRPERSON HILL: No, that's all right. That's all
19 right, Commissioner Lewis. That's all right. Commissioner
20 Shapiro is the one that has to leave at 11:20.

21 COMMISSIONER LEWIS: Oh, okay. Sorry.

22 CHAIRPERSON HILL: So, Ms. Brown-Roberts, in terms of
23 the other -- because now I'm just curious -- the other decks or
24 the other buildings in the block, they just are meeting the
25 regulations, the criteria, as far as you know, to have those

1 decks, correct?

2 MS. BROWN-ROBERTS: They should be meeting the
3 regulation, but I don't know under what conditions they were
4 built or when they were built, so.

5 CHAIRPERSON HILL: Okay.

6 COMMISSIONER LEWIS: Some of them were constructed, you
7 know, a long time ago, I mean, because we have neighbors, as I
8 previously stated, I myself have been here for 35 years, and so
9 we have neighbors here that, you know, have been here a long
10 time. And so I don't know when these regulations came into play,
11 but they may not have existed at that time.

12 CHAIRPERSON HILL: Right. And now we're under the
13 regulations (indiscernible) I guess, Ms. Lewis -- I mean
14 Commissioner Lewis, is what I'm trying to figure out. So does
15 anybody have any questions? Did the board have any questions for
16 Commissioner Lewis? Okay. All right, Commissioner Lewis -- oh,
17 Commissioner Shapiro, you have a question?

18 COMMISSIONER SHAPIRO: Just a brief comment, Mr. Chair.
19 Just want to thank Commissioner Lewis. Thank you for your -- I
20 mean, you clearly have your finger on the pulse of the community
21 and you're representing your constituent well. And I would just
22 reiterate what Chair Hill has said, which is we could take that
23 into account, and our primary task is to work within the regs,
24 which means that we don't get to make everybody happy around this
25 stuff all the time, but we're going to -- we'll talk it through

1 and deliberate. That's all I have, Mr. Chair.

2 COMMISSIONER LEWIS: Okay. But what can the Board do
3 with regards to when you have situations like this where it's
4 already preexisting and you have neighbors that have such decks
5 to change the regulations so that there's leniency for other
6 neighbors that would like to build like structures?

7 COMMISSIONER SHAPIRO: I mean, if I can, Mr. Chair?
8 Short of it is that's not within the purview of the BZA. So
9 there -- if we're looking at a broader issue around changing the
10 regulations, there are pieces of that that the Zoning Commission
11 can take up, but certainly this body right here is working within
12 the regulations that are before us.

13 COMMISSIONER LEWIS: Okay. So then I would present
14 that to OP in terms of when they look at those structures and
15 they see that there are existing structures in an alley that are
16 somewhat the same, that they need to take these things into
17 consideration.

18 COMMISSIONER SHAPIRO: Yes, ma'am.

19 CHAIRPERSON HILL: Okay. All right. Thanks,
20 Commissioner. All right. Mr. Bello, do you know what you and
21 your client would like to do?

22 MR. BELLO: (Indiscernible).

23 VICE CHAIR JOHN: Excuse me. Excuse me, Mr. Chairman,
24 did we check to see if there's anyone waiting to testify?

25 CHAIRPERSON HILL: Thanks, Ms. John. Commissioner

1 Shapiro, your timeline has just scrambled my brain, so, but I'm
2 trying.

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

4 MR. YOUNG: We do not.

5 CHAIRPERSON HILL: Okay. All right. Okay. Mr.
6 DeYoung, you had something you want to say?

7 MR. DEYOUNG: Only in response to a question, Mr. Hill.
8 You had asked whether or not we wanted to proceed here today.
9 After back of envelope calculation, the 70 percent option really
10 doesn't get us to a deck at all, something shy of 50 square feet
11 by my own calculation, it really wouldn't provide for, again, the
12 two objectives that we set out here for today. And so with your
13 indulgence, I think we would like to ask for a sense of where
14 the Board stands on this. And then moving forward, we will
15 consider how to amend our application if need be. But, you know,
16 again, I would just reiterate that the community has indicated
17 its support for this and we don't feel that it does change --

18 CHAIRPERSON HILL: Mr. DeYoung, I'm trying to -- I
19 mean, I live here. I've lived here for a very, very long time
20 in D.C., I just can tell what's going to happen here. And so
21 I'm trying to help also, like I have no problem with a deck. I
22 stated this at the very beginning, right. We have to go with
23 the regulations that are in front of us. If it were just up to
24 me and I can do whatever I want to do, that sounds great. You
25 know, deck looks good. The deck is already built, to Commissioner

1 Lewis' point, right? So, you know, it's not that I want to say
2 no. I just don't think you have the votes here. So that's why
3 I'm trying to say that once the application is gone, the
4 application is gone. So you won't even be able to revise the
5 application. I'm going to close this hearing and we're going to
6 take a vote. And so you're telling me to close the hearing and
7 take a vote, correct.

8 MR. DEYOUNG: No, based upon that restatement, we will
9 go ahead and revise our application.

10 CHAIRPERSON HILL: Okay. So whether you revise the
11 application or not, whether you revise the application or not,
12 is up to you. If -- I'm going to go ahead and close the hearing,
13 right? And then we're going to go ahead and put this on for
14 decision next week. Okay? If, Mr. Bello, you have a different
15 idea as to what your client might want to do, you can let us know
16 before then, but we'll decide next week. Do you understand, Mr.
17 Bello?

18 MR. BELLO: Not quite, Mr. Chairman. Perhaps I was
19 confused by your earlier statement. I thought that the reason
20 for taking a quick recess was to find out whether the applicant
21 wanted to revise this application and leave the records open to
22 do so or if need be.

23 CHAIRPERSON HILL: Right. So, Mr. Rice, are you there?
24 Yeah, I'm just trying to be helpful, and so, you know, I'm trying
25 to be, you know, allow some flexibility. And any of my board

1 members here can go ahead and speak up if you want -- if you have
2 a different idea as to what I'm trying to do here. And so I was
3 going to, Mr. Rice, close the hearing, close the record, and then
4 set this up for decision next week. Right? And if the applicant
5 wanted to change anything, they would still have an opportunity
6 to do so. Is that app- -- or we can have a continued hearing
7 next week. And I'm, again, just trying to be flexible, given
8 the situation that I think this application is in. Mr. Rice, do
9 you have a thought

10 MR. RICE: My thought would be if you close the record,
11 the applicant's not going to be able to amend any of its filings
12 and plans that are currently in the record. So if you're going
13 to do anything, I would suggest continuing the hearing to a date
14 subsequent and allowing the applicant about a week to file
15 whatever it needs, as well as OP and the public or any agencies
16 another week to file their responses to that completed filing.

17 CHAIRPERSON HILL: Yeah, I mean, Mr. Bello, what I'm
18 trying to get at is you still have to get a go back -- I mean,
19 it's basically you're not starting all the way at the beginning,
20 but you are going to have to go to OP again, right? And so it's
21 not something that's going to happen by next week. So I think
22 that we'll go ahead -- Mr. Shapiro, when are you back with us
23 again?

24 COMMISSIONER SHAPIRO: Sorry about that, Mr. Chair. I
25 think I have carried over cases on July 21 and July 28 and then

1 September 15th is a full day.

2 CHAIRPERSON HILL: Okay. So September 15th is a full
3 day, right? And, Commissioner Lewis, can you hear me?

4 COMMISSIONER LEWIS: Yes.

5 CHAIRPERSON HILL: When do you guys meet? When does
6 your ANC meet?

7 COMMISSIONER LEWIS: We meet the third Tuesday of
8 September.

9 CHAIRPERSON HILL: So you'll meet again on the 21st of
10 September?

11 COMMISSIONER LEWIS: Looking at the calendar now. Yes,
12 yes.

13 CHAIRPERSON HILL: Okay. So that's the next time you
14 meet again, correct?

15 COMMISSIONER LEWIS: Yes.

16 CHAIRPERSON HILL: Okay. Because, Commissioner,
17 they're going to have to come back to you again if, in fact, they
18 change this application, right? So, Mr. Bello, I'm going to put
19 you back on September 15th when Commissioner Shapiro is here.
20 And you might have to ask for a delay if you're trying to get
21 back in front of the ANC again. And so let's just go ahead and
22 leave it at that and see what happens on September 15. Mr. Bello,
23 can you hear me?

24 MR. BELLO: Yes, thank you, Mr. Chairman.

25 CHAIRPERSON HILL: All right. So we'll do a continued

1 hearing, everybody, on September 15th.

2 Mr. Moy, do you hear me?

3 MR. MOY: Yes, yes, I do Mr. Chairman, I heard all of
4 it. So you're going to continue the hearing to September 15th.

5 CHAIRPERSON HILL: Yes. Commissioner Lewis, do you
6 understand?

7 COMMISSIONER LEWIS: I understand. On September 15 he
8 comes back if he wants. And I don't understand -- well, let me
9 say this, I don't understand why you would just come back on
10 September 15th and not just pick a date after the 21st where the
11 ANC would have a chance to hear the new application.

12 CHAIRPERSON HILL: I got you. Commissioner Lewis, I
13 don't know what they're going to do. And the 15th is the next
14 time Commissioner Shapiro is here. And Commissioner Shapiro has
15 to be the person that decides because he's the commissioner that's
16 on this case. So we'll see what happens. You know, he's -- it'd
17 be better if it was the other way around, but it's not. And so
18 Commissioner Shapiro is back here on the 15th of September. So
19 we'll continue this case to the 15th of September. And, Mr.
20 Bello, we'll see where you are at that time. All right?

21 MR. BELLO: Thank you, sir.

22 CHAIRPERSON HILL: Okay. Thank, everybody, and,
23 Commissioner Shapiro, I got you off on time. Commissioner Lewis,
24 thanks for joining us. And we're going to take a break, I think.
25 Bye-bye, Commissioner Shapiro.

1 COMMISSIONER LEWIS: Bye. Thank you.

2 CHAIRPERSON HILL: So, you guys, it's 11:23. We got
3 one still -- we still have one with Commissioner Hood. Right?
4 And then -- do you want to just take a ten-minute break? We're
5 eight minutes, why don't we come back at 11:30, okay?

6 (Recess.)

7 CHAIRPERSON HILL: Mr. Moy?

8 MR. MOY: Yes, sir?

9 CHAIRPERSON HILL: Is Chairman Hood only here on the
10 next case, 20495?

11 MR. MOY: That's correct, sir.

12 CHAIRPERSON HILL: Okay.

13 MR. MOY: No, 20380.

14 CHAIRPERSON HILL: Oh.

15 MR. MOY: That should be the next one.

16 CHAIRPERSON HILL: Okay. I got them mixed up. Okay.

17 MR. MOY: It's the (indiscernible) Polygon.

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

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

21 The Board is back in its hearing session after a quick
22 break. And the time is at or about 11:36 a.m. The next case is
23 application number 20380 of Polygon Holdings, LLC. This
24 application is amended for special exceptions under the new
25 residential development requirements, Subtitle U Section 421 side

1 yard requirements, Subtitle F Section 306.2(a) this would
2 construct a three-story addition to an eight-unit residential
3 apartment house. Previously it was filed for nine units. It's
4 now intended for eight units, and this is in the RA-1 zone,
5 property located at 4457 MacArthur Boulevard NW, Square 1363, Lot
6 57.

7 There are (indiscernible) -- Mr. Chairman, there are
8 preliminary matters here. First, there -- the applicant filed
9 not meeting the 21-day rule, a supplemental filing with a cover
10 letter, I believe self-cert, and the applicant's request to waive
11 the 21-day filing. So those are all under Exhibit 72.

12 We also have a 24-hour block where the applicant filed
13 a motion to postpone and then I believe there's a consent motion
14 to postpone. And I would ask that you confirm that with the
15 party in opposition, which is Foxhall Terrace. And let's see -
16 - well, going back a step, the applicant not meeting the 21-day,
17 there's a waiver to that because they submitted revised plans,
18 revised surveyor's plat, and revised (indiscernible), I may or
19 may not have said that. And that's it.

20 CHAIRPERSON HILL: Okay. All right. Mr. Sullivan, can
21 you hear me?

22 MR. SULLIVAN: Yes, I can.

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

25 MR. SULLIVAN: Yes, thank you, Mr. Chairman, and

1 members of the Board. Marty Sullivan, on behalf of the applicant.

2 CHAIRPERSON HILL: Who's here today with you, Mr.
3 Sullivan?

4 MR. SULLIVAN: The architect, Adam Crane, is here.

5 CHAIRPERSON HILL: Okay. Mr. Brown, are you there, can
6 you hear me?

7 MR. BROWN: I am here, Mr. Chairman.

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

10 MR. BROWN: Patrick Brown from Greenstein DeLorme &
11 Luchs on behalf of the party opponent, Foxhall Terrace, LLC.

12 CHAIRPERSON HILL: Okay. Great. Dr. Lee (phonetic),
13 are you there, Lea (phonetic).

14 DR. LEA: Thank you, Chairman Hill. It's -- yes, I am
15 here. And you can pronounce the last name Lee.

16 CHAIRPERSON HILL: Lee.

17 DR. LEA: Sorry, I know the A on the end confuses
18 things, but I am the owner of the abutting property at 4459,
19 representing myself.

20 CHAIRPERSON HILL: Okay. Great. Thank you, Dr. Lea.

21 DR. LEA: Thank you.

22 CHAIRPERSON HILL: Mr. Sullivan, what has happened
23 since the next (sic) time and are you asking for a postponement?

24 MR. SULLIVAN: We are. We had a mediation yesterday
25 between the parties and we're optimistic that it's going to lead

1 to something productive. And so at least to the extent that it
2 is worth asking for a continuance, and so all parties agreed that
3 it would be a good idea to ask for a continuance.

4 CHAIRPERSON HILL: Okay. Chairman Hood, where you --
5 when will you be here with us next?

6 CHAIRMAN HOOD: Mr. Chairman, if they come back with
7 an agreement and things are going well, whenever they say, that's
8 when I'll be back.

9 CHAIRPERSON HILL: Okay. All right. So let's see, Mr.
10 Moy, I know that we have a bunch of stuff going on, when can we
11 come back with them -- well, actually, Mr. Sullivan, when do you
12 think there might be a chance that you could be back with us?

13 MR. SULLIVAN: I'm sorry, I don't have this date, but
14 it was at least September. There's no hurry.

15 CHAIRPERSON HILL: Got it. Because you're going to try
16 to go back to the ANC then?

17 MR. SULLIVAN: Yes, we would.

18 CHAIRPERSON HILL: All right. So then I mean, I can
19 put you in October?

20 MR. SULLIVAN: October would be great.

21 CHAIRPERSON HILL: Okay. Mr. Moy when is the -- when
22 are you scheduling out in October?

23 MR. MOY: It will be -- it would accommodate Chairman
24 Hood if we -- the Board can schedule this for October 6.

25 CHAIRPERSON HILL: Okay. All right. We'll do a

1 continued hearing on October 6th. Mr. Brown, you're in agreement
2 with that?

3 MR. BROWN: I'm just checking my calendar, Mr.
4 Chairman.

5 CHAIRPERSON HILL: Sure.

6 MR. BROWN: Yes, October 6 is fine for my client.

7 CHAIRPERSON HILL: Okay. Dr. Lea?

8 DR. LEA: Yes, I'll make that work. Thank you.

9 CHAIRPERSON HILL: Okay. Great. All right. Well,
10 good luck to everybody and we'll see you on October 6th.

11 MR. BROWN: Thank you.

12 DR. LEA: Thank you very much.

13 CHAIRPERSON HILL: Thank you. Bye-bye.

14 Chairman Hood, is that the end for you?

15 CHAIRMAN HOOD: That's it for me. You all have a great
16 day.

17 CHAIRPERSON HILL: Okay. You as well, sir. Bye-bye.

18 Okay. Let's see. All right. Do we want to hear one
19 case or see how long we -- I mean, is everybody okay for the
20 whole lunch thing? Everybody's shaking their head yes. Okay.
21 Let's see. Okay. Is Commissioner Turnbull there?

22 COMMISSIONER TURNBULL: I'm here.

23 CHAIRPERSON HILL: Okay. Great. Mr. Moy, can I just
24 make sure we got the right order with you? Can I read through
25 this order real quick?

1 MR. MOY: Yes.

2 CHAIRPERSON HILL: Okay. So I got 20495, then 18400C?

3 MR. MOY: Wait a minute, what was that first one?

4 CHAIRPERSON HILL: 20495.

5 MR. MOY: Yeah, 'cause my next one I have is 18400C

6 CHAIRPERSON HILL: Okay. Somehow, I got messed up.

7 That's fine. So 18400C.

8 MR. MOY: Yeah, yeah.

9 CHAIRPERSON HILL: Then you got 88 - 181830B as in boy?

10 MR. MOY: Correct.

11 CHAIRPERSON HILL: Then 20479?

12 MR. MOY: Correct.

13 CHAIRPERSON HILL: Then 20480?

14 MR. MOY: Correct.

15 CHAIRPERSON HILL: Then what do you have after that?

16 MR. MOY: 20475.

17 CHAIRPERSON HILL: 20475. Okay. And then what do you
18 have after that?

19 MR. MOY: 20476.

20 CHAIRPERSON HILL: Okay. And then you have 20495?

21 MR. MOY: Correct.

22 CHAIRPERSON HILL: Okay. That's fine. Okay. Right,
23 the case before 83 was withdrawn, correct?

24 MR. MOY: Yes, sir.

25 CHAIRPERSON HILL: Okay. Great. Okay. All right.

1 Before we go ahead and start our next case, I guess, Commissioner
2 Turnbull, this is your last day with us -- well, actually that's
3 not true I suppose. I don't know -- this is your last full day
4 with us.

5 COMMISSIONER TURNBULL: Yeah, the full -- with a full
6 set of hearings, yeah.

7 CHAIRPERSON HILL: Right. And so I don't know exactly
8 -- I guess I'm going to say goodbye twice, Commissioner, because
9 Commissioner Turnbull, this is your, you know, you've decided
10 to leave us and go to a higher state.

11 COMMISSIONER TURNBULL: Right, a higher plane of
12 living.

13 CHAIRPERSON HILL: Higher plane of living. Well,
14 Commissioner, my heartfelt thank you and congratulations on the
15 higher plane. It's been an absolute pleasure working with you.
16 I've learned a lot from you about architecture and zoning and
17 also, you know, how to work with people. And so I really
18 appreciate, you know, all of your guidance and look forward to
19 seeing you in the real world in some form -- in some future time.

20 COMMISSIONER TURNBULL: Well, I want to say I really
21 appreciate you, Chairman Hill, and the rest of the Board,
22 Chrishaun, Carl, and Ms. John, Lorna, it's been a pleasure working
23 with you all -- with all of you and the former colleagues of the
24 BZA, Mr. Hart and then -- just Mr. Hart, but so I really enjoyed
25 working here. It's been a lot of fun. It's hard to say how to

1 the BZA is -- you separate Zoning Commission from BZA, the BZA
2 is much more gritty, nitty-gritty, and you rub shoulders with the
3 people and it's kind of interesting. So I've enjoyed being a
4 part of the BZA, I really have.

5 CHAIRPERSON HILL: Well, that's wonderful. Chairman -
6 - I mean, Commissioner Turnbull, I'm going to go around the table
7 here and just let people wish you well. I'm going to end with
8 Ms. John. Ms. -- Mr. Blake, you've been here the least amount
9 of time, but would you like to say something?

10 BOARD MEMBER BLAKE: Yes, Commissioner Turnbull, thank
11 you very much. You've been very supportive of me in my early
12 stages of this adventure, and I appreciate that very, very much.
13 Thank you.

14 COMMISSIONER TURNBULL: Oh, thank you, Carl.

15 BOARD MEMBER SMITH: Mr. Turnbull, I'm still -- I still
16 consider myself a fresh face so -- even though I think it's been
17 about a year, but your perspective from an architectural
18 standpoint, I believe, you know, lends itself greatly to this
19 Board, and you will -- you will, and your expertise will be
20 greatly missed. So congratulations on arriving to that higher
21 plane. I'll be there in 30 years. I'll see.

22 COMMISSIONER TURNBULL: Well, thank you, Chrishaun.
23 Thank you very much.

24 BOARD MEMBER SMITH: Oh, thank you.

25 CHAIRPERSON HILL: Ms. John?

1 VICE CHAIR JOHN: Thank you, Mr. Chairman. So,
2 Commissioner Turnbull, I just don't know what to say. This took
3 me by surprise. I don't know why, but I'm really going to miss
4 you, to put it, you know, simply, and I've really appreciated
5 your advice and your perspective from the Commissioner's, you
6 know, point of view in terms of the policy issues that we on the
7 Board grapple with all the time and because of the tension between
8 -- sometimes between the policy and the regulations, and so I've
9 always appreciated your feedback on that, which is always well
10 thought out and carefully delivered.

11 So what else can I say? I'm going to really miss you.
12 I miss your architectural insight, you know, and if there's
13 something that I'm trying to struggle with late at night and
14 beyond the next day, I say okay, I know Mr. Turnbull will educate
15 me. So I'm going to miss you. And I will always cherish our
16 extracurricular outing and I am very happy it took place when it
17 did. That's all I'm going to say. So --

18 COMMISSIONER TURNBULL: Well, thank you, Lorna, and I'm
19 glad we got you up into the dome. I -- and it was a bit of a
20 struggle there for a bit, but with Chairman Hill, we were able
21 to convince you to keep going so I'm glad you could make -- you
22 made it up there.

23 VICE CHAIRPERSON JOHN: Yes, yes, yes, it was amazing.
24 Thank you. And we -- this is not goodbye, this is, you know --

25 COMMISSIONER TURNBULL: No.

1 VICE CHAIR JOHN: Good. All right.

2 CHAIRPERSON HILL: Well, we're get -- we'll do a briefer
3 version on this on August 6th. Okay, Commissioner?

4 COMMISSIONER TURNBULL: Okay.

5 CHAIRPERSON HILL: But it's a pleasure, Commissioner.
6 All right. Mr. Moy -- or, Mr. Moy, do you want to say anything?
7 You've been working with Commissioner Turnbull -- well, you can
8 save it for August 6th as well, but longer than us even.

9 MR. MOY: Well, I have a personal note in a way, apart
10 from concurring with all the comments we just heard, but I really
11 have enjoyed my time when we were in the hearing room sitting
12 next to Mr. Turnbull because that's where the Zoning Commission
13 chair is, and for him reviewing the drawings, the elevation,
14 floor plans, the penthouse level. Those are words of wisdom.
15 And for me, personally, I'm going to miss all that, looking at
16 the drawings. Despite all the technicalities, Mr. Turnbull is a
17 really good guy and that means a lot to me. So I wish you -- on
18 behalf of the staff, I wish you well.

19 COMMISSIONER TURNBULL: Thank you very, very much. I
20 -- I'm not sure who's going to be coming after me. The selection
21 is now being made, but hopefully I'll be able to work with them.
22 I've got to give them a little bit of a heads-up of what to look
23 for and what to do, so I don't know. We'll see.

24 CHAIRPERSON HILL: All right. Mr. Moy, you can call
25 our next case, please.

1 MR. MOY: All right. This is Case Application
2 No. 18400C, that's C as in Charlie, of Milton, Gottesman Jewish
3 Primary Day School of the Nation's Capital. And this is a
4 modification of significance from BZA Order No. 18-400B to
5 increase the number of students to 425 students and to increase
6 the number of staff members to 87 staff members of an existing
7 private school in the R-1-B and RA-1 zones. The property is
8 located at 6045 16th Street, NW, Square 2726, Lots 825 and 831.
9 And their relief as this is a mod of significance, it's for
10 special exceptions under the use provisions of Subtitle U,
11 Section 203.1(m) and from the minimum vehicle parking
12 requirements of Subtitle C, Section 701.5.

13 The only preliminary matter on the way out, Mr.
14 Chairman, as you will recall, is that there is a waiver by the
15 applicant to consider their transportation statement which was
16 filed less than the required 30 days and I believe that was filed
17 on June 23rd under Exhibit 28.

18 CHAIRPERSON HILL: Okay. All right. Mr. Sullivan, can
19 you hear me?

20 MR. SULLIVAN: Yes, I can.

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

23 MR. SULLIVAN: Yeah, thank you, Mr. Chair, and members
24 of the Board. Marty Sullivan on behalf of the applicant, Milton
25 Gottesman Jewish Primary Day School.

1 CHAIRPERSON HILL: And who is here with you, Mr.
2 Sullivan?

3 MR. SULLIVAN: So we have Nicole White, our
4 transportation consultant, and we should have Evan Goldman who
5 is with the Board of Milton and -- there he is. Yeah.

6 MR. GOLDMAN: Yeah, I'm here.

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

9 MS. WHITE: Good morning. My name is Nicole White.
10 I'm principal with Symmetra Design. Our address is 727 15th
11 Street, NW.

12 CHAIRPERSON HILL: Great. Mr. Goldman, could you
13 introduce yourself for the record, please?

14 MR. GOLDMAN: Yes. Hi, everybody. My name is Evan
15 Goldman. I live at 1926 Biltmore Street, NW, Washington, D.C.,
16 20009, and I'm one of the board members of the Milton Gottesman
17 Jewish Day School.

18 CHAIRPERSON HILL: Okay. And then I guess there's a
19 waiver on the filing time for the transportation report. Unless
20 the Board has any issues, I want to waive that because I want to
21 see that transportation report. Anyone have any issues? No?
22 Could you hold one moment, please, for me? Someone just rang my
23 doorbell.

24 (Pause.)

25 CHAIRPERSON HILL: All right. Sorry, you guys. I

1 apologize. So -- okay. We'll let that into the record.

2 Mr. Sullivan, you can go ahead and, again, present your
3 presentation to us and you can begin whenever you like.

4 MR. SULLIVAN: Thank you, Mr. Chairman. If Mr. Young
5 could load the PowerPoint presentation, please? And I'm going
6 to start -- we're going to start with Mr. Goldman's testimony and
7 then he'll turn it over to Ms. White and then I will pick it up
8 near the end after Ms. White's testimony. Thank you.

9 So if you could go to the next slide and, Evan, if you
10 could go through those next couple slides?

11 MR. GOLDMAN: Yes, good afternoon, everybody. Thank
12 you so much, Marty, and thank you to the BZA for allowing us to
13 speak. I'm one of the board members of the Milton Jewish
14 Day School at Military and 16th Street. We have really been
15 focused over the last few years on how to handle a pandemic and
16 still educate our children and I'd say as a result, really, as a
17 direct result of how well the school has handled the pandemic and
18 kept our kids educated, we've seen kind of skyrocketing
19 applications to be students at our school. And so for the first
20 time in our history as a school, we had to turn children away
21 this past year because there just wasn't enough spots in the
22 school because we had a cap on the number of students we could
23 have in the building. And so, as a result, we started a
24 conversation with the community about six months ago with our
25 single member ANC, and then with the various community

1 organizations in our neighborhood about how we might be able to
2 expand access to the school by another 75 children. The building
3 can handle that, and it was really restricted due to traffic when
4 we got our initial approvals about five years ago.

5 Today we'll talk briefly about that. The first item
6 on the agenda is what I just mentioned. It'll talk a little bit
7 about our community outreach. Nicole will address
8 transportation, which we think we've handled in a really creative
9 way, and then Marty will get in to special exception criteria
10 and, obviously, we can answer any questions you have.

11 And the next slide just goes through very briefly what
12 our request is and the community outreach portion of the process.
13 So our request specifically is to go from 350 children at the
14 north campus of our building which serves grades 2nd through 8th
15 to go to 425 students. So 75 more children and approximately 15
16 more faculty and staff members. In addition, as part of that,
17 because we already have a parking special exception, we would
18 have to get a slightly larger parking special exception for off-
19 site parking, essentially.

20 We've been working really closely -- we have a
21 fantastic single member ANC, Marlene Moss, and we've been
22 interacting with her 20, 30 times over the past six months on
23 this. We've presented twice to the ANC and the ANC voted
24 unanimously to support the resolution last month -- or two, three
25 weeks ago.

1 We've met with the Brightwood Community Association and
2 the 16th Street Heights Civic Association which -- our neighbor
3 our site -- or border our site and we've also notified other
4 local property owners. As part of -- in return for -- as part
5 of working with the community, one of the items that was raised
6 was a desire for us to help with neighborhood cleanups which
7 we've since adopted the streets that border our school and we'll
8 be cleaning those up as part of the D.C. Cleanup Program and, in
9 addition to that, are going to do added kind of street safe
10 cleaning in the area just to make sure that the neighborhood
11 always looks as pretty as it can be.

12 So that is the reason we're here and we really
13 appreciate your consideration. I'll hand it over to Nicole to
14 talk through how we think we can manage the additional students
15 from a traffic perspective.

16 MS. WHITE: Thank you very much, Evan. Again, I'm
17 Nicole White, principal with Symmetra Design. Symmetra prepared
18 a transportation statement for the special exception. The scope
19 of the transportation statement was coordinated with DDOT. As
20 stated in the DDOT report, DDOT is supportive of the requested
21 parking relief and staff-student cap increases with one condition
22 that I will outline later in my presentation.

23 If we could go to the next slide, please? And then the
24 slide after that shows the school location on 16th Street, NW,
25 and the transportation network indicating the site is very well

1 served by numerous bus lines and bus stops.

2 Next slide, please. So in terms of background, we
3 prepared a number of recent transportation studies for the
4 school. In 2015, we prepared a transportation study associated
5 with the previous BZA case to examine the increase in student
6 enrollment. At that time, as conditions of approval, the school
7 agreed to a vehicle trip cap and also to prepare a performance
8 monitoring plan.

9 We did prepare a performance monitoring study in 2019.
10 The study was conducted to examine trip generation associated
11 with the school expansion at that time.

12 So if we can go to the next slide, it shows a comparison
13 of travel mode split from the two studies. So in 2015 versus
14 2019 and just wanted to highlight a few important factors here
15 and that is the number of students or the percentage of students
16 that were driven alone in 2019 decreased substantially as
17 compared to 2015. You can see that decrease there and that is
18 because the school was able to attract more students to its school
19 bus program and also more students are now taking bike and the
20 older students are even taking advantage of the Metro bus. And
21 so, with that, we are able to see reductions in the overall trip
22 rates which I'll show you on the next slide, please.

23 So this next slide shows a comparison of projected trip
24 generation with the 425-student increase compared to the vehicle
25 trip cap that was established back in 2015. So the first row,

1 you can see the total trips that we projected for 207 a.m. peak
2 trips, 135 trips during the school dismissal period and fewer
3 trips, 88 trips, during the commuter p.m. peak hour. And then
4 comparing those projections to the cap that was established in
5 coordination with DDOT previously, you can see we would be below
6 the trap -- the trip tap again because of those reductions in
7 single occupant vehicles and the increase in school bus trips.
8 So we have a little room in the morning with fewer than 64 trips
9 and net zero during the dismissal period.

10 So if we could go to the next slide, please? So, again,
11 DDOT noted conditions of approval and the school has agreed to
12 those conditions which would be to implement -- continue to
13 implement their successful transportation demand management plan
14 and the school has agreed to do that. I'd just highlight a couple
15 of points here and that is the school will continue to subsidize
16 the school bus program and, also, continue to provide subsidies
17 for staff in terms of taking public transportation.

18 In terms of -- next slide, please -- in terms of the
19 performance monitoring plan, again, the school has agreed to this
20 condition and would provide a performance monitoring plan that
21 would resume in the fall for two years and then again when the
22 school reaches its proposed cap of 425 students. And I'll turn
23 it back over to you, Marty.

24 MR. SULLIVAN: Thank you, Nicole.

25 If we could go to the next slide, please, Paul? So the

1 requested relief, as you heard, is for -- it's a modification for
2 an increase to 425 students and a total of 87 staff and the
3 increase in the staff triggers a higher parking requirement. The
4 requirement is actually 58 spaces. There's eight fully compliant
5 spaces provided and 47 -- or 60 -- I'm sorry, 60 proposed to be
6 total on-site -- either an on-site in a noncompliant
7 configuration or off site.

8 Next slide, please. The general special exception
9 criteria. Granting relief will be in harmony with the general
10 purpose and intent of this zone, the zoning regulations and zoning
11 maps. While a number of the parking spaces do not count towards
12 the parking requirement, the applicant is providing as many as
13 possible on site and a significant number off site. And Milton
14 has operated successfully in this location in concert with the
15 neighboring communities including a significant physical
16 expansion five years ago.

17 Granting relief will not tend to affect adversely the
18 use of neighboring property in accordance with the regulations
19 and maps and I would refer to the testimony that you heard from
20 Ms. White as well as DDOT's favorable report and OP's favorable
21 report and the ANC support. And, also, this building is somewhat
22 isolated a little bit from the surrounding community mostly which
23 is multi-family buildings.

24 Next slide, please. The special exception conditions
25 for private school approval under U-203.1, the building shall be

1 located so that it is not likely to become objectionable to
2 adjoining and nearby property because of noise and, of course,
3 the children are indoors for the majority of the day and there's
4 minimal amount of noise created outdoors.

5 Traffic and the number of students. Again, I would
6 refer you to the testimony of Ms. White for this and DDOT's report
7 or otherwise objectionable conditions and there are no other
8 objectionable conditions. Milton has operated in this location
9 successfully for many years and following an increase and a
10 significant physical expansion in 2006, continues to enjoy broad
11 support in the community.

12 Next slide, please. Regarding the parking special
13 exception criteria. The applicant is required to meet one of
14 these criteria in 703.2. The first one is due to the physical
15 constraints of the property. The required parking spaces cannot
16 be provided either on the lot or within 600 feet and the applicant
17 is providing as many as possible on the lot and as many as
18 possible off site, although it's not within 600 feet, but there
19 is a shuttle from the off-site location to this property. And
20 the other criteria is the quantity of existing public, commercial
21 or private parking other than on-street parking on the property
22 or in the next neighborhood that can reasonably be expected to
23 be available when the building or structure is in use. This
24 refers primarily to the off-site parking.

25 Next slide, please. Additional special exception

1 conditions for the parking special exception. Any reduction in
2 the required number of parking spaces shall be only for the amount
3 that the applicant is physically unable to provide and, as stated,
4 we have provided the maximum number of compliant and noncompliant
5 spaces as possible on site and 38 additional spaces off site.
6 And, also, 703.4, any request for a reduction in the minimum
7 required parking shall include a transportation demand management
8 plan which, as you heard, we have worked on with DDOT and has
9 been approved by DDOT.

10 Next slide, please. Again, as you heard, we have the
11 full support of ANC 4A, DDOT, and the Office of Planning.

12 Next slide, please. I think I just have some photos
13 from 16th Street on the next slide just to show the Board some
14 context from the front, what the building looks like. This
15 building was renovated and added to significantly as a result of
16 the 2016 BZA approval, and that's it. If the Board has any
17 questions for any of us.

18 CHAIRPERSON HILL: Okay. Just, Mr. Sullivan, you were
19 in agreement with all of the Office of Planning's
20 recommendations, correct?

21 MR. SULLIVAN: (No audible response).

22 CHAIRPERSON HILL: I can't hear you, Mr. Sullivan.

23 MR. SULLIVAN: Yes.

24 CHAIRPERSON HILL: Okay. All right. Does the Board
25 have any questions for the applicant? Mr. Turnbull? Commissioner

1 Turnbull?

2 COMMISSIONER TURNBULL: I just had one. It's a very
3 general question. There is -- basically the parking on the site,
4 there is no way to expand the parking lot or add any other parking
5 on the property itself?

6 MR. GOLDMAN: I'll answer that.

7 MR. SULLIVAN: I'm sorry. Good.

8 MR. GOLDMAN: Yeah, I can answer that and then folks
9 can jump in too. The way our -- our site is a fairly small site
10 with a good amount of topography and so when we renovated the
11 building in 2006 and created the expansion of the middle school
12 for the school, we created some kind of under-building parking
13 to expand the amount of parking we had, but the parking we have
14 is tandem spaces mostly. So we actually have quite a bit of
15 parking on site, and we have a monitor that essentially works
16 with all the teachers to make sure that we maximize the amount
17 of cars in that parking lot, but they're not standard spaces
18 because they're tandem. So that's how we've handled maximizing
19 the number of people that can be on site from a parking
20 perspective. And then we have seven buses that get kids and
21 teachers to the school and so that allows us to have the satellite
22 parking lots where teachers can, if they live in Woodley,
23 Georgetown, you know, anywhere, Shepherd Park, they can just jump
24 on one of our buses and that's really allowed us to maximize the
25 transportation demand management measures.

1 COMMISSIONER TURNBULL: Okay. And how often do the
2 buses run?

3 MR. GOLDMAN: So the -- we have a school bus -- there's
4 a set pickup time at every stop. So it's, you know, privately-
5 owned buses. So if you live in a certain neighborhood, everybody
6 knows in that neighborhood that the bus comes at X time in the
7 morning and then we have an app on the phone that tells you if
8 the bus is running late so you know if you're -- you haven't
9 missed it. And we do have a number of kids who do take public
10 bus up and down 16th Street. About a third of our kids live in
11 Ward 4 or the city along that corridor.

12 COMMISSIONER TURNBULL: So the shuttle system sounds
13 fairly well organized.

14 MR. GOLDMAN: It is, yeah.

15 COMMISSIONER TURNBULL: You know, if I miss a bus, what
16 can I do?

17 MR. GOLDMAN: So if you miss the school bus, I mean,
18 what ends up happening -- I have three kids who have -- one of
19 which is (indiscernible) and two in the school. If you miss the
20 bus, the parent really does have to do drop-off and so that
21 happens from time to time. For the older kids, there's public
22 bus options on 16th Street. Those are pretty high-volume buses
23 which is good, but I think you learn quickly as a parent not to
24 miss the bus --

25 COMMISSIONER TURNBULL: Yeah, right.

1 CHAIRPERSON HILL: Okay. Can we --

2 MR. GOLDMAN: -- because it's generally going to be a
3 problem for you.

4 COMMISSIONER TURNBULL: All right. Thank you very
5 much.

6 MR. GOLDMAN: You're welcome.

7 CHAIRPERSON HILL: Mr. Smith?

8 BOARD MEMBER SMITH: I just have a follow-up question
9 to that. How does the school -- and it sounds like your process
10 is very well organized -- how do you incentivize and -- how do
11 you incentivize that shuttle system and how do you disincentivize
12 people coming to that site? Does that mean teachers have to pay
13 a certain amount every month to park in one of those standard
14 parking spaces? I just wanted to see -- how do you disincentivize
15 people coming to the site?

16 MR. GOLDMAN: So I think we also have Adam Bross, our
17 COO, on this call but I can -- maybe I can answer for him.

18 BOARD MEMBER SMITH: Yeah.

19 MR. GOLDMAN: So for students, we give away -- we give
20 Ride Metro Free passes out. We give them to a whole -- a lot of
21 our students as a way to incentivize them to use public
22 transportation. For the teachers, I believe it's the same way
23 it works for students or families. The teachers identify before
24 the school year starts, over the summer, which teachers will need
25 to be able to park on site, and I believe what happens, if you

1 want to park on site, they encourage you to be a carpool where
2 you have more than one teacher in your car and that's kind of
3 the first choice. There are some teachers that need, from a
4 handicap accessibility perspective, to park close to the school
5 and then beyond that, Adam, our COO or chief business officer,
6 worked closely with every teacher to come up with them for how
7 they're going to come to the school. We actually have some
8 teachers that live right in the neighborhood and so they're able
9 to walk to school across the street. And then for the other
10 teachers, he plans it out in advance, so we know which ones are
11 going to be on certain buses as bus monitors and, thus, you know,
12 they're going to park in a certain lot and be part of the bus
13 monitor program too.

14 Adam, I don't know if you're on, whether you know if
15 the teachers pay.

16 MR. BROMS: I'm sorry?

17 MR. GOLDMAN: Do the teaches pay for their parking
18 spaces? I don't know that answer.

19 MR. BROMS: No, they do not pay for their parking
20 spaces. The only thing I wanted to add is that we also --

21 CHAIRPERSON HILL: Can I interrupt one second? Can I
22 interrupt a second? Sir, could you introduce yourself for the
23 record?

24 MR. BROMS: Oh, I'm sorry, my name is Adam Brooms. I'm
25 the chief business officer at Milton and our address here at the

1 school is 6045 16th Street, NW.

2 CHAIRPERSON HILL: Okay. Did you take the oath?

3 MR. BROMS: I had -- I signed up on the (audio
4 interference) that I took the oath.

5 CHAIRPERSON HILL: Okay. So that means you did. That's
6 great. Okay. Perfect. Okay. Please go ahead with your
7 testimony.

8 MR. BROMS: Thank you. The only thing I was going to
9 add to what Evan just mentioned is that in addition to all of
10 the things that we do in terms of the cars, we also provide a
11 matching program for anybody that rides Metro, so if they put
12 money toward their SmarTrip to ride the public bus system, the
13 school actually contributes its own funds into their account as
14 a matching program to incentivize using public transport as well.

15 BOARD MEMBER SMITH: Okay. Are they -- is it a decal
16 system? So what I'm trying to get at is -- and that's great --
17 a teacher or a student can't just wake up one day running late
18 and say I'm going to go park at school to create a bigger parking
19 situation?

20 MR. BROMS: Correct. We do a sign-up system at the
21 beginning of the year for teachers, and we ask them to identify
22 how it is that they're intending to come and then, as Evan alluded
23 to, I work with the whole faculty across both of our -- we have
24 another campus off of 16th and Decatur, so I do it for both
25 campuses --

1 BOARD MEMBER SMITH: Uh-huh.

2 MR. BROMS: -- in terms of managing who's coming, as
3 Evan said, arranging carpools. Oftentimes we have new teachers
4 who are not familiar with other teachers, but we can link them
5 up with people in their neighborhood. They can carpool, et
6 cetera. So we do all of that as part of the preparation for the
7 school year and then, obviously, we iterate it on an annual basis
8 based off of what the list of faculty volume looks like. We do
9 not have -- no students are allowed to drive or -- I mean, they
10 only go through eighth grade, but we don't have any students or
11 parents coming to park in -- sort of long term during the day.

12 BOARD MEMBER SMITH: Okay. That's great. And I think
13 Mr. Turnbull, you know, already answered this particular
14 question, but just to elaborate a little bit more. So there
15 isn't an opportunity to create any additional tandem parking on
16 the site, whether underneath the school or in the area where you
17 have drop-off or any additional compact parking spaces? Was that
18 explored in any way, shape, or form?

19 MR. BROMS: Yeah, that was explored in detail during
20 our -- you know, five years ago when we got approval to build
21 the middle school, that was explored in detail. Our site is
22 where -- I believe we already have an exception for the amount
23 of permeable open space where -- we have on the site and so we
24 have a certain requirement for the playground, for example, which
25 we have on site and then we have quite a bit of topography in

1 that area so you wouldn't be able to park there anyway. And the
2 lot itself is cheek to jowl with parking spaces. There'd be no
3 way to get any more cars in there at all.

4 BOARD MEMBER SMITH: Okay. Thank you. That's all that
5 I had, Mr. Chair.

6 MR. GOLDMAN: We did expand our agreement with the off-
7 site parking. We -- as part of this process in preparation for
8 this application, we reached out to them and expanded the number
9 of spaces available at that parking facility to take advantage
10 of the shuttle.

11 BOARD MEMBER SMITH: Okay. Thanks. I think that was
12 in the record, but thanks for reiterating. And that's all the
13 questions I had, Mr. Chair.

14 CHAIRPERSON HILL: All right. Thanks, Mr. Smith. All
15 right. Anyone else?

16 Ms. John and then Mr. Blake.

17 VICE CHAIR JOHN: Thank you. Just one quick question,
18 I didn't see anything in the record to explain why parking could
19 not be located within 600 feet of the school.

20 MR. GOLDMAN: So the school is in a fairly residential
21 neighborhood, mostly single family and then a few apartment
22 buildings, so there's no commercial properties within 600 feet
23 of the area that we could do a park share -- parking share
24 agreement with but because we have this extensive bus system that
25 goes throughout the entire city and, quite frankly, all the way

1 into Maryland, we had this ability to have agreements with
2 religious institutions, essentially synagogues in other parts of
3 the city where we had a lot of families where they would allow
4 us to rent parking and that's been the system we've used for the
5 last 15 years in this location. That's been very successful for
6 us.

7 VICE CHAIR JOHN: Thank you.

8 MR. GOLDMAN: Uh-huh.

9 CHAIRPERSON HILL: Mr. Blake?

10 BOARD MEMBER BLAKE: Yeah, my question has already
11 answered, but I do have one quick follow-up. What's the total
12 enrollment including the lower school, and do they also share the
13 same parking program, just out of curiosity?

14 MR. BROMS: So I -- Evan, do you want me to answer
15 that?

16 MR. GOLDMAN: Yeah, Adam, I was going to say you should
17 answer that.

18 MR. BROMS: Our total enrollment for both campuses is
19 475 students currently and that's based off of a maximum capacity
20 of 350 at our north campus, the property about which we're
21 speaking today, and then 125 at our south campus location on 16th
22 and Decatur. We treat them as two separate properties for
23 everything related to capacities and teachers and operations. We
24 have a shared bus system. Our buses services both campuses but
25 the parking situation over there which is, you know, about a mile

1 and a half, two miles south of the property we're talking about
2 now, it's just a totally different situation. So we don't treat
3 them the same in that way.

4 BOARD MEMBER BLAKE: Thank you.

5 CHAIRPERSON HILL: Okay. Anyone else? I'm going to
6 turn to the Office of Planning. I'm sorry, you're on mute. Now
7 you're on mute. You're okay.

8 MR. MORDFIN: Okay. Sorry. Good afternoon, Mr. Chair,
9 and members of the Board. I'm Stephen Mordfin with the Office
10 of Planning. The Office of Planning is in support of this
11 application subject to one condition and that's that the
12 applicant shall comply with the revised transportation demand
13 management plan as approved by DDOT and this is just to ensure
14 that there's adequate parking provided for the school and that
15 the number of trips to and from the school doesn't exceed that
16 as stipulated in the transportation demand management plan and
17 that the faculty and staff don't exceed that which is proposed
18 by the application and all of that is for the protection of the
19 neighborhood. So, as I said, OP is in support of this application
20 and is available for any questions.

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

23 Mr. Sullivan, do you have any questions for the Office
24 of Planning?

25 MR. SULLIVAN: No. Thank you.

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

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. Does the Board have any final
5 questions for anyone?

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

8 MR. SULLIVAN: No thank you.

9 CHAIRPERSON HILL: Okay. I'm going to go ahead and
10 close the hearing and the record.

11 MR. MOY: Mr. Chairman?

12 CHAIRPERSON HILL: Yes, Mr. Moy?

13 MR. MOY: Sorry. I'd like to segue on your earlier
14 statement about administering the oath. It appears that Mr.
15 Goldman may not have been administered the oath.

16 CHAIRPERSON HILL: Okay. Mr. Goldman, would you mind
17 taking the oath administered by the secretary?

18 MR. GOLDMAN: Sure, of course.

19 MR. MOY: Mr. Goldman --

20 Whereupon,

21 ADAM GOLDMAN,

22 a Witness, called for examination by the Applicant, was duly
23 sworn and was examined and testified as previous and as follows:

24 MR. MOY: Thank you, sir.

25 MR. GOLDMAN: You're welcome.

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

2 All right. I'm going to go ahead and again close the
3 hearing and the record and excuse everyone.

4 I can begin the deliberation. I thought that the
5 Applicant's presentation was concise. I also was satisfied with
6 their discussion about how they're going to handle the parking
7 and I'm also comfortable with DDOT's conditions as well as
8 basically OP asking that they follow DDOT's conditions. And,
9 also, the Office of Planning's analysis as well as that of the
10 support of the ANC and so I'm going to be voting in support of
11 this application.

12 Mr. Smith, would -- I'm sorry, Commissioner Turnbull,
13 would you like to add anything?

14 COMMISSIONER TURNBULL: Not really, Mr. Chair. I would
15 agree with all your comments. I think the applicant has done
16 the -- gone out of his way to provide a transportation demand
17 management plan to mitigate the extreme circumstances on the site
18 with the parking and getting children to and the faculty from
19 their -- from homes to work. So I'm totally satisfied that
20 they've done their best effort and I would be in support of this
21 also.

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

23 BOARD MEMBER SMITH: I completely agree with your
24 analysis, Chairman Hill, and also reiterate what Mr. Turnbull has
25 said. This applicant has gone above and beyond the call of duty

1 when it comes down to transportation management to the site and
2 I believe that the increase in the additional -- some of the
3 changes that they're making to their TDM to accommodate that
4 additional increase in potential traffic with students to the
5 school, they have shown that they can sufficiently moderate that.
6 So, with that, I would support this particular application with
7 the recommended conditions.

8 CHAIRPERSON HILL: Mr. -- Vice Chair John?

9 VICE CHAIR JOHN: I am in support of the application.
10 I believe that the applicant has shown that it meets the criteria
11 for approval and that there's no change in the material facts
12 upon which the Board based its original approval and the proposed
13 modification would continue to conform with the relevant
14 criteria.

15 I'm also impressed, particularly with the bus
16 transportation system, because I believe that that will
17 definitely help with the parking situation so -- I thought the
18 presentation was quite thorough.

19 CHAIRPERSON HILL: Mr. Blake?

20 BOARD MEMBER BLAKE: Yeah, I would agree with all the
21 comments made and would also be in a position to support. I do
22 think the transportation structure they have with the buses is
23 off the chain. I very much like that, so I totally am in support.

24 CHAIRPERSON HILL: Okay. Great. I thank you, Mr.
25 Blake. All right.

1 I'm going to go ahead and make a motion then to approve
2 application No. 18400C as in Charlie, as captioned and read by
3 the secretary, and ask for a second, Ms. John.

4 VICE CHAIR JOHN: Second.

5 CHAIRPERSON HILL: The motion has been made and
6 seconded.

7 Mr. Moy, could you take a roll call, please?

8 MR. MOY: When I call each of your names, if you would
9 please respond with a yes, no, or abstain to the motion made by
10 Chairman Hill to approve the application for the relief
11 requested. For a moment, was there a condition or not, just to
12 double check?

13 CHAIRPERSON HILL: Oh, I apologize. Thank you so much.
14 Let me re-make the motion. I'm going to make a motion to approve
15 Application no. 18400C as captioned and read by the secretary
16 including the conditions that the applicant has agreed to by DDOT
17 as well as the Office of Planning and ask for a second, Ms. John.

18 VICE CHAIR JOHN: Second.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. If you could
20 please go ahead and take a roll call?

21 MR. MOY: You're very welcome, sir.

22 So when I call your names, if you would please respond
23 with a yes, no, or abstain to the motion made by Chairman Hill.
24 The motion was seconded by Vice Chair John.

25 Zoning Commissioner Michael Turnbull?

1 COMMISSIONER TURNBULL: Yes.

2 MR. MOY: Mr. Smith?

3 BOARD MEMBER SMITH: Yes.

4 MR. MOY: Mr. Blake?

5 BOARD MEMBER BLAKE: Yes, sir.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes

10 MR. MOY: Staff would record the vote as 5-0-0 and this
11 is on the Chairman's motion to approve with condition, seconded
12 by Vice Chair John. Also in support of the motion is Mr. Blake,
13 Mr. Smith, and Zoning Commissioner Michael Turnbull. Motion
14 carries on a vote of 5-0-0-.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
16 All right. Does the Board -- do you guys want to take lunch?
17 Okay. You want to say -- is 1 o'clock okay? Okay. All right.
18 We'll see you guys at 1 o'clock. Thank you.

19 (Whereupon, the Board recessed for lunch and then
20 resumed.)

21 COMMISSIONER TURNBULL: Well, Commissioner. Mr. Chair,
22 welcome back.

23 CHAIRPERSON HILL: Are you drinking a Yoo-hoo?

24 COMMISSIONER TURNBULL: No, I -- no, and she looks like
25 it. No, I'm drinking one of these Splenda, milk chocolate. I

1 didn't get to have lunch. I was doing something else.

2 CHAIRPERSON HILL: It looks like a Yoo-hoo.

3 COMMISSIONER TURNBULL: You know, I was never a big fan
4 of Yoo-hoo. I had a friend of mine when we were in grade school
5 and even in high school, he always drank Yoo-hoo and I could
6 never see the attraction, but it's okay. It's okay, but this
7 guy loved them. It was crazy.

8 CHAIRPERSON HILL: I'm looking it up right now. I
9 forgot like -- I don't even know where -- I haven't had one in
10 such a long time. It was developed in 1928.

11 COMMISSIONER TURNBULL: Every -- if we were playing
12 baseball, you know, and get the -- everybody else would be
13 drinking those -- like a Nehi, or something like this, orange or
14 grape or whatever, you know, and he'd always buy a Yoo-hoo.

15 CHAIRPERSON HILL: 1928. 1928 is when they --

16 COMMISSIONER TURNBULL: Wow.

17 CHAIRPERSON HILL: Yeah.

18 COMMISSIONER TURNBULL: There used to be ads with -- I
19 think it was Yogi Berra. Yogi Berra used to do ads for Yoo-hoo.

20 CHAIRPERSON HILL: Right, that sounds probably correct.

21 COMMISSIONER TURNBULL: I shouldn't show it from the
22 screen. I've giving free advertising here.

23 CHAIRPERSON HILL: Yeah, I'm sure there's so many
24 people watching us Mr. Turnbull.

25 COMMISSIONER TURNBULL: Well, it's a reality show.

1 CHAIRPERSON HILL: This much is true. Like, you can
2 go to Yoo-hoo -- Yoo dash hoo dot com and it tells you all about
3 Yoo-hoo, the products.

4 COMMISSIONER TURNBULL: Oh, wow.

5 CHAIRPERSON HILL: There is a chocolate peanut butter
6 drink --

7 COMMISSIONER TURNBULL: Really?

8 CHAIRPERSON HILL: -- as well as I've seen the
9 strawberry one. It's probably really bad for you.

10 COMMISSIONER TURNBULL: Well, it's like a water-based
11 chocolate drink. It's -- I think it's water based. I think --

12 CHAIRPERSON HILL: It says corn syrup.

13 COMMISSIONER TURNBULL: Corn syrup. Oh.

14 CHAIRPERSON HILL: We need the rest of the people to
15 come back so they save us from really doing something stupid.

16 Hello, Ms. John. We can't hear you, but I see you.

17 VICE CHAIR JOHN: Now you can.

18 CHAIRPERSON HILL: Oh, see you.

19 VICE CHAIR JOHN: Good job.

20 CHAIRPERSON HILL: Great. Okay. That's one, and that's
21 two. All right. Okay. We got everybody.

22 Mr. Moy, are you there?

23 MR. MOY: Yes, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Great. Can you call our next
25 case when you have an opportunity?

1 MR. MOY: Yes, sir. After a brief lunch recess, the
2 Board is back in session, in its hearing session, and the time
3 is at or about 1:05 p.m.

4 The next application before the Board is Application
5 No. 18830B of Bright Beginnings, Incorporated. This is a
6 requested modi -- well, it's filed as a modification of
7 consequence to the conditions of BZA Order 18830 to permit an
8 increase in the number of children to 150 children and the number
9 of staff to 60 staff members at an existing child development
10 center in the RF-1 zone. This also includes a special exception
11 for the matter of right uses of 11 DCMR 201.1.

12 Let's see, if the Board will recall -- oh, before I get
13 to that, the property is located at 3418 4th Street, SE, Square
14 5969, Lot 249.

15 As the Board will recall, at its hearing on May the
16 12th, the Board addressed preliminary matters and determined that
17 the application is actually a modification of significance and
18 that's why this was scheduled to today's hearing.

19 Let's see, and other than that, the preliminary matter
20 is the applicant filed a waiver to notarize their affidavits of
21 posting and maintenance, and I believe that's all I have for the
22 Board.

23 CHAIRPERSON HILL: Okay. Mr. Kadlecek, can you hear
24 me?

25 MR. KADLECEK: Yes, I can. Good afternoon, Chairman

1 Hill.

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

4 MR. KADLECEK: Yes. Hi, Cary Kadlecek from the law
5 firm of Goulston and Storrs on behalf of the applicant. And,
6 just to let you know, my colleague, Jen Bisgaier, is also here.
7 She'll be handling the hearing.

8 CHAIRPERSON HILL: Okay. Great. Ms. Bisgaier, could
9 you introduce yourself for the record, please?

10 MS. BISGAIER: Yes, thank you, Mr. Chairman. My name
11 is Jennifer Bisgaier with Goulston and Storrs on behalf of the
12 applicant.

13 CHAIRPERSON HILL: Okay. Great. And, Ms. Bisgaier,
14 who else is here with you?

15 MS. BISGAIER: I have here with me Dr. Marla Dean, the
16 executive director for Bright Beginnings.

17 CHAIRPERSON HILL: Okay. Dr. Dean, can you hear me?

18 DR. DEAN: I can, thank you.

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

21 DR. DEAN: Yes. My name is Dr. Marla Dean. I am the
22 executive director/CEO of Bright Beginnings. Thank you.

23 CHAIRPERSON HILL: Okay. Great. Welcome, Dr. Dean.
24 All right.

25 Ms. Bisgaier, I don't have anything in particular to

1 ask of you. I am a little cur -- I thought maybe the Office of
2 Planning had a condition but I'm not clear on that so we can
3 address that, or you can address that in your presentation. I'm
4 going to go ahead and put 15 minutes on the clock, and you can
5 begin whenever you like.

6 MS. BISGAIER: All right. Thank you, Mr. Chairman, and
7 members of the Board.

8 We're here today seeking a modification of significance
9 to Orders 18830 and 18830A. Currently, Bright Beginnings Child
10 Development Center is approved to have 115 students and 43 faculty
11 and staff, and we are proposing to increase those numbers to 150
12 students and 60 faculty and staff.

13 We originally filed this application in March as a
14 modification of consequence and on May 12th, the Board requested
15 a modification of significance to allow for public
16 (indiscernible). The Office of Zoning mailed notice of the
17 hearing on May 27th and Bright Beginnings posted signs on
18 June 28th. Beyond the ANC's report in support of the modification
19 from their March 3rd public meeting, we have not received any
20 additional feedback from the community at this time.

21 And, in addition to the ANC support, the Office of
22 Planning and DDOT have submitted reports in support of the
23 modification. And, with that, I'll turn it over to Dr. Dean to
24 give an overview of what -- the cost.

25 CHAIRPERSON HILL: Dr. Dean, I'm sorry, you're on mute.

1 DR. DEAN: Thank you. Good afternoon, Commissioners.
2 I am Marla Dean, and I just want to tell you a little bit about
3 Bright Beginnings. Bright Beginnings is an early childhood
4 learning center for children and families experiencing
5 homelessness. We have a mission of supporting in a two-generation
6 approach families experiencing homelessness, making sure the
7 children are healthy, safe, engaged, supported and challenged,
8 kindergarten prepared school ready and supporting families as
9 they move from crisis to self-sufficiency.

10 The reason that we are requesting this is because we
11 had a second location that we were renting that was less than a
12 half mile away that we had to close due to some maintenance
13 concerns and so we need to move our 32 pre-K three and four-year-
14 old children over to this building to continue to provide services
15 to the families.

16 As you might know, because of the population that we
17 serve, we have very little vehicle traffic. Our traffic is mostly
18 through public transportation, and we help to support and
19 subsidize the use of public transportation for our families.

20 We have an excellent relationship with the community,
21 a strong community partner. We offer services not only to the
22 families we serve, but services to the wider community,
23 everything from health and wellness, food services, therapeutic
24 services, workforce development services, home visiting services
25 to support and reduce the infant and maternal mortality rates

1 east of the river. And we have no -- we are at capacity and so
2 we will not be coming before you for additional increases.

3 CHAIRPERSON HILL: Okay. All right, Dr. Dean. Thank
4 you.

5 Ms. Bisgaier?

6 MS. BISGAIER: Yes, sir.

7 CHAIRPERSON HILL: Is that your presentation?

8 MS. BISGAIER: Yes, that is all. Thank you.

9 CHAIRPERSON HILL: Okay. All right. Does anybody have
10 any questions for the applicant? All right. I'm going to turn
11 to the Office of Planning.

12 MR. MORDFIN: Good afternoon, Chair, members of the
13 Board. I'm Stephen Mordfin with the Office of Planning.

14 The Office of Planning is in support of this
15 application subject to the same conditions that were approved
16 previously with their first application which was when they
17 constructed the building and so, therefore, it's subject to the
18 approved plans and the architectural site plans and the 13 parking
19 spaces on site and also three -- the three short-term bicycle
20 parking spaces that were requested by DDOT in the last
21 application. So subject to that, which are the improvements that
22 are existing on the site, the Office of Planning is in approval,
23 and I'm available for any questions. Thank you.

24 CHAIRPERSON HILL: Okay. Does anybody have any
25 questions for the Office of Planning?

1 Ms. Bisgaier, do you have any questions for the Office
2 of Planning?

3 MS. BISGAIER: No. Thank you.

4 CHAIRPERSON HILL: Mr. Young, is there anyone here
5 wishing to testify?

6 MR. YOUNG: We do not.

7 CHAIRPERSON HILL: Okay. Ms. Bisgaier, is there
8 anything -- does anybody have any questions before I close the
9 hearing?

10 Ms. Bisgaier, you have anything you'd like to add at
11 the end?

12 MS. BISGAIER: No. Thank you for your time.

13 CHAIRPERSON HILL: Okay. Ms. John?

14 VICE CHAIR JOHN: Mr. Chairman, do we have a request
15 for a waiver outstanding or did we address this before? Mr. Moy?

16 CHAIRPERSON HILL: Thank you. No, that's correct. So
17 there was a request for the app -- not applicant -- notary and I
18 believe that's correct, right, Ms. Bisgaier?

19 MS. BISGAIER: I'm unaware of a request for a notary.

20 CHAIRPERSON HILL: No, I think it was Mr. Kadlecek.
21 You guys didn't notarize -- was it -- what is it that you guys -
22 - you guys can't do something because of the pandemic and I always
23 forget what it is.

24 MR. KADLECEK: Right, we requested a waiver of the
25 notarization for the affidavit of maintenance for the posting.

1 MR. MOY: Right. Got it. So that's what you guys are
2 requesting, correct?

3 MR. KADLECEK: Correct, yes, it's still difficult to
4 find notaries.

5 CHAIRPERSON HILL: Okay. Unless the Board has an issue
6 with that, I'm going to go ahead and waive that requirement
7 because of the reason the pandemic is still, I guess, going on.
8 And then -- yeah. Okay. Great.

9 So, Ms. Bisgaier, is that it for you?

10 MS. BISGAIER: Yes.

11 CHAIRPERSON HILL: Okay. Great. All right. Well, Ms.
12 Bisgaier, welcome. Welcome. Nice to see you here. Welcome to
13 the BZA and/or if we'll see more of you, then that's good.

14 MS. BISGAIER: Yeah.

15 CHAIRPERSON HILL: And then, Dr. Dean, you're just, you
16 know, doing wonderful work there, and we wish you the best and
17 continued success in helping that population.

18 DR. DEAN: Thank you.

19 CHAIRPERSON HILL: You're welcome. Thank you. All
20 right. Okay.

21 I'm going to close the hearing and the record. Please
22 excuse everyone. Since I've been talking a lot, Mr. Turnbull,
23 if you wouldn't mind starting?

24 COMMISSIONER TURNBULL: Sure, Mr. Chair. I think that
25 the applicant is presenting a good case. I guess I'd just go

1 back to the ANC's -- ANC 8C's letter which is Exhibit No. 4, and
2 I think one of the things that is noteworthy is this, "Bright
3 Beginnings, Inc. has operated without incident with respect to
4 parking, traffic, noise, number of children, or any potential
5 concern. Bright Beginnings provides a vital service to the
6 working families in our community, particularly, the essential
7 workers during the public health emergency and we urge the Board
8 to grant the application."

9 I think in light of this, it has community support. I
10 think it's a vital -- as the ANC says, it's a "vital service"
11 and I think the increase, according to what -- what's in the
12 record is there will be no detriment to the community or the
13 neighborhood, so I will be voting in support of this.

14 CHAIRPERSON HILL: Thank you, Commissioner. Mr. Smith?

15 BOARD MEMBER SMITH: I don't have anything else to add
16 from what Mr. Turnbull has stated. I am in support of the
17 application. I do believe that the applicant has presented --
18 with everything that's presented, I believe that they can
19 sufficient -- sufficiently -- oh, sorry, I'm looking at my notes.
20 They're all jumbled here.

21 I do believe that they can sufficiently control any
22 issues as relates to traffic and parking at the site so, in
23 general, I am supportive of the special exception and the
24 modification of significance.

25 I do remember that we had a question about capping the

1 number and putting it in the Order. Have we decided which way
2 we're going to go on that? I believe this was the case. Correct
3 me if I'm wrong (audio interference). I could be wrong.

4 VICE CHAIR JOHN: I'm not sure what you're saying.

5 BOARD MEMBER SMITH: Okay. Never -- it's the wrong
6 case. It may -- it is another daycare that I think was that
7 situation, so my apologies.

8 CHAIRPERSON HILL: Okay. Vice Chair John, do you have
9 anything to add?

10 VICE CHAIR JOHN: Nothing much. I will give great
11 weight to the Office of Planning's recommendation and analysis.
12 And I note that OP is recommending that they -- if the Board
13 approves the modification of significance and the same conditions
14 of approval as the original application should apply. And then
15 I would just also say that I believe that the -- there does not
16 appear to be any change in the material facts upon which the
17 Board based its original approval and so I'm in support.

18 CHAIRPERSON HILL: Thank you. Mr. Blake?

19 BOARD MEMBER BLAKE: I actually would have nothing to
20 add. I think that everyone has covered all the main points and
21 the issues here. I certainly applaud the mission these guys have
22 in serving that community and we (audio interference) to support
23 them.

24 CHAIRPERSON HILL: Thank you, Mr. Blake. All right.
25 I have nothing to add also. I'll agree with my colleagues. I'm

1 going to make a motion to approve Application No. 18830B as in
2 boy and ask for a second, Ms. John.

3 VICE CHAIR JOHN: Mr. Chairman, if we add subject --

4 CHAIRPERSON HILL: Oh, sorry, sorry. Thank you. Sorry.
5 I'm going to make a motion to approve Application No. 10 -- 18830B
6 as in boy, including the conditions that the previous conditions
7 are still upheld in the previous BZA order and ask for a second,
8 Ms. John.

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: Thank you. The motion has been made
11 and seconded.

12 Mr. Moy, if you could take a roll call?

13 MR. MOY: Yes, when I call your names, if you would
14 please respond with a yes, no, or abstain to the motion made by
15 Chairman Hill to approve the application along with the condition
16 from the previous order? The motion was seconded by Vice Chair
17 John.

18 Zoning Commissioner Michael Turnbull?

19 COMMISSIONER TURNBULL: Yes.

20 MR. MOY: Mr. Smith?

21 BOARD MEMBER SMITH: 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: Staff would record the vote as 5-0-0 and this
4 is on the motion made by Chairman Hill to approve. The motion
5 was seconded by Vice Chair John to approve. Also in support of
6 the motion to approve is Zoning Commissioner Michael Turnbull,
7 Mr. Smith, and Mr. Blake. The motion carries on a vote of 5-0-
8 0.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. All
10 right.

11 Mr. Moy, you can call our next case when you get a
12 chance.

13 MR. MOY: Okay. The next case before the Board is
14 Application No. 20479 of 212 56th Place, NE, LLC. This application
15 has been amended, Mr. Chairman, very recently. And it's now before
16 the Board for a special exception from the side yard requirements
17 of Subtitle D, Section 206.3. And this would construct a new
18 semi-detached two-story, instead of a three-story, principal
19 dwelling unit in the R-2 Zone. The property is located at 212
20 56th Place, N.E. And as to preliminary matters, because of our
21 24-hour block for filings, there was not in the record because
22 of that block, a revised solar analysis, the applicant's
23 PowerPoint and also the ANC 7C filed yesterday in request to
24 postpone the application. That's it.

25 CHAIRPERSON HILL: Okay.

1 Mr. Sallah, are you there? Mr. Sallah?

2 MR. SALLAH: Okay. Yes, sir.

3 CHAIRPERSON HILL: Can you hear me?

4 MR. SALLAH: Yes, I can hear you.

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

7 MR. SALLAH: Alex Sallah. 8837 Western Hemlock Way,
8 Lorton, Virginia. I'm here on behalf of the applicant.

9 CHAIRPERSON HILL: Okay. And Mr. Sallah, you know that
10 there is -- well, first of all, you don't have a recommendation
11 with the Office of Planning nor from the ANC, so I think we're
12 going to have to postpone this. Are you aware of this?

13 MR. SALLAH: Yes, I was aware of it.

14 CHAIRPERSON HILL: Okay.

15 Commissioner Holmes, can you hear me? Could you
16 introduce yourself for the record Commissioner?

17 COMMISSIONER HOLMES: Yes. Commissioner Antawan
18 Holmes, the Chair of ANC 7C.

19 CHAIRPERSON HILL: Okay. Commissioner Holmes, when do
20 you think -- I mean there's two cases here and you guys are going
21 to have to come back because they're going to reread it again,
22 but when would you be able to hear them?

23 COMMISSIONER HOLMES: We will -- we've gone on recess
24 for the summer like everyone else. But we are working -- we had
25 a meeting with the applicant earlier this weekend. We -- aren't

1 you -- are you also on break?

2 CHAIRPERSON HILL: Yes. We're not here in August. So
3 you guys are coming back in September, correct?

4 COMMISSIONER HOLMES: Okay. So then it's September
5 then because -- we'll do a September then. So the first meeting
6 that we have in September will be on -- we'll have our executive
7 meeting on August the 26th. We will meet them -- we can meet
8 them again on August 26th and we'll make a final -- we'll make a
9 decision on the case on September 9th.

10 CHAIRPERSON HILL: Okay.

11 Can the Office of Planning introduce themselves,
12 please?

13 MR. KIRSCHENBAUM: Good afternoon, Chair Hill and
14 members of the Board of Zoning Adjustment. I'm Jonathan
15 Kirschenbaum with the Office of Planning.

16 CHAIRPERSON HILL: Mr. Kirschenbaum, do you guys -- so
17 what else did you need from the applicant? Well, I haven't
18 figured this out yet. I mean are you waiting for anything?

19 MR. KIRSCHENBAUM: At this point, the applicant still
20 needs to work on their solar study. We have -- as we've provided
21 the applicant, we have concerns. It is not properly rendered on
22 sheets A01 and A103. We don't think that the shadows that are
23 being shown or accurately actually represented. And the
24 applicants will need to demonstrate how the proposed for -- this
25 is for both cases, how the proposed new development will not

1 significantly interfere with the solar panels particularly on
2 -- at the 220 property, and they need to show calculations
3 demonstrating that there's not significant interference.
4 Significant interference is a defining term in the zoning
5 regulations.

6 And we have strongly encouraged and continue to
7 strongly encourage the applicant to speak to Keith Winston at the
8 Department of Consumer Regulatory Affairs, he is their solar
9 coordinator. And that is probably the best direction for them
10 to go to ensure that their solar study is correct and to ensure
11 that they are properly demonstrating there's not significant
12 interference.

13 MR. PIGG: Hello. Can you hear me? Joseph Pigg here?

14 CHAIRPERSON HILL: Sure, Mr. Pigg. Go ahead. Can you
15 introduce yourself for the record?

16 MR. PIGG: Hi. How are you doing? How are you doing
17 guys? My name is Joseph Pigg. I'm the owner of 212 and 214 of
18 56th Place, NE. And we've assembled a complete solar panel to
19 Mr. Keith. We've changed the plan from a three level to a two
20 level.

21 CHAIRPERSON HILL: Okay. Mr. Pigg, give me one second.
22 Give me a second. So you're -- who -- you're with Mr. Sallah?

23 MR. SALLAH: Yes.

24 MR. PIGG: Yes. Yes, sir.

25 CHAIRPERSON HILL: And who are you?

1 MR. PIGG: I'm the owner.

2 CHAIRPERSON HILL: And who's Mr. Sallah then?

3 MR. PIGG: The officer.

4 MR. SALLAH: I'm the applicant -- I'm sorry, I'm the
5 consultant. I'm not the owner.

6 CHAIRPERSON HILL: Got it. Okay. All right. Mr.
7 Pigg, just give me a second because you're still going to have
8 to come back here, so --

9 MR. PIGG: Okay.

10 CHAIRPERSON HILL: All right. So it sounds as though
11 you still need to work with the Office of Planning, Mr. Sallah.

12 MR. SALLAH: Yes, sir.

13 CHAIRPERSON HILL: You have to get what they need in
14 order for us to get a report because without a report, we're not
15 going to be able to move forward, and it seems as though you
16 still have to get in front of the ANC. So there still has some
17 things that you're trying to get done.

18 Mr. Moy, can you hear me?

19 MR. MOY: Yes, sir.

20 CHAIRPERSON HILL: Okay. I didn't want to -- I don't
21 want to give these guys enough time like, I mean it's still like
22 we're booked up pretty solid through September, correct?

23 MR. MOY: Yes, we are. If you are pushing on this,
24 the earliest you could do would be September 15th. But the rest
25 of that month is not good for the Board, so we're into October.

1 CHAIRPERSON HILL: When is the -- after the -- because
2 we won't be able to get back here by the 15th. After the -- or
3 you might be able to get back here by the 15th, I guess. I don't
4 know.

5 Mr. Sallah, are you looking at a calendar?

6 MR. SALLAH: Yes.

7 MR. PIGG: September would be great (audio
8 interference) for the 15th.

9 CHAIRPERSON HILL: How many cases, Mr. Moy, do we have
10 on the 15th?

11 MR. MOY: At the moment, eight cases. This will be the
12 ninth case.

13 CHAIRPERSON HILL: All right. But then the other one
14 will be the 10th. So yeah, no. So then what's the first one in
15 October that we can get them on here?

16 MR. MOY: It will be October 6th because you have seven
17 cases and one which may be rescheduled and one expedited review
18 case.

19 CHAIRPERSON HILL: Okay.

20 Mr. Sallah, we're going to bring you back on October
21 6th. Do you hear me?

22 MR. SALLAH: Yes, sir, I can hear you.

23 MR. PIGG: Mr. Hill.

24 CHAIRPERSON HILL: Yes.

25 MR. PIGG: Can I interject, please?

1 CHAIRPERSON HILL: Sure.

2 MR. PIGG: We've submitted everything to the Office of
3 Planning. And like two or three weeks ago, they submitted
4 something saying they would need the solar study. We completed
5 the solar study, and we sent it to Mr. Keith -- with Mr. Keith.
6 We've changed the plan from a three-level project to a two-level
7 project. We are not interfering at all on any of the solar panels
8 on either of the properties next door by reducing the property
9 to a two-level structure. Is there any way at all that we can
10 try to -- I know that you guys are swamped and I understand that
11 in this climate right now, you're doing the best you can. But
12 is there any way at all that we can try to get on that September
13 meeting?

14 CHAIRPERSON HILL: Okay. The reason why because you
15 have some kind of carrying costs and things you try to deal with?

16 MR. PIGG: Yeah, we got a lot of going on with the
17 investment. We got a lot of stuff going on, sir. And this issue,
18 I can promise you this I'm -- the solar issue was -- is not (audio
19 interference).

20 CHAIRPERSON HILL: Okay. All right. Okay. All right,
21 Mr. Pigg. All right. Let's go ahead and put them on the 15th,
22 Mr. Moy. It's only one more case than we would have had on the
23 6th in terms of report. And Mr. Pigg, you're welcome. But I
24 just got to let you know like you guys are the ones that are here
25 not being ready, right? Like, I got no Office of Planning report,

1 I got no report from the ANC. I had to review these cases on
2 Saturday just like everybody else.

3 MR. PIGG: Right.

4 CHAIRPERSON HILL: I have to review them ahead of time.
5 So I'm trying to say is make sure you're here ready to go on the
6 15th. Okay?

7 MR. PIGG: Right. Right.

8 MR. SALLAH: Yes, sir. Uh-huh.

9 CHAIRPERSON HILL: Okay?

10 MR. PIGG: Yes, sir. There is a --

11 CHAIRPERSON HILL: I hope you're --

12 MR. PIGG: But (audio interference). Well, I guess -
13 - I just want to make sure that me and Mr. Sallah and the ANC
14 are on the same -- on one accord here. The issue is, at this
15 point, is not going to be a solar issue because like I explained,
16 we took it from a three-level to a two-level structure even with
17 the neighboring houses. But my -- at this point, we're only
18 asking for the side setback relief, from eight-feet to, I think
19 to four-foot. Because eight-foot is the standard that we need
20 this -- the zoning because I have this -- the saying that it is
21 allowed by zoning, but we are asking for is to reduce the eight-
22 foot to four-foot.

23 CHAIRPERSON HILL: Mr. Pigg, I got you. I'm sorry.
24 I'm just going to interrupt you. But go ahead and work with the
25 Office of Planning, right?

1 MR. PIGG: Okay.

2 CHAIRPERSON HILL: Figure out what you need to do with
3 them and then you have to come back and actually have a hearing.

4 MR. SALLAH: Yes, sir.

5 MR. PIGG: Okay.

6 CHAIRPERSON HILL: So there's no point in you having a
7 hearing now or trying to have a hearing.

8 Mr. Moy is trying to say something back?

9 MR. PIGG: I'm just trying to do too much, you're
10 right.

11 CHAIRPERSON HILL: No, I got you. It's all right.

12 Mr. Moy is trying to say something as is Ms. John.

13 Ms. John, what are you trying to say? You're on mute,
14 Ms. John.

15 VICE CHAIR JOHN: I was trying to alert you to the fact
16 that Mr. Moy was trying to say something?

17 CHAIRPERSON HILL: (Indiscernible).

18 VICE CHAIR JOHN: If he has the same question, I have,
19 is if they come back on the 15th, will they have gone to the ANC
20 by then?

21 MR. PIGG: Yes. Yes, ma'am.

22 VICE CHAIR JOHN: Okay.

23 CHAIRPERSON HILL: Well, the ANC, I guess Commissioner
24 Holmes said you guys meet on the 9th, correct?

25 MR. PIGG: Yes, sir.

1 COMMISSIONER HOLMES: It will be on the 9th. We'll
2 make our decision the 9th. You'll get the report right after
3 that.

4 CHAIRPERSON HILL: Okay.

5 Mr. Moy, was that your question?

6 MR. MOY: Yes. But also, just for you, for the Board
7 to keep in mind, it's more than just this one case. He has like
8 a companion. He has a companion other case.

9 CHAIRPERSON HILL: I know. I got it.

10 MR. SALLAH: It's identical.

11 MR. PIGG: I'm sorry. I'm sorry. I'm sorry. I didn't
12 understand what he was saying about the companion other case,
13 what does he mean by that?

14 CHAIRPERSON HILL: It's -- all right. Mr. Pigg, give
15 me a second.

16 Commissioner Turnbull?

17 COMMISSIONER TURNBULL: Mr. Chair, I just want to point
18 out that the Office of Planning, Mr. -- pointed out that the
19 solar studies that they received, they had some questions about
20 it. They didn't think they were quite accurate, so I think Mr.
21 Pigg has to go back and really look to make sure that he's
22 followed up and he's got accurate solar studies.

23 MR. PIGG: Okay.

24 CHAIRPERSON HILL: Right.

25 MR. PIGG: Will do. Will do.

1 CHAIRPERSON HILL: So Mr. Moy, did you have any other
2 questions? No. Okay.

3 So Commissioner Holmes, thank you for joining us, as
4 always.

5 COMMISSIONER HOLMES: No problem.

6 CHAIRPERSON HILL: Mr. Sallah, can you hear me?

7 MR. SALLAH: Yes, sir. I can hear you.

8 CHAIRPERSON HILL: If you need a delay, let me know
9 because I don't want to work on this case again and then postpone
10 you guys again, right? So please be ready to go on the 15th.
11 I'm sorry. Yeah, on the 15th of September. Otherwise, let us
12 know. Okay?

13 MR. SALLAH: Yes, sir. We will do that. Okay.

14 CHAIRPERSON HILL: All right.

15 MR. PIGG: Thank you, Mr. Hill. I appreciate you.

16 CHAIRPERSON HILL: One second, Mr. Pigg, you're going
17 to have to come back again in a minute.

18 MR. PIGG: Okay.

19 CHAIRPERSON HILL: Actually, I don't think you guys
20 (audio interference) -- maybe to leave.

21 Mr. Young, is anyone here wishing to testify?

22 MR. YOUNG: We did have one person that's calling in?

23 CHAIRPERSON HILL: Where are they?

24 MR. YOUNG: They are calling in by phone, so I can
25 unmute them.

1 CHAIRPERSON HILL: Okay. Great.

2 Hello.

3 MR. RAY: Hello.

4 CHAIRPERSON HILL: Hi. Can you hear me?

5 MR. RAY: Yeah. I'm Christopher Ray, a homeowner on
6 220 56th Street.

7 CHAIRPERSON HILL: 220 56th Street. Okay. All right.

8 Sir, you're going to -- so let me think what was I going to do?

9 So we are actually postponing this meeting --

10 MR. RAY: Yes, sir.

11 CHAIRPERSON HILL: -- until September 15th.

12 MR. RAY: Okay. I got it all written down. Okay. I
13 will be waiting.

14 CHAIRPERSON HILL: Okay. Okay. And then your ANC
15 meeting is on September 9th.

16 MR. RAY: Exactly.

17 CHAIRPERSON HILL: Okay. Thank you. Why don't you go
18 to your ANC meeting and then we'll see you back here on September
19 15th, so we can take your testimony.

20 MR. RAY: Thank you ever so much. Okay.

21 CHAIRPERSON HILL: Okay. What's your name again, sir?

22 MR. RAY: Christopher. The last name is Ray, R-A-Y.

23 CHAIRPERSON HILL: Okay. Mr. Ray, do you have Mr.
24 Pigg's contact information?

25 MR. RAY: I don't have it.

1 CHAIRPERSON HILL: Pardon?

2 MR. RAY: I don't have it.

3 CHAIRPERSON HILL: Give me a second.

4 MR. RAY: Go ahead. I'm sorry, go ahead and talk.

5 CHAIRPERSON HILL: That's all right. Mr. Ray -- okay.

6 Well, I don't think you guys have -- are you here in opposition?

7 MR. RAY: Well, I guess so. I was -- I mean, I'm in
8 agreement or not agreement on what's going on around the corner,
9 you know what I mean, as far as that property, so --

10 CHAIRPERSON HILL: Okay. Hold on. Let me think on how
11 to do this.

12 MR. RAY: All right.

13 CHAIRPERSON HILL: Mr. Ray, do you have the phone number
14 for the Office of Zoning?

15 MR. RAY: No, I don't.

16 CHAIRPERSON HILL: Can I give it to you?

17 MR. RAY: Yep. Give me one sec. Give me one sec.
18 Okay. Go ahead.

19 CHAIRPERSON HILL: 202 --

20 MR. RAY: Yes.

21 CHAIRPERSON HILL: -- 727 --

22 MR. RAY: Yes.

23 CHAIRPERSON HILL: -- 5471.

24 MR. RAY: What was that first number, what?

25 CHAIRPERSON HILL: 202-727 --

1 MR. RAY: All right.

2 CHAIRPERSON HILL: -- 5471.

3 MR. RAY: 5471. Okay.

4 CHAIRPERSON HILL: Okay. You call that number.

5 And Mr. Pigg, they'll -- you -- they'll give Mr. Ray
6 your email address; is that good?

7 MR. PIGG: I can give Mr. Ray my number right now.

8 CHAIRPERSON HILL: No, no, no because we're on -- we're
9 live.

10 MR. RAY: Right.

11 MR. PIGG: Okay.

12 CHAIRPERSON HILL: Okay.

13 MR. PIGG: We'll talk to this -- so you need to -- Mr.
14 Ray and I have no problem meeting with you at the job site to
15 give you a full analysis on what's going on.

16 CHAIRPERSON HILL: All right.

17 So Mr. Ray, call that phone number and they'll give you
18 Mr. Pigg's email address. Okay?

19 MR. RAY: Okay. Thank you ever so much.

20 CHAIRPERSON HILL: All right. Thank you.

21 MR. PIGG: All right.

22 Mr. Ray, I look forward to hearing from you.

23 MR. RAY: Okay. Bye.

24 CHAIRPERSON HILL: Okay. Bye-bye.

25 All right. So Mr. Moy, I don't have to really -- I

1 don't have to excuse anyone, right? I can close the hearing and
2 the record, and you can call our next case, correct?

3 Okay. I'm closing the hearing and the record and we're
4 postponing this until September 15th. And now, if you can call
5 our next case, Mr. Moy.

6 MR. PIGG: All right. Thank you, guys.

7 CHAIRPERSON HILL: Thank you.

8 MR. MOY: Uh-huh. All right.

9 The next case before the Board is Case Application No.
10 20480 of 214 --

11 CHAIRPERSON HILL: Mr. Sallah. Don't hang up, Mr.
12 Sallah. Mr. Sallah, don't hang up. Are you there? Mr. Sallah?
13 Mr. Sallah. Now, I don't know what to do.

14 MR. MOY: I see his picture on the screen. I'll be
15 sure the staff will contact him to get back in.

16 CHAIRPERSON HILL: Okay. You want to go ahead and call
17 our next case then, Mr. Moy, I guess?

18 MR. MOY: Yes, sir.

19 So that would be Application No. 20480 of 214 56th
20 Place, N.E., LLC. Again, amended for special exception from the
21 side yard requirements Subtitle D, Section 206.3 to construct a
22 new semi-detached two-story instead of a three-story principal
23 dwelling unit in the R-2 Zone. Property located at 214 56th
24 Place, N.E., Square 20 -- Square 5249, Lot 23.

25 CHAIRPERSON HILL: Mr. Sallah, are you there?

1 Mr. -- Commissioner Holmes, are you there? I lost
2 everybody. All right. So for the --

3 COMMISSIONER HOLMES: Yes. Yeah, I'm here.

4 CHAIRPERSON HILL: Great Commissioner. All right. So
5 for the record, I've lost the two previous --

6 COMMISSIONER HOLMES: Yeah, I've noticed. I don't hear
7 him.

8 CHAIRPERSON HILL: Okay. So I've lost the applicant
9 from the previous case which was 20479. So we spoke at length
10 about 24 -- 20479, which is similar to 20480, because they're
11 attached. So I'm going to also suggest that we postpone this
12 until 9/15, which is the same day that we're having the other
13 one. And Commissioner Holmes, you guys can hear that at that
14 time as well.

15 COMMISSIONER HOLMES: Absolutely. We've -- yes, we
16 talked to them about that.

17 CHAIRPERSON HILL: Great.

18 Mr. Sallah, are you there yet?

19 Okay. Mr. Moy, is that good?

20 MR. MOY: I believe so. Staff will double back and
21 confirm all this with the owner.

22 CHAIRPERSON HILL: Ms. Cain, are we good?

23 MS. CAIN: Yes, we're good.

24 CHAIRPERSON HILL: Okay. All right.

25 Commissioner Holmes, you have a good day.

1 COMMISSIONER HOLMES: Thank you.

2 CHAIRPERSON HILL: All right. We're going to go ahead
3 and close the hearing and the record for 20480 and it's been
4 postponed in 9/15/21. Okay. Let me look at one thing. Okay.

5 Can we take a five-minute break again, just quick five
6 minutes? We'll be back. Okay. Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record and then resumed.)

9 CHAIRPERSON HILL: Mr. Moy, can you hear me?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: I guess there are some issues with
12 20475. So if we can put that maybe the last case of the day,
13 and just go to the next one.

14 MR. MOY: Yes. Thank you, sir. Staff has made the
15 necessary contact as well just to let you know.

16 CHAIRPERSON HILL: Okay. Great. Thank you.

17 You can call the next one whenever you like, Mr. Moy.

18 MR. MOY: All right. After a quick break, the Board
19 is back in session. The time is at or about 1:49 p.m. So with
20 that, the next application before the Board is 20476 of District
21 Restoration Company, LLC. This application is captioned and
22 advertised for a special exception from the minimum lot area
23 requirements of Subtitle E, Section 201.4. This would subdivide
24 the property into two record lots, retain an existing single
25 family rowhouse and construct a new detached three-story flat for

1 two families with cellar in the RF-1 zone. The property is
2 located at 4107 New Hampshire Avenue, NW, Square 3228, Lot 56.
3 And other than that there -- because of the 24-hour block, the
4 applicant attempted to upload a PowerPoint as well as submit
5 updated architectural plans and elevations.

6 CHAIRPERSON HILL: Okay. And we don't have that
7 PowerPoint, correct, or the architectural plans and elevations,
8 Mr. Moy?

9 MR. MOY: We have it in hand but it's not -- has not
10 been uploaded to the (audio interference) until the Board
11 decides.

12 CHAIRPERSON HILL: Okay. Okay.

13 Mr. Cross, can you hear me?

14 MR. CROSS: I can.

15 CHAIRPERSON HILL: Can you introduce yourself for the
16 record, please?

17 MR. CROSS: Yes. Robert Michael Cross, project
18 architect.

19 CHAIRPERSON HILL: And Mr. Cross, who is with you here
20 today?

21 MR. CROSS: I've got Matthew Lee here.

22 CHAIRPERSON HILL: Okay. Great.

23 MR. CROSS: Another architect on this job.

24 CHAIRPERSON HILL: Mr. Lee, can you hear me?

25 MR. LEE: Yes, sir, I can hear you.

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

3 MR. LEE: Yes. This is Matthew Lee with our R. Michael
4 Cross Design Group.

5 CHAIRPERSON HILL: Got it.

6 And Ms. Botstein is that -- can you hear me?

7 COMMISSIONER BOTSTEIN: Yep.

8 CHAIRPERSON HILL: And could you introduce yourself,
9 Ms. Botstein?

10 COMMISSIONER BOTSTEIN: Sure. I'm Clara Botstein. I'm
11 the Advisory Neighborhood Commissioner for 4C08, the District in
12 which the property is located.

13 CHAIRPERSON HILL: Okay. Great. Thank you,
14 Commissioner. Thank you for joining us.

15 Let's see. Mr. Cross, so I want to see your PowerPoint
16 because I want to be able to look at it while you're going through
17 there. So unless the Board has any issues, I want to go ahead
18 and allow that into the record.

19 And then Mr. Cross, the architectural plans that you're
20 updating us with, what are those? Are they -- there's new plans?

21 MR. CROSS: They're not. I think the confusion is the
22 PowerPoint that was uploaded is the same architectural plans that
23 were in the record. I just shuffled the plan order so that they'd
24 be easier to go through in the presentation today. Same content,
25 just different page numbers.

1 CHAIRPERSON HILL: Got it. So then -- but we still
2 need two exhibits uploaded; is that correct?

3 MR. CROSS: No, I think it's just a single exhibit
4 presentation.

5 CHAIRPERSON HILL: The PowerPoint? Okay. If staff
6 could go ahead and please upload that into the record.

7 And then Mr. Moy, if you could just let us know when
8 that's uploaded.

9 Mr. Cross, if you want to go ahead and give your
10 presentation. You got 15 minutes on the clock, just so I know
11 where we are. And if you can, again, give us the understanding
12 or argument again as to how you're meeting the criteria for us
13 to grant the relief requested. I guess Mr. Young has your
14 PowerPoint, I assume.

15 MR. CROSS: That's correct. I appreciate that.

16 Okay. We're here today seeking a special exception
17 relief for lot occupancy -- sorry, lot area requirement under an
18 E 201.4 to permit a 1500-square-foot block in the RF-1 zone by
19 voluntarily providing one inclusionary zoning unit.

20 Next slide please. The proposal is to subdivide the
21 existing property at 4107 New Hampshire Avenue, NW into two lots.

22 Next slide please. The newly created lot will be
23 located at the rear of the property located at the corner of
24 Taylor Street and the alley that enters mid-block off of Taylor.

25 Next slide please. The structure being proposed on the

1 new lot is semi-detached. It's a two-family flat and it will be
2 three-stories above a cellar.

3 Next slide please. Both units will be multi-story and
4 will each have autonomous entries. The market rate unit is
5 proposed to be a five bedroom, five-and-a-half bath with roughly
6 2200 square feet of living area. The inclusionary zoning unit
7 will be a family sized, three-bedroom, two bath unit at
8 approximately 1200 square feet. The IZ unit will occupy part of
9 the first floor and the cellar level, and it will be offered at
10 80 percent AMI.

11 Next slide please. We'll be providing one additional
12 parking space in the rear of the new lot with access provided
13 via shared driveway behind the existing property at 4107 New
14 Hampshire Avenue. That still leaves one full sized parking space
15 to serve the existing property at 4107.

16 Next slide please. Based on the feedback from OP as
17 well as that received from the ANC and its constituents, we've
18 revised our original proposal to provide a porch that is more
19 consistent with the character of the neighborhood.

20 Next slide please. We've eliminated the parapet to
21 lower the effective building height as viewed from the street and
22 reduce the shadows cast by the structure.

23 Next slide please. We've changed the foundation to
24 have a masonry appearance with a water table on top.

25 Next slide please. And we've dedicated the entire

1 cellar level to the IZ unit increasing it by almost 200 square
2 feet. This also eliminated a rear stair an areaway that was
3 previously dedicated to the cellar area of the market rate unit.

4 If we could advance two slides. Thank you. We've
5 prepared shadow studies showing the net effect of the shadows
6 anticipated to be generated by this building versus a matter of
7 right accessory building and those net effect shadows are shown
8 here in red. In the spring and fall, shading occurs in the early
9 to mid-afternoon.

10 If we could advance two slides again. In the winter,
11 the shading is already substantial -- there's already substantial
12 -- my apologies, I think we're looking at summer here. In the
13 summer in neighboring yard -- the shading on the neighboring
14 yards is limited to the early morning.

15 If you could advance two slides again. And in the
16 winter, the shading is already substantial during much of the day
17 with the greatest net impact being during the early afternoon.
18 Additionally, based on my conversations we had at the ANC, we've
19 prepared some additional diagrams for context.

20 Next slide please. As seen here, there's only a limited
21 amount of properties offering affordable housing in the area.
22 Those are shown here with the yellow pens. Our property is the
23 green house in the center of the quarter mile radius circle.
24 Those that do exist are primarily smaller one bedroom and studio
25 sized units. And they're almost all located along the commercial

1 corridor.

2 Next slide please. The relief we're seeking here today
3 is specifically to create a lot that is less than 1800 square
4 feet. All the lots you see shaded here in both orange and red
5 are less than 1800 square feet. Again, on this diagram, the
6 subject property is in the middle indicated by green house. Those
7 properties that are highlighted in red are less than or equal to
8 1500 square feet, which is the lot size we're proposing today.
9 Furthermore, the blue pens identify locations where one or more
10 properties look out onto a structure that is located directly
11 behind them.

12 And finally, the two magenta pens on Upshur and
13 Shepherd represent lots, which are virtually identical to the
14 situation which we are proposing. They have lots that are roughly
15 1500 square feet in area. And the structure located on those
16 lots is positioned directly behind other row houses on the
17 adjacent street.

18 Next slide please. These are photos of those two (audio
19 interference lots that share nearly identical situations to that
20 which we're proposing today. 610 Upshur Street, NW and 716
21 Shepherd Street, NW.

22 In conclusion, we would greatly appreciate the Board's
23 approval of this application for the creation of a 1500 square
24 foot lot as it is consistent with the existing lots in the area,
25 the future comprehensive plan and would, in turn, create a family

1 size affordable housing unit in a residential environment. We
2 appreciate your time and we'd be happy to answer any questions
3 that you have.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Cross. How did
5 you get five bedrooms? Like, how did the program turn out that
6 you put in a unit with five bedrooms?

7 MR. CROSS: It's just the program provided. It is a
8 2200 square foot house on multiple floors, so we've got living
9 area on one floor and the other floors have sleeping areas.

10 CHAIRPERSON HILL: Okay. Okay.

11 Does the Board have any questions for the applicant?

12 Ms. John.

13 VICE CHAIR JOHN: So Mr. Cross, in your presentation
14 and in your shadow studies exhibit, I believe you say that a
15 matter of right building would be more -- would create more
16 adverse impacts. But there -- are you talking about an accessory
17 structure, which would be 20-feet high. I don't quite understand
18 that.

19 MR. CROSS: Yeah, I might have misspoke. The
20 illustrations are intended to show the net increase of our
21 structure over and above that of an accessory structure. So yes,
22 we are talking about the shadows of an accessory structure. But
23 the red areas are indicating the increased shading that our
24 project would have as opposed to that matter of right structure.
25 Does that make more sense?

1 VICE CHAIR JOHN: Yes. And just a follow up. You
2 could not have an accessory structure on that lot, right, if it
3 were not subdivided. Because there's a multi-unit building at
4 the front and you're subdividing, so by subdividing, you're able
5 to get around the inability to have an accessory structure and
6 create a new building that's 35-feet high.

7 MR. CROSS: So you're correct for a use for a dwelling
8 unit, but a lot does not necessarily prohibit an accessory
9 building for garage, storage, et cetera. You may be accurate in
10 suggesting that this particular lot as currently built may not
11 allow an accessory structure the size we're proposing because of
12 overall lot occupancy concern, but I actually can't verify that
13 at this time either.

14 VICE CHAIR JOHN: Okay. I was referring to habitable
15 space or another dwelling unit, so I think we are in the same
16 area. So that's it for now. Thank you.

17 CHAIRPERSON HILL: Anyone else for the applicant?

18 Commissioner Turnbull.

19 COMMISSIONER TURNBULL: I'm trying to understand the
20 footprint of this building, buildings. I'm looking at the drawing
21 on this -- it's a site plan which shows the driveway, and there's
22 an entrance off the alley that is also a curb cut. I wonder if
23 you could pull that drawing up.

24 CHAIRPERSON HILL: Which should -- are you in a
25 particular exhibit, Commissioner, or in that slide deck?

1 COMMISSIONER TURNBULL: I'm looking in the -- I guess
2 it's the old PowerPoint or drawing set. It's -- well, exactly,
3 I can't read the exhibit here. It could be Exhibit --

4 CHAIRPERSON HILL: 36?

5 COMMISSIONER TURNBULL: Yeah, I think it's 36.

6 CHAIRPERSON HILL: Okay.

7 Mr. Young, could you pull up 36, please?

8 MR. CROSS: The content in the presentation and Exhibit
9 36 is the same. It's just slightly out of order. It'll be sheet
10 BZA 05 in either.

11 CHAIRPERSON HILL: Yep. Thank you, Mr. Young.

12 COMMISSIONER TURNBULL: There's a -- it's an adjacent
13 garage next to the building. Is that -- who does that belong
14 to?

15 MR. CROSS: Yes, that is not part of our property. I
16 believe that is the property of 4105 New Hampshire.

17 COMMISSIONER TURNBULL: Okay. Then on the alley,
18 you've got a divide -- what -- the part that goes straight back
19 on the farthest right of the driveway belongs to who? I'm not
20 sure how this works.

21 MR. CROSS: So there's an easement that would allow
22 both 4107 and the new proposed structure that faces Taylor to
23 share a common driveway off the alley that leads up to two
24 separate full size parking spaces that are then on their
25 respective lots.

1 COMMISSIONER TURNBULL: An easement that you have to
2 apply for, right?

3 MR. CROSS: We would have to record with 4107, yes.

4 COMMISSIONER TURNBULL: And you have to maintain this.
5 You will have to provide some documents saying that you will
6 probably maintain this for its entirety, right?

7 MR. CROSS: Yes. I'm not an expert in that stuff but
8 I do know that it is a relatively routine real estate mechanism
9 that would be filed with the recorder of deeds for properties
10 4107 and possibly also this new lot as well.

11 COMMISSIONER TURNBULL: But there's really not much of
12 this in this neighborhood that act like that, right?

13 MR. CROSS: With a shared drive?

14 COMMISSIONER TURNBULL: Right.

15 MR. CROSS: I couldn't speak to that.

16 COMMISSIONER TURNBULL: Okay. Let me ask you
17 something. The four-bedroom, the unit that you're trying to get
18 out with 1500 square feet, how is that affordable?

19 MR. CROSS: The market rate unit or the inclusionary
20 zoning unit?

21 COMMISSIONER TURNBULL: The inclusionary zoning one?

22 MR. CROSS: I guess -- I'm not sure if I understand
23 your question. It would be filed with the inclusionary zoning
24 program and offered at the rates published by DHCD for --

25 COMMISSIONER TURNBULL: 80 percent is really not

1 affordable. I mean, that's basically along with a market rate.
2 80 percent, I mean that's -- with a four bedroom, not many people
3 won't be able to afford an 80 percent unit at 80 percent AMI.

4 MR. CROSS: The unit being offered for inclusionary
5 zoning is three bedroom, but I don't know if I can speak to the
6 levels of AMI and how they were established, but that's the
7 program we're complying with.

8 COMMISSIONER TURNBULL: I'm just worried that you're
9 kind of manipulating the system to get another unit. And you're
10 going through a lot of configurations that would really change
11 the zone quite a bit in this area or change the character of it
12 by doing this. It just seems like there's a lot of finesse going
13 around trying to build and I don't blame anybody for trying to
14 build on the site. But it seems like there's a lot of
15 manipulation going on trying to create this extra unit on such a
16 small site. I just feel like it's going to be almost too big
17 and too cumbersome for the lot. It's seems like you're -- it
18 seems like -- well, I think it's an overreach on the site.

19 MR. CROSS: I can appreciate that. Hopefully, our
20 presentation showed that there is actually a great deal of
21 precedent for this size lot and this density. We could run
22 through those again, but I think you understand it. And in terms
23 of the 80 percent AMI, where -- that's the rate at which the code
24 is suggesting we (audio interference). And with a two-unit
25 building, providing an inclusionary zoning unit is very difficult

1 from a developer standpoint because of the cost set, which it
2 takes to build the unit versus what it sells at. There's just
3 not enough market rate to make up the other. So I think that 80
4 percent may be as well as most developers will be able to make
5 this feasible.

6 COMMISSIONER TURNBULL: All right. Thank you.

7 CHAIRPERSON HILL: Okay.

8 MR. LEE: If I might add. I just have a message from
9 the property owner, and he is in the attendees list. It seems
10 like he would like to respond to Commissioner Turnbull's
11 comments, if that's okay?

12 CHAIRPERSON HILL: Sure. What's his name?

13 MR. LEE: It's Adrian Dungan.

14 CHAIRPERSON HILL: Mr. Young, do you have an Adrian
15 Dungan? There we go.

16 Mr. Dungan, can you hear me? I can't hear you, Mr.
17 Dungan. You're on mute. You're still on mute. No. You can
18 take your time. We'll try to figure it out. Does the -- I can't
19 hear you, still can't hear you.

20 MR. DUNGAN: No?

21 CHAIRPERSON HILL: Now, I can hear you.

22 MR. DUNGAN: Okay. Good afternoon, members of the
23 Board. Thank you for your --

24 CHAIRPERSON HILL: Could you -- I'm sorry to interrupt
25 you. Could you introduce yourself for the record, please?

1 MR. DUNGAN: Yes. My name is Adrian Dungan. And my
2 wife, Nicole and I live in Petworth in the neighborhood and are
3 the owners of the subject property and the adjacent property,
4 which is the garage that was mentioned.

5 CHAIRPERSON HILL: Okay. One second, Mr. Dungan. Did
6 you get sworn in? Did you -- I don't know. I think you have to
7 click something.

8 Mr. Moy, do you know if this gentleman completed the
9 oath?

10 MR. MOY: My suspicion is that if he didn't log in and
11 sign up, he has not gone through the --

12 CHAIRPERSON HILL: Did you log in and sign up, Mr.
13 Dungan?

14 MR. DUNGAN: I just -- I clicked on the Webex link. So
15 I'm not -- I had to run an extension and a few things like that.
16 But I don't know if I did, so I'd be happy to --

17 CHAIRPERSON HILL: Okay.

18 Mr. Moy -- yeah. Mr. Moy, could you give him the oath
19 please.

20 MR. MOY: With pleasure.

21 Whereupon,

22 ADRIAN DUNGAN,
23 a witness, first duly sworn, and was examined and testified as
24 follows:

25 MR. DUNGAN: Absolutely, yes.

1 MR. MOY: Thank you, sir.

2 CHAIRPERSON HILL: Okay.

3 Mr. Dungan, what question did you want to help answer
4 for Commissioner Turnbull?

5 MR. DUNGAN: With regard to the inclusionary zoning.
6 It is already set by the Department of Housing and Community
7 Development. And it being 80 percent AMI, I just wanted to ensure
8 that there wasn't confusion about that being 80 percent of market
9 rate, that it is a three-bedroom unit that would be \$325,000 is
10 what the sales price would be.

11 And I also just wanted to mention that we live in the
12 neighborhood, and this is our third street project where we have
13 proposed an RF-1 project, which is in neighborhoods rather than
14 just restricting all inclusionary zoning units to Georgia Avenue
15 or commercial corridors that are actually in a neighborhood where
16 many people have asked -- would prefer to live. And furthermore,
17 the size being three bedroom, as mentioned, is not something that
18 is frequently provided. People just do the bare minimum, doing
19 like a one bedroom or whatever they have to do. And so anyhow,
20 I just wanted to provide that context. Thank you for your time.
21 I appreciate it.

22 CHAIRPERSON HILL: Thank you, Mr. Dungan. All right.

23 Yeah, Mr. Blake.

24 BOARD MEMBER BLAKE: Yeah. Quick question. Could you
25 just repeat the pricing on that again? I just missed the actual

1 number.

2 MR. DUNGAN: 325,200 for a three bedroom.

3 BOARD MEMBER BLAKE: Okay. And what is the
4 configuration of 4107 currently?

5 MR. DUNGAN: The current configuration is that it is a
6 two unit.

7 BOARD MEMBER BLAKE: How many bedrooms are in those two
8 units?

9 MR. DUNGAN: In those units, they each have a five
10 bedroom.

11 BOARD MEMBER BLAKE: Five-bedroom total?

12 MR. DUNGAN: Correct. Yes.

13 BOARD MEMBER BLAKE: Thank you.

14 MR. DUNGAN: No problem.

15 CHAIRPERSON HILL: Now, each -- you're saying each unit
16 is a five bedroom, correct?

17 MR. DUNGAN: Correct.

18 CHAIRPERSON HILL: So there's 10 bedrooms.

19 MR. DUNGAN: Correct. And it's over, I think its 4,500
20 square feet.

21 CHAIRPERSON HILL: And that's 4107 New Hampshire?

22 MR. DUNGAN: Yes.

23 CHAIRPERSON HILL: Okay.

24 MR. DUNGAN: And this is the lot that's -- essentially,
25 if you look at 610 Upshur Street, it's already happened there

1 where they've made it another lot behind there originally, that
2 did not happen here, catty-corner and that is what we are
3 proposing. And it is -- by proposing it, it's something that I
4 don't know of anybody else even doing this yet where you do a
5 two unit, and one of the two units is for inclusionary zoning as
6 part of it being only 1,500 square feet for the lot size.

7 CHAIRPERSON HILL: Okay. Let me see.

8 All right. Anyone else for the applicant?

9 Ms. John.

10 VICE CHAIR JOHN: I'd like to know if there's a
11 photograph or some context for the houses on Taylor Street on
12 both sides of the street because this new building will front on
13 Taylor Street. And I didn't see anything in the files that would
14 help me understand what Taylor Street would look like after this
15 building is built.

16 MR. CROSS: Yeah. I don't believe we have an
17 architectural rendition of what the new streetscape would look
18 like. There are a few photographs included on BZA 03 that show
19 the context of the lot and some of Taylor, but even that doesn't
20 show some of the context it seems you're asking for.

21 VICE CHAIR JOHN: Thank you. I think I'd like to see
22 that, but I would prefer to hear from my other Board members.
23 Because as you know, based on the information in the record, many
24 of the neighbors are concerned about how this building fits into
25 the context of Taylor Street.

1 CHAIRPERSON HILL: Okay. We'll see what we need.

2 Next up. Mr. Turnbull.

3 COMMISSIONER TURNBULL: I would concur with the Vice
4 Chair. I think we need some more contextual photographs and
5 drawings.

6 CHAIRPERSON HILL: I just realized something, Mr.
7 Turnbull. Are you going to be able to come back?

8 COMMISSIONER TURNBULL: Maybe not.

9 CHAIRPERSON HILL: Yeah. I don't know.

10 COMMISSIONER TURNBULL: I don't know, but whoever
11 follows me will do an excellent job.

12 CHAIRPERSON HILL: Okay. There you go. All right.
13 Let's see. Yeah, I won't necessarily disagree with anything you
14 guys just said.

15 All right. Anyone else for the applicant?

16 Mr. Smith.

17 BOARD MEMBER SMITH: I was going to echo Ms. John's
18 concerns and then Mr. Turnbull isn't here. I will, again, raise
19 his concerns. So I think it will be great to see the context
20 along the block of how this fits within the neighborhood, the
21 character of the neighborhood and the height of this proposed
22 structure relative to the already existing homes.

23 CHAIRPERSON HILL: Mr. Cross, you got that?

24 Mr. Turnbull.

25 COMMISSIONER TURNBULL: I just want to say that if the

1 Board really presses the Architect of the Capitol to have me come
2 back, I could make an exception.

3 CHAIRPERSON HILL: Oh, great. Do that. You can say
4 goodbye all over again. All right. Okay. Let me see. Okay.
5 So let's see. So that's it from the Board.

6 All right, Commissioner Botstein, can you hear me?

7 MS. BOTSTIEN: Yep.

8 CHAIRPERSON HILL: Is it -- am I pronouncing that right?

9

10 COMMISSIONER BOTSTEIN: Yep.

11 CHAIRPERSON HILL: Okay. You seem like, more or less.
12 How do you say it?

13 COMMISSIONER BOTSTEIN: Botstein.

14 CHAIRPERSON HILL: Botstein. Botstein. Okay. All
15 right.

16 So let's see, Commissioner, do you want to give
17 testimony and ask questions, or do you want to ask questions
18 first, or do you have any questions or just want to give
19 testimony?

20 COMMISSIONER BOTSTEIN: I'd like to give testimony, if
21 that's okay. And I actually contacted your colleague and he
22 recommended that I formally request the testimony to be added to
23 the record. I think I sent it a bit after 9:30, I apologize.

24

25 CHAIRPERSON HILL: Yeah, no problem. Meaning the ANC?

1 COMMISSIONER BOTSTEIN: No. Just for this meeting.

2 CHAIRPERSON HILL: Oh, meaning the testimony you're
3 about to give?

4 COMMISSIONER BOTSTEIN: Correct. Yeah.

5 CHAIRPERSON HILL: Okay. Yeah, sure. Unless the Board
6 has any opposition to that. Let's go ahead and staff can please
7 add the testimony to the record, and Commissioner Botstein.

8 COMMISSIONER BOTSTEIN: Yeah, that's good.

9 CHAIRPERSON HILL: Botstein, Botstein.

10 COMMISSIONER BOTSTEIN: I know. It's fine. Yeah.

11 CHAIRPERSON HILL: Please go ahead and give your
12 testimony.

13 COMMISSIONER BOTSTEIN: Okay. Thank you. And I think
14 you should have our ANC letter and the supporting documents from
15 the neighbors.

16 So thank you for the opportunity to testify today. As
17 I said, my name is Clara Haskell Botstein, and I'm the Advisory
18 Neighborhood Commissioner for 4C08 in which the 4107 New
19 Hampshire Avenue property is located. I live at 610 Upshur, a
20 building that has been referenced today.

21 I became an ANC Commissioner in order to represent the
22 interests of my neighbors and advance policies that benefit our
23 community.

24 Creating and maintaining affordable housing,
25 preventing displacement, especially of longer-term residents, and

1 maintaining a cohesive and diverse community are issues I care
2 about deeply.

3 A large group of neighbors came to me with concerns
4 about the proposed development at 4107 New Hampshire early on in
5 my term. They had concerns about the adverse community impact
6 of the proposed property on neighboring property, including
7 obstruction of light and infringement of privacy from the new
8 multi-story structure; the detriment to the coherence of the
9 block of row homes, as mentioned, that a lot subdivision and two
10 multi-story multi-unit structures pose; and the negative impact
11 of the proposed lot subdivision and new structure on the
12 character, scale, and pattern of houses on the block, and just
13 the precedent this would set in the neighborhood.

14 The neighbors also had concerns about the communication
15 they received around the project by the developer. I've had the
16 chance to get to know several of the neighbors in the properties
17 near the 4107 New Hampshire building, many of whom have lived in
18 the neighborhood for decades, and I know them to be strong
19 advocates for their community and deeply committed to ensuring
20 that Petworth remains a place where residents with a range of
21 incomes and backgrounds can live as a community and where people
22 can age in place.

23 As an elected representative, tasked with weighing
24 community input and the merits of any given policy or project,
25 I noted the strength and magnitude of the opposition to this

1 project, voiced in the approximately 35 letters the ANC received
2 and the engagement in my SMD meeting on this issue, as well as
3 the substance of the arguments against the project rooted in what
4 is laid out in the zoning code.

5 After careful deliberation, I wrote a letter of
6 opposition to this project and the ANC 4C Commission voted to
7 approve my letter of opposition at its May meeting with seven
8 yes, zero no, and three abstentions.

9 The BZA is supposed to give the ANC decisions "great
10 weight," and I hope it does so in this case.

11 It may be easy to dismiss opposition to new development
12 as NIMBYism, but that's not what's at play here. If the applicant
13 were proposing an affordable housing unit at 30 percent or 50
14 percent or 60 percent AMI to allow for a deeply affordable unit
15 on the property, this would be a very different proposition, and
16 I would be supportive. However, the proposed project with one
17 additional unit of market rate housing five bed, and one
18 additional unit at 80 percent AMI, does not, I would argue,
19 meaningfully advanced the District's affordable housing goals and
20 does not justify the dismissal of "great weight" around the ANC
21 decision.

22 If the BZA grants a special exception, what is the
23 purpose of gathering community input and having neighbors and the
24 ANC put hours into discussion and deliberation on this type of
25 matter? On principle, I would hope that the BZA will have a

1 compelling justification to disregard the community and ANC input
2 and the time and energy that neighbors, and volunteer elected
3 representatives put into assessing the merits of this project,
4 ultimately deciding that the granting of a special exception in
5 this case is not in the best interest of the community.

6 Thank you for the opportunity to testify, and I'd be
7 happy to answer any questions.

8 CHAIRPERSON HILL: Okay.

9 Does the Board have any questions for the Commissioner?
10 I have a couple.

11 Okay. Commissioner Turnbull.

12 COMMISSIONER TURNBULL: I just wanted to go back to -
13 - so from the standpoint of subdividing it with the shared
14 driveway, you're not really opposed to that then, but you really
15 would like to see this thing really at 50 or 60 percent AMI or
16 even less.

17 COMMISSIONER BOTSTEIN: I mean, in my mind, as one of
18 the other -- Commissioner John mentioned earlier, I mean this
19 isn't a by right project, so the lot subdivision is -- I mean
20 that is a -- an exception that the Board would have to grant.
21 And so to justify building this structure and essentially having
22 to multi-story -- multi-unit structures on one property, I would
23 want to see -- I mean the motive seems to be affordable housing.
24 I would agree with members of the Commission that 80 percent AMI
25 is just -- plus another market rate which is going to drive up

1 prices. It's not actually achieving that goal. So I don't see
2 if, you know -- I was saying like, if it were a 30 percent AMI
3 unit, that would be like, okay, that's a really deeply affordable
4 unit that might actually change the conversation around
5 affordable housing in this neighborhood. I just don't believe
6 that the current proposal does that, if that answers your
7 question.

8 COMMISSIONER TURNBULL: Okay. Mr. Chair, Mr. Dungan
9 is making faces on the screen, and I don't appreciate it.

10 CHAIRPERSON HILL: Okay.

11 COMMISSIONER TURNBULL: I don't know what he is trying
12 to do, but it's very disturbing to look at my screen and see him
13 raising his hands and making mouth movements, so very disturbing.
14 I think he's out of order.

15 CHAIRPERSON HILL: Okay. All right, Commissioner
16 Turnbull.

17 Mr. Dungan, we'll get to you, you can just kind of take
18 a seat.

19 Let's see. So, right, Commissioner Botstein.
20 Commissioner Botstein, so you guys went, and this is what I'm
21 going to ask Mr. Cross actually at some point is I'm trying to
22 understand, the light and air issues from a matter of right versus
23 what they're proposing, right. And so that's one thing that I'm
24 going to get around to when we're talking with the Office of
25 Planning.

1 So you're -- and I'm just kind of everybody has their
2 opinions on stuff. Like, the 80 percent AMI, that's what is
3 currently within our regulations. Like, that's how they're
4 getting to the 80 percent. And I don't need Mr. Dungan to tell
5 me exactly whatever. I'm just kind of giving my opinion that
6 325 for a three-bedroom unit, that's pretty low, right, in terms
7 of it's not -- I mean we all know what everybody's -- real estate
8 is going for nowadays. And so like three bedrooms at \$325,000,
9 I don't see that that often.

10 But I do understand what you're saying, whatever the
11 affordable AMI component is. And so -- but you're the ANC --
12 the ANC's position, and this is where I'm just kind of confused.
13 I'm not trying to box you in on this question, but it's like, if
14 then it was 60 percent AMI versus 80 percent, you think that the
15 ANC might have actually voted for it? You don't know.

16 COMMISSIONER BOTSTEIN: I don't know. I mean, I think
17 that would be a different -- it would certainly have sparked a
18 different conversation, I think, among the neighbors too. I
19 mean, I think one of the challenges is, as the neighbors have
20 laid out and I think several here today, they have a lot of
21 concerns about what the property would do to the neighborhood and
22 to their own properties, which I think are legitimate.

23 And I think they also had some concerns around just how
24 the project was presented and the engagement. And so I think if
25 -- I don't know, if it had been brought differently, I can't

1 speak for them, but perhaps they would have had a different take.
2 I'm not sure.

3 CHAIRPERSON HILL: Yeah. But when you say that how
4 -- and this is where I'm trying to understand when you say that
5 would be -- would have possibly been received differently by the
6 community still -- it's still the same massing, right? Like,
7 people are still going to have the same light and air issues.
8 It's still going to look the same way. So you don't know
9 necessarily how that would have gone, right? I mean if exact -
10 - it's the exact same building, it's just that it's 60 percent
11 AMI versus 80 percent AMI, right. So I guess what I'm trying to
12 ask you is, were there other issues other than just the AMI?

13 COMMISSIONER BOTSTEIN: With the opposition to the
14 project?

15 CHAIRPERSON HILL: Yes.

16 COMMISSIONER BOTSTEIN: Yes. A lot. So I think the
17 neighbors spent a lot of time, and I know some of them are here
18 looking at the zoning codes, so that they were looking at what
19 actually is allowable, and I think they had a lot of different
20 concerns. But certainly, the adverse community impacts, they -
21 - light, privacy, character, scaling pattern, they had a lot of
22 different reasons why they felt this was not -- shouldn't be
23 granted a special exception.

24 CHAIRPERSON HILL: Okay.

25 COMMISSIONER BOTSTEIN: Yeah.

1 CHAIRPERSON HILL: Okay. Before I turn to the Office
2 of Planning, does my colleagues have any more questions for the
3 Commissioner?

4 Okay. Mr. Cross, do you have any questions for the
5 Commissioner?

6 MR. CROSS: I do not.

7 CHAIRPERSON HILL: Okay. All right.

8 Can I turn to the Office of Planning?

9 MS. VITALE: Good afternoon, Mr. Chair and members of
10 the Board. Elisa Vitale with the Office of Planning for BZA Case
11 20476.

12 The Office of Planning is recommending approval of the
13 special exception from the lot area requirements that is being
14 requested via the voluntary inclusionary zoning opt-in
15 provisions. OP reviewed the request against the general special
16 exception criteria in Subtitle X, Chapter 9, that's how this
17 special exception is analyzed. The first criteria speaks to the
18 general purpose and intent. This property is in the RF-1 Zone,
19 and that zone permits two dwelling units as a matter of right.
20 The proposed development is consistent with the development
21 standards of the zone with the exception of the decreased lot
22 area. But that is the 1500-square-foot lot is exactly what is
23 contemplated by this voluntary opt-in provision in the zoning
24 regulations, so we felt that the proposal was consistent with the
25 general purpose and intent of the RF-1 Zone in the zoning

1 regulations.

2 The second criteria is that the relief requested would
3 not tend to adversely affect the use of adjoining property. As
4 you saw in the applicant's presentation, given the presence of
5 Grant Circle there and New Hampshire Avenue and the other state
6 streets, there are a number of irregularly shaped squares. The
7 -- just the pattern of the development in these squares is a bit
8 unique, you don't have the traditional kind of rectangular lots.
9 There are a number of alleys that cut through the subject square
10 for this application, which create a number of irregularly shaped
11 lots. And so you do have a unique situation here, where you have
12 the rear yards coming through from the properties that front on
13 New Hampshire, coming through to Taylor. You also have lots that
14 front on Taylor. So I -- in reviewing this, we looked at it and
15 saw that this actually kind of helped to create a more uniform
16 and continuous street frontage along Taylor. Right now, you have
17 two accessory buildings that are operating as garages with a
18 large curb cut on Taylor than the alley that cuts through to
19 Taylor and then the -- a row -- of row dwellings that front on
20 Taylor.

21 This proposal would reduce the size of that curb cut
22 adjacent to the alley, would add another row building and kind
23 of help create a more continuous street frontage along Taylor.
24 So I do think that this is -- that this would be an improvement
25 and would not be inconsistent or out of character with the

1 surrounding development in the area.

2 In terms of other impacts, the criteria don't get
3 specifically into light and air or privacy and use. But again,
4 given the nature of the square, there are other properties where
5 you have a -- the rear yards in close proximity. I don't believe
6 that this would create undue impact in terms of privacy of use
7 or enjoyment or exceptionally undue impacts with respect to light
8 and air. So the Office of Planning is recommending approval of
9 this special exception relief. I'll conclude my comments there,
10 and I'm happy to answer any questions. Thank you.

11 CHAIRPERSON HILL: Thank you, Ms. Vitale.

12 Does the Board have questions for the Office of
13 Planning? I got a couple and you all can think about it. I'll
14 get to you, Commissioner, also.

15 Ms. Vitale, so I'm trying to understand and maybe you
16 can help me. I'm trying to understand whatever the matter of
17 right is versus what is being proposed. And it doesn't seem like
18 I can get necessarily to an apples-to-apples comparison, right,
19 because we're allowing them to subdivide the lot because of the
20 (indiscernible) not allowing. I'm saying the application is
21 subdividing a lot because of the IZ unit, right?

22 MS. VITALE: That's correct. It's a voluntary opt- in.
23 And so -- let me pull up my report just so I have the right
24 section number to reference for you. The provisions in Subtitle
25 E, so again, we're in the RF, the Residential Flat Zone, that

1 subtitle and Subtitle E in 201.4. It's kind of an "if-then." If
2 you want to do a voluntary inclusionary development, so if a
3 developer says I want to opt in in the RF Zone, it requires
4 special exception relief and that's via E-5206.2. And you can -
5 - then it says you can -- that relief is to utilize any of the
6 IZ modifications. And that refers you back to the IZ provisions
7 in Subtitle C, that the minimum lot width and lot area
8 requirements are what are spelled out in 201.4. So if you say I
9 want to opt in, I'm requesting a relief via E-5206.2, you can
10 have a minimum lot area of 1500-square-feet, which the applicant,
11 in this instance, is proposing. And you can have a minimum lot
12 width of 16-feet. In this instance, the applicant far exceeds
13 that 16-foot minimum lot width.

14 If the applicant did not propose to subdivide the
15 property -- as you've heard, 4107 now is currently being used as
16 a two unit flat -- and so they could have an accessory building.
17 That accessory building could be used for parking. You know, I
18 believe right now, it's a one-story structure that functions as
19 a parking space. It may or may not physically house a vehicle
20 currently, but that would be permitted. That would be permitted
21 to continue.

22 We aren't reviewing a proposal, so I can't speak to
23 -- and I think the architect even said this earlier, you can't
24 really speak to hypotheticals. I don't know if they could add
25 on to that accessory building and still meet the lot occupancy

1 requirements. But right now, you can have two dwelling units as
2 a matter of right on that 4107 New Hampshire Avenue property.

3 CHAIRPERSON HILL: Right. And then the -- if the
4 building requirements, the height and everything, the massing is
5 within the zoning parameters, right, meaning the -- if we approve
6 the lot, then there -- the height is correct and everything else.

7 MS. VITALE: That is correct. The applicant is not
8 requesting any additional relief for heights for lot occupancy
9 for parking for pervious surface, so this is a self-certified
10 application. Certainly, if they go to DCRA to pull building
11 permits and it's determined that the proposal does not meet the
12 development standards of the RF Zone, they would need to come
13 back to you, but they're asserting that they meet all of the
14 development standards and that the only relief they need is the
15 special exception that they're requesting to voluntarily opt in
16 to inclusionary zoning to get to that 1500-square lot
17 (indiscernible).

18 CHAIRPERSON HILL: Got it. So the Office of Planning
19 obviously looked at it; 4105, 4103, 4101, all of the homes on
20 that -- in particular 4105, right. And did not think that it
21 would tend to adversely affect the use of neighboring properties
22 in accordance with the zoning regulations and zoning maps.

23 MS. VITALE: That's correct.

24 CHAIRPERSON HILL: Okay. And just kind of -- I mean,
25 can you kind of explain to me why again?

1 MS. VITALE: Certainly. As I mentioned, the -- because
2 of this -- I can read my report on page three, this is on Criteria
3 B. Because the square has frontage on multiple streets and is
4 bisected by two alleys, it creates a variety of lots, and it also
5 creates a number of irregularly shaped lots. So we noted that
6 the proposed subdivision would not create a lot pattern that
7 would be out of character with other lots in the square. And as
8 the applicant noted in their presentation, this pattern of
9 subdivision would not be out of character with other squares in
10 the area. This is seen elsewhere in the neighborhood. The
11 applicant's proposing to construct a new row building that would
12 front on Taylor Street. The facade of the proposed building
13 would align with other properties to the east across the alley.

14 CHAIRPERSON HILL: I got you, Ms. Vitale. I'm following
15 along with your report here.

16 MS. VITALE: Okay. I mean -- and --

17 CHAIRPERSON HILL: No, no, no. It's okay. That's
18 good. That's good. I just want to kind of understand a little
19 bit.

20 All right. Okay. Anybody got anything else for the
21 Office of Planning before I go around to other people.

22 Ms. John.

23 VICE CHAIR JOHN: So just to clarify, for me, if this
24 were an accessory struct -- habitable space in an accessory
25 structure, the height would be 20 feet, right?

1 MS. VITALE: It doesn't -- the height for accessory
2 buildings is not related to the use. Those are two separate
3 issues. Accessory buildings under the zoning regulations in the
4 R and RF Zones, so the residential and residential flat zones,
5 are permitted to go to 22 feet or two stories.

6 VICE CHAIR JOHN: Okay. So it's 22 feet and two
7 stories, that's what I was trying to get to. Okay. Thank you.

8 CHAIRPERSON HILL: Okay. Anyone else?

9 Commissioner, you have a question for the Office of
10 Planning?

11 COMMISSIONER BOTSTEIN: Yeah, just a couple comments.
12 I appreciate your feedback. I mean one thing just -- we did
13 spend a lot of time, you know, I did. As an ANC, we were trying
14 to make an informed decision, and I know the neighbors did too.
15 And I believe I talked to Zoning. We were directed to on Subtitle
16 10, Chapter 9, where the adverse use of effect on the use of
17 neighboring property, light, privacy, character scale, pattern,
18 you know, all those things were actually cited in the code. So
19 maybe we were given misdirection, but we were just going off of
20 what -- I mean, I guess I'm a little confused as to the point of
21 a special exception then because developers they're -- so right
22 now, it's a very strange lot. So I see what you're saying about
23 there are row homes, but essentially, you're putting a new multi-
24 story building in where other people have a backyard.

25 And so, I guess under RF-1, I thought you need to have

1 900-square-foot for each unit for a three plus unit building.
2 And so there isn't enough space to justify the four units that
3 are proposed here without the IZ. So I guess I'm just -- I was
4 thinking that we were looking at the code and trying to see making
5 arguments based on that, which are -- what the neighbors felt.
6 But also then I would think because it's a special exception, you
7 would need some sort of compelling justification to sort of go -
8 - to build more than -- under the square foot ratios in an RF-1.
9 So I -- maybe there's another place we should be looking, but
10 just for context, at least as a new commissioner coming in and
11 looking at the zoning code, I think we were trying to do our due
12 diligence and figure out what the actual regulations are and make
13 an argument based on the merits that way, just for context.

14 MS. VITALE: And I can clarify, I think you're combining
15 two provisions. The zoning regulations do allow a conversion in
16 the RF Zone to a three-unit or an apartment house provided that
17 there are 900-square-foot of land area. So if your lot is of
18 sufficient size in the RF-1 (audio interference), in this
19 instance in an RF Zone, you could convert to an apartment and
20 you could go to three units if you had the 900-square-foot.

21 This application is completely separate and apart from
22 that. This is a voluntary inclusionary zoning development. So
23 the applicant saying, I'm requesting to voluntarily opt in to IZ,
24 to inclusionary zoning, and as part of that opt in, I'm allowed,
25 if I request a special exception and that's approved by the Board,

1 to come in with a bit smaller of a lot area and a bit narrower
2 of a lot width than what the minimum requirement would be if
3 someone was coming in and just subdividing property generally
4 without opting into IZ.

5 If they were just coming in to subdivide this lot in
6 the RF Zone, they would have needed 1800-square-feet of land area
7 and 18-foot width of lot frontage. They're saying we're going
8 to opt in to IZ and this is what the (indiscernible) contemplated
9 in order to encourage the development of affordable housing
10 units.

11 We're saying it's not a lot smaller, but if you go to
12 15 -- if you have 1,500-square-feet of lot area, so 300 less than
13 what the zone requires as a minimum for new subdivisions, if you
14 have that 1,500 and you come to the Board as a special exception
15 request and you voluntarily opt in to IZ, that's the process that
16 they're in. They're not trying to do a conversion. That 900-
17 square-foot of land area per dwelling unit doesn't apply in this
18 case. This is a separate application under the voluntary
19 inclusionary zoning opt-in provisions.

20 COMMISSIONER BOTSTEIN: Yeah. No, I totally appreciate
21 it. I just want to clarify; I think there's a lot of confusion
22 also among the community because this was originally presented
23 as a by right project. And because there's this program like,
24 oh, yeah, this is going up. In fact, I don't think that garage
25 is even there anymore, and I think that was a misunderstanding.

1 So then it's like, is it by right or is it a special exception?

2 And I think -- I mean the reality is, there's a request
3 for lot subdivision, which is something and not done commonly.
4 And there's going to be more building than there would be just
5 under, you know, so I think, in the future, if you do approve
6 this case, I mean I just think that it's very -- you're
7 essentially telling neighbors who don't want the structure for a
8 lot of reasons, and I think there are several people on the phone
9 who want to present, but to say that there's a whole community
10 impact -- input process, that's going to be given great weight.
11 It's in fact, this is a program that developers can use to build
12 more units as long as there's one IZ, then I would just say,
13 something should be made clear, so that we don't go through all
14 the -- neighbors don't put their sweat and tears into really
15 thinking about this and putting together arguments.

16 MS. VITALE: Well, I don't want to step on the Chair's
17 toes or the Board, but that's why we're all here today. This
18 hearing process is this opportunity for input. If it was by
19 right, they would have gone to DCRA, gone to the Office of the
20 Surveyor, subdivided the property, pulled the building permits,
21 and the building would be there without this public process, so
22 it is a special exception. It is not matter of right. The
23 special exception request, as I stated, has to be reviewed, it's
24 Subtitle X, Chapter 9, and the two criteria are that it's
25 consistent with the general purpose and intent of the zoning

1 regulations, and that it would not tend to adversely affect the
2 use of adjoining property. And so every special exception, every
3 variance, the zoning regulations lay out very clearly the
4 criteria against which relief must be evaluated. And the criteria
5 varies depending on what that special exception or variance
6 request may be.

7 Special exceptions are things that are generally
8 contemplated to be consistent, but are being reviewed for
9 impacts. And so that -- I think all of the comments that the
10 community is making are -- you're looking at the right things
11 here. You're weighing in about the issues that concern you and
12 that's the purpose of this hearing, that's why we're here.

13 CHAIRPERSON HILL: Okay.

14 First of all, Ms. Vitale, like, that was excellent.
15 Like, that was really -- like, it was a lesson. I had like -- I
16 mean I was quietly sitting just because I was -- I felt I was in
17 a training session for -- you can come and give us another
18 training if you like on the inclusionary zoning requirements.

19 Do you live in the city, Ms. Vitale?

20 MS. VITALE: I do.

21 CHAIRPERSON HILL: You should be on the Board, Ms.
22 Vitale. I don't know if you can be on the Board --

23 MS. VITALE: I don't think I can do that.

24 CHAIRPERSON HILL: -- and work at the Office of
25 Planning. I mean the pay is so good on the Board. So let's see.

1 Commissioner, I guess what I'm trying to figure out
2 also, just -- I'm just kind of repeating things, but is that you
3 are here for the right reasons, right. And even though I
4 mentioned light and air, and Ms. Vitale was pointing out that
5 light and air isn't necessarily the regulation you're looking at.

6 You know even in X 901.2(b), "Will not tend to affect
7 adversely, the use of neighboring property in accordance with the
8 Zoning Regulations and Zoning Maps"; you can still argue that
9 point. And so the whole reason why we're here is again because
10 it isn't a matter of right, so therefore, they have to go through
11 this process, right. And I guess even as I'm repeating this for
12 my Board members is, I'm kind of processing this even myself, is
13 that, right -- I mean 900-square-foot is like the kind of the
14 "hard and fast" rule that nobody can ever get around, right, but
15 -- and not even "get around" is the wrong word.

16 But the Zoning Commission and the Zoning Regulations
17 now have this IZ component in there. And so they are saying that
18 if you give 80 percent, you can lose 300-square-foot, you know,
19 150-square-foot less, but you still have to be so -- I, mean, in
20 other words, it makes sense also, right. Now, we're here to
21 argue whether or not the neighborhood and whether it's adversely
22 affecting the neighborhood, right, which is still an argument,
23 right?

24 And again, back to the "great weight" thing when you
25 were first talking about. We always give the ANCs great weight,

1 right? I know that the ANC always come here and think, you all
2 are sitting at the table, you get a lot of "great weight." I
3 have an ANC, I go to my ANC meetings. You know, great weight
4 doesn't mean we have to say yes or no to what you say. It just
5 says you have to have "great weight," which is what you're
6 getting, right? If you're a regular member of the public, you've
7 got three minutes. That's not great weight, right. Okay.

8 So Commissioner. How long have you been a Commissioner?

9 COMMISSIONER BOTSTEIN: Since January?

10 CHAIRPERSON HILL: So not that long, but still a little
11 bit. So I mean the ANC is, I mean that's where all of the --
12 this is where the "sausage" happens as well, but the "sausage
13 making" is going on at the ANC level. So good luck is what I'm
14 saying. All right. Let's see. Okay.

15 Mr. Cross, do you have any questions for the Office of
16 Planning?

17 MR. CROSS: I do not.

18 CHAIRPERSON HILL: Okay. Nobody else has any questions
19 for the Office of Planning? Okay.

20 Is there anybody here wishing to speak, Mr. Young?

21 MR. YOUNG: Yeah, we have three people. One is calling
22 in by phone.

23 CHAIRPERSON HILL: Okay. Can you go ahead and bring
24 them up?

25 Ms. Marshall, can you hear me?

1 Ms. Hoffman, can you hear me?

2 MS. HOFFMAN: Yes, I can hear you. I prefer that Ms.
3 Marshall goes first or --

4 CHAIRPERSON HILL: No. That's fine.

5 Ms. Marshall, can you hear me? I got two Ms. Marshalls.
6 So let's see what happen.

7 MS. MARSHALL: So this is Melanie Marshall.

8 CHAIRPERSON HILL: Ms. Marshall.

9 MS. MARSHALL: Yes.

10 CHAIRPERSON HILL: Could you first introduce yourself
11 for the record?

12 MS. MARSHALL: My name is Melanie Marshall and I'm the
13 property owner of 4103 New Hampshire Avenue, NW.

14 CHAIRPERSON HILL: Okay. Give me one second. You're
15 4103. Okay. Got you. Okay. All right.

16 Ms. Marshall, if you -- can you see the clock?

17 MS. MARSHALL: Yes.

18 CHAIRPERSON HILL: Okay. You'll have three minutes to
19 give your testimony and you can begin whenever you like.

20 MS. MARSHALL: My name is Melanie Marshall. I'm a
21 native Washingtonian, and I have lived in this area for (audio
22 interference) years.

23 This application is not one that would add value to the
24 Petworth community or to us, individually. On the contrary and
25 specifically, it will devalue our properties, my property

1 substantially. And as more important, if not more so, negatively
2 impact the light and enjoyment of my property.

3 I know that Mr. Cross did not say that the applicant
4 owned 4105 New Hampshire Avenue, which is immediately adjacent
5 to 4107 property in question. When the applicant came on-line.
6 He said that he was the owner of 4105 New Hampshire Avenue.

7 This block shape is an L shape with a shortened of the
8 L base in Taylor Street. I believe that the drawings presented
9 do not show my property, correct? I believe you also referred
10 to -- I'm sorry, Ms. Vitale referred to 4105 as being the property
11 most impacted by this build; he owns 4105, so I doubt that. It's
12 my property at 4103, which is on the other side.

13 But just to say I do oppose this building. I feel that
14 the applicant was not coming forthcoming when he proposed to the
15 community about what he wanted to do. He prefaced everything
16 with the phrase "by right." By right, I am going to build this
17 apartment, and I don't think that that was very transparent.

18 I intend to age in place and several of my neighbors
19 do as well, and we're concerned that our property taxes are going
20 to go up by structures of this kind. He (audio interference)
21 renting those out individually, 3107 and then 4105, which adds
22 to the density to the neighborhood already.

23 We do protest the design, height, and facade of the
24 building because we have what are referred to as the Wardman
25 style row houses that are unique to this area, and he is going

1 to be putting a modern aluminum siding structure in it (audio
2 interference), and so I want to say I oppose this wholeheartedly.

3 CHAIRPERSON HILL: Okay. Thank you, Ms. Marshall. Can
4 you hear me?

5 MS. MARSHALL: Yes. Thank you very much.

6 CHAIRPERSON HILL: Thank you. Just stay on the line
7 there for a minute.

8 Ms. Hoffman, can you hear me?

9 MS. HOFFMAN: Yes, I can. Yes, I'd like to add
10 something --

11 CHAIRPERSON HILL: Ms. Hoffman. Ms. Hoffman.

12 MS. HOFFMAN: Yes.

13 CHAIRPERSON HILL: Could you first introduce yourself
14 for the record.

15 MS. HOFFMAN: My name is Sandra Hoffman. I live at 7th
16 and Taylor NW. I have lived here for the last 21 years. I know
17 many of the neighbors in the block that's being affected, and
18 what is done in this block will also affect us in other areas.
19 I'm sorry, but it appears we may have something -- police action
20 going on in front of our house. I've got probably police
21 helicopters overhead. I'm sorry.

22 CHAIRPERSON HILL: I can hear you. We can hear you.

23 MS. HOFFMAN: Okay. All right. So one of the things
24 that Melanie did not mention is how -- I know people are saying
25 this is not going to affect light. I'm a gardener. I know light.

1 Melanie is a gardener. She spent 20 years developing a garden
2 in the back of her house. It's a small garden that abuts the
3 accessory unit, which is a less than one story -- currently a
4 less than one story 1920s garage that has two bays.

5 What he's proposing is taking one half of the bay,
6 splitting that garage and building on half of that. So imagine
7 1920s, two cars wide shared garage, he's taking half of it and
8 calling -- that's what's on his property. So how the other half
9 is going to stand up, I'm not quite sure, but I'm sure they'll
10 figure out something.

11 But I cannot see, knowing the light patterns in my
12 neighborhood and how the houses across the street from me. I am
13 on the west side of 7th Street. Melanie's house is the west side
14 of this property. The houses across the street from me severely
15 shade my garden for about half the day. That's across the street
16 and as well as two side yards that reach about 15-feet wide. So
17 I have got probably a hundred yards between my house and the next
18 house.

19 There will be about -- I went out with tape measures
20 last night and measured various properties. There will be about
21 25 to 30-feet between her house and the next building. So when
22 she says it's affecting her ability to use and enjoy her house,
23 it will.

24 Other neighbors expressed a lot of concern about
25 parking. We are concerned about -- I can understand their concern

1 about losing the parking that's already being -- he's already
2 taken two row houses that were single family homes and turn them
3 into multiple units.

4 So there's parking that's associated with those and now
5 he's adding another two units. It's a very short block, other
6 people on but -- you'll see in the ANC, other people have
7 mentioned that this is an issue; parking is becoming more and
8 more an issue in this area.

9 I also wanted to say I went out and measured 610 Upshur
10 and 716 Shepherd to kind of get a sense; he says those are
11 comparable. Each of those have a side yard as well as the houses.
12 So if you can imagine there are houses along New Hampshire Avenue
13 in each case, and then there's a house being -- that was built
14 on a cross street that he said is comparable in location to this
15 one. But each of those houses on New Hampshire both on Upshur
16 Street and Shepherd Street, each have a back yard that is 35 to
17 40-feet deep. And the house on across street has a side yard 9
18 to 12-foot deep. So there is about a 40 to 45-foot distance
19 between the back porch of the houses on New Hampshire and the
20 houses that are built on the side street that he says are
21 comparable. Yet in this case, it's going to be closer to 25 to
22 30-feet, so it's quite a difference in terms of density.

23 This affects other people's decisions. And one of the
24 decisions that will affect for me, I own a house that has a
25 grocery store in the back. It's currently an apartment that I've

1 transformed into an apartment. I have spent 20 years restoring
2 the interior of my house. I am not about to sell it and have
3 somebody rip 20 years of work out of my house. So I will do
4 whatever it takes to keep the interior of my house intact
5 including going two-stories up in the back.

6 When I do that, in order to subdivide my house into
7 three units and be able to sell the part that I've restored as a
8 coherent unit, that will definitely affect the neighbors to my
9 west. It will shade their yards to the point where they are not
10 going to be able to grow gardens. So I understand this concern
11 about light and space. I understand this concern about parking,
12 and I don't think it should be taken lightly. It will definitely
13 change the character and use of -- the character of that street
14 and the use of properties adjacent.

15 CHAIRPERSON HILL: Okay. All right, Ms. Hoffman. Thank
16 you for your testimony.

17 Mr. Young, you said there's somebody on the phone.

18 MR. YOUNG: Yeah. I have Ms. Waters on the phone. I
19 will have her unmute now.

20 CHAIRPERSON HILL: Ms. Waters, can you hear me?

21 MS. WATERS: Hello. Can you hear me?

22 CHAIRPERSON HILL: Yes.

23 MS. WATERS: Hello. My name is Diana Waters and I live
24 at 536 Taylor Street, NW. Okay. I purchased my home over 20
25 years ago.

1 CHAIRPERSON HILL: Ms. Waters? Ms. Waters? Ms. Waters?

2 MS. WATERS: Yes.

3 CHAIRPERSON HILL: No, it's okay. I just want to get
4 you introduced first, and then let you know you have three minutes
5 to give your presentation, and so please go ahead and continue.

6 MS. WATERS: Yes. Okay. For the record, my name is
7 Diana Waters. I live at 536 Taylor Street, NW. Okay.

8 I purchased my home over 20 years ago. I am now a
9 senior homeowner at this location. And I chose this block for
10 the natural lighting, this -- for the street, the wide street.
11 It's a very short block and very unique block. Yes, we have bus
12 stops and it's close to the Metro.

13 I purchased my home to age in place and not to be taxed
14 out as a senior as this is going on over the city, okay, by
15 someone who really doesn't have a true interest in the block. He
16 does not have interest in this block. I have fought for safety
17 and peace for our neighborhood very actively. And now, I cannot
18 believe that I'm fighting this project that doesn't fit in to
19 this block, the short block. Okay. He's taking these plain
20 garages and did look -- will look nothing -- the aesthetics will
21 look nothing like it does on the short block of Taylor Street.

22 I don't care what the Planning said. She said it fits
23 in; it does not fit in on Taylor Street. She was talking about
24 up on the corner of New Hampshire Avenue. Okay. I stated this
25 at the meeting in April, on the Zoom meeting in April, and also

1 at the ANC meeting on May 12th. And I stand firm to my word that
2 this project does not fit. I am not in support of this project.
3 Taylor Street, this short 500 block of Taylor Street, does not
4 need to be redeveloped.

5 He needs to go somewhere where -- he says he's at --
6 for helping. He needs to go to Ward 7 or 8 where there's a need
7 for it. He wouldn't have this over there in Ward 3, they wouldn't
8 accept it. So we do not need any more development on Taylor
9 Street, NW. He needs to be more considerate as it is he's a
10 slumlord. The way he (audio interference) --

11 CHAIRPERSON HILL: Ma'am, wait a minute. Hold on, hold
12 on, hold on, hold on, hold on. Now, Ms. Young (sic), I let you
13 go for a pretty long time about everything, and I'll let the
14 property owner respond to things afterwards. But so let's just
15 not get personal about stuff, right? Please continue.

16 MS. WATERS: It's not getting -- no, this is not
17 personal. This is our neighborhood.

18 CHAIRPERSON HILL: Ms. Young, you just called somebody
19 a slumlord. That sounds pretty personal to me.

20 MS. WATERS: It is. Well, this is what we're bringing
21 to the neighborhood.

22 CHAIRPERSON HILL: Okay.

23 MS. WATERS: When you're not taking care of the
24 property.

25 CHAIRPERSON HILL: Anyway, Ms. Young --

1 MS. WATERS: It is.

2 CHAIRPERSON HILL: Okay. All right, Ms. Young, I'm
3 just telling you --

4 MS. WATERS: You just call it what you want.

5 CHAIRPERSON HILL: Well, Ms. Young, you don't have to
6 yell at me. I'm just telling you. I'm trying to keep you up
7 --

8 MS. WATERS: I'm not yelling. I'm not yelling. Okay.
9 I'm not yelling. I am speaking in my voice because I'm very
10 annoyed, very annoyed.

11 CHAIRPERSON HILL: Okay. Now, please continue to give
12 your testimony.

13 MS. WATERS: Excuse me?

14 CHAIRPERSON HILL: Would you like to continue to give
15 your testimony?

16 MS. WATERS: Yes, I would. So as I was stating that
17 five -- this 500 block of Taylor Street does not need any more
18 development, okay, new development.

19 CHAIRPERSON HILL: Okay. All right, Ms. Young. Okay.
20 Does the Board --

21 MS. WATERS: My name is Waters. My Name is Diana
22 Waters.

23 CHAIRPERSON HILL: Ms. Waters. I'm sorry. I can't see
24 your picture here.

25 MS. WATERS: Well, I said my name.

1 CHAIRPERSON HILL: No, I understand.

2 MS. WATERS: And I thank you for your time.

3 CHAIRPERSON HILL: I understand. I can't see your
4 picture, I'm sorry.

5 MS. WATERS: Thank you.

6 CHAIRPERSON HILL: All right. Okay.

7 Does anybody have any questions of the witnesses?

8 Ms. John.

9 VICE CHAIR JOHN: So Ms. Waters, can you describe for
10 me what the houses look like on that block of Taylor Street? I'm
11 having difficulty conceptualizing what this looks like between
12 New Hampshire Avenue and where you live, I believe you're at 536.

13 MS. WATERS: Yes.

14 VICE CHAIR JOHN: Can you tell me what the houses look
15 like?

16 MS. WATERS: And who are you? Who are you, please?

17 VICE CHAIR JOHN: I am Board Member John.

18 MS. WATERS: I'm sorry. I didn't hear you.

19 VICE CHAIR JOHN: Board Member John.

20 MS. WATERS: Yes. The houses are red brick, okay.
21 Most of them have columns. They have porches, very unique.
22 They're not built from a garage. If you'd look at what he's
23 building, okay, and you look -- you could Zoom, if you use your
24 Zoom, you could go on any real estate and you could see the
25 houses, what they look like on Taylor Street.

1 VICE CHAIR JOHN: Yes, I did see that online. But
2 precisely is -- between the alley and New Hampshire Avenue, I
3 couldn't picture what's --

4 MS. WATERS: Well, all the houses are the same. What
5 you see from New Hampshire, 500 block of New Hampshire, that
6 whole 500 block between New Hampshire and Taylor Street, all the
7 houses are uniformed.

8 VICE CHAIR JOHN: Okay. And that's on the same side
9 of the street as this project?

10 MS. WATERS: Yes. On both sides, the houses are similar
11 on both sides and (audio interference) width.

12 VICE CHAIR JOHN: I see. Okay. Thank you.

13 MS. WATERS: You're welcome.

14 CHAIRPERSON HILL: Okay. Any more questions for the
15 witnesses? Anybody? Okay.

16 Mr. Cross, do you have any questions?

17 MR. CROSS: No questions.

18 CHAIRPERSON HILL: Okay. Great. All right.

19 Mr. Young, thank you all very much for your testimony.
20 If you could release the witnesses, please.

21 Okay. Mr. Cross, can you hear me?

22 MR. CROSS: Yes, sir.

23 CHAIRPERSON HILL: Yeah. What I'm trying to figure out
24 also, and you can go ahead and maybe what I think Board Member
25 John was trying to understand is just really kind of what Taylor

1 Street looks like, right. Like, we haven't had a chance to kind
2 of like -- I can't -- maybe if you can show some kind of content,
3 more pictures there, or -- I don't know what is it the
4 Commissioner Hood always asks for? He asks for something. It's
5 an architectural word and I forget. Rendering, rendering.

6 BOARD MEMBER SMITH: Renderings.

7 CHAIRPERSON HILL: Right, rendering. Thank you. If I
8 -- maybe a rendering of Taylor Street, right. And then because
9 I can see the garages, right, so that's one question. Then that
10 other half of that garage, right. Like, I got -- so who owns 40
11 -- 4105?

12 MR. DUNGAN: I do.

13 CHAIRPERSON HILL: Okay. So you do own 4105. Okay.

14 MR. DUNGAN: Yes. Correct.

15 CHAIRPERSON HILL: So 4105 and you own 4107? And Mr.
16 Dungan, can you hear me?

17 MR. DUNGAN: Yes, sir. I can hear you.

18 CHAIRPERSON HILL: Yeah, I got you. I'll give you an
19 opportunity to respond if you want, but at the same time, I got
20 to let you know, it doesn't really help to get into too much of
21 response, but I'm just trying to understand some context of
22 things. I'm not coming after you. I'm just asking some
23 questions. So 4107, you are renting -- so there's 10 bedrooms
24 in there right now, right? So how are you renting out 40 -- I'm
25 just curious how you renting out 4107 now?

1 MR. DUNGAN: As far as -- this is just general curiosity
2 unrelated to the application?

3 CHAIRPERSON HILL: Yes.

4 MR. DUNGAN: Okay. Sure. There's two units and they're
5 all young professionals that want --

6 CHAIRPERSON HILL: They're group homes.

7 MR. DUNGAN: -- quality housing.

8 CHAIRPERSON HILL: No, I got you. I'm just saying
9 they're group houses.

10 MR. DUNGAN: They're brand new, and yes, co-living,
11 group homes.

12 CHAIRPERSON HILL: That's fine. No, I got you. I'm
13 just trying to understand. You're not renting it out to 10
14 different individuals, so you've got two group houses?

15 MR. DUNGAN: No. That would be illegal. There's just
16 one lease per residential unit allowed in the District.

17 CHAIRPERSON HILL: Right. I understand. So then --
18 and 4105. Just to get -- now, I'm curious, is it the same thing?

19 MR. DUNGAN: No, not at all. And I've said this at
20 the Single Member District at the main meeting, and now, the --
21 it's like a falsehood that continues to get repeated. It is a
22 single-family home. It's not a multi-unit.

23 CHAIRPERSON HILL: Okay. That's fine. That's okay.

24 MR. DUNGAN: 4105 is a single-family home, not a multi-
25 unit --

1 CHAIRPERSON HILL: Got it. I'm just saying, did you -
2 -

3 MR. DUNGAN: -- that we completely renovated in 2019 and
4 now we rent it out.

5 CHAIRPERSON HILL: Got it. Okay. And so -- okay.
6 Great. Do you live in the city, Mr. Dungan?

7 MR. DUNGAN: I live three blocks away and --

8 CHAIRPERSON HILL: Don't tell me where it is. Don't
9 tell where it is.

10 MR. DUNGAN: I will not.

11 CHAIRPERSON HILL: Okay. I just want --

12 MR. DUNGAN: I will not.

13 CHAIRPERSON HILL: I just want the city.

14 MR. DUNGAN: I just wanted to say that, I apologize to
15 Board Member Turnbull for -- I should have turned off my video
16 while Commissioner Botstein was speaking. I just -- it's very
17 disheartening and frustrating to hear the argument that adding
18 to the supply of housing is going to drive up home prices. And
19 then also people saying, it will devalue their property, but
20 their property taxes will go up and to take it to Ward 7 and Ward
21 8, which was said at both at the Single Member District meeting
22 and the main ANC.

23 CHAIRPERSON HILL: Okay. Right. So let's see. Okay.
24 So I had my questions answered.

25 Mr. -- the other people in the Board, do you have any

1 final questions for anybody?

2 Mr. Turnbull.

3 COMMISSIONER TURNBULL: Thank you, Mr. Chairman.
4 Apology accepted, Mr. Dungan.

5 MR. DUNGAN: Thank you, sir.

6 COMMISSIONER TURNBULL: Ms. Vitale, I just had a
7 question about the IZ and the 1500-square-feet. AMI and IZ
8 currently the -- AMI currently has listed that the -- that's
9 accepted for IZ is that, I believe 50, 60 and 80 percent. Those
10 are the three categories. Is there anything in the special
11 exception that sets a limit that you have to -- 80 percent of
12 the max -- but is there anything that sets the limit for what
13 this has to be for the 1500-square-foot?

14 MS. VITALE: The regulations don't specify. It's my
15 understanding that the way that the IZ provisions would apply in
16 this instance is the 80 percent (audio interference) for a for
17 sale property and 60 percent would be relevant for a rental
18 property. I don't believe the applicant specified. If they're
19 saying it's going to be at 80 percent, my understanding is then
20 it would be a for sale property. That would be the CZIC, the
21 inclusionary zoning compliance form would be reviewed when the
22 applicant submits the building permit with DCRA.

23 COMMISSIONER TURNBULL: Well, right now, I believe the
24 applicant is saying it's 80 percent, so I'm assuming then that
25 it's a for sale unit.

1 MS. VITALE: That's my understanding as well. I would
2 let the applicant confirm that.

3 COMMISSIONER TURNBULL: But that -- but the regs call
4 that out?

5 MS. VITALE: Correct.

6 COMMISSIONER TURNBULL: Okay. Thank you.

7 CHAIRPERSON HILL: Okay. All right.

8 So Mr. Cross, so a rendering of some kind, I guess,
9 about Taylor Street, right. And then, I guess -- I mean Mr.
10 Cross, I'm like trying to get -- and I don't know where and maybe
11 you can in the next filing -- like, I'm just trying to get a
12 better idea of how this is going to look around the whole
13 neighborhood, right. And it's kind of hard -- I mean, I can see
14 the building in your slideshow, I can see that -- hold on. I
15 can see the building in the slide deck. And I can see kind of
16 like the Google Maps thing, I guess.

17 But it's not really -- I mean just trying to get you
18 to convince me that it kind of fits in, right, is what I'm trying
19 to understand. And like, then even they were talking about the
20 Wardman style homes versus this design. I don't necessarily
21 agree with that, only because I think you all are
22 -- going to get the porch there. And then what did you say you
23 have done -- you guys did do things that the community had wanted?
24 How did you change the plans?

25 MR. CROSS: I think with respect to the exterior

1 appearance, a lot of those came from OP from their design
2 division. And that -- those elements were the front porch to
3 make it more in keeping with the other porches, more traditional
4 on the block, as well as providing a brick walk foundation instead
5 of just a concrete foundation. Those two were made for OP.

6 The change that was made with regard to its exterior
7 appearance for the ANC was, we had a parapet for part of the
8 upper roofline that accentuated the corner element, giving it
9 kind of a bookend (indiscernible) look. And that was reduced in
10 order to reduce the overall perceived height of the building as
11 well as some shadows. For the ANC, we also increased the IZ unit
12 size to make it more of a family size unit.

13 CHAIRPERSON HILL: Okay.

14 And then, Mr. Duncan, I guess the -- Dungan, sorry.
15 What are you guys going to do with that garage that's next door?

16 MR. DUNGAN: The garage next door, I think will just
17 remain. There's no plans for it. I mean one of the things that's
18 been said throughout is this is a setting precedent. There's
19 only one other lot in the whole of Petworth that this could even
20 be possibly entertained. And I can promise you right now, based
21 on my experience, I have no interest in pursuing that lot or
22 doing this again, so nothing will happen with that adjacent
23 garage.

24 And just a quick thing I wanted to mention, there was
25 a determination letter written by Matt LeGrant saying this could

1 move forward. And so there have been a lot of points made where
2 I was saying this was matter of right. I was saying this was
3 matter of right. I was relaying in good faith, where we were at
4 that juncture, which we were, all the way up until January or
5 February, right before permit issuance, we were told this needed
6 to be a special exception. But up until that point, we had a
7 signed determination letter from Matt LeGrant saying we could
8 move forward with the project, so I just wanted to relay that to
9 you.

10 CHAIRPERSON HILL: Commissioner Botstein, you
11 understand what was just said?

12 COMMISSIONER BOTSTEIN: Yeah, I had heard that before.
13 I think that was -- yeah. Yes, I understand.

14 CHAIRPERSON HILL: No. The only reason why (audio
15 interference) is that sometimes does happen. And so people will
16 be there with like matter of right projects and then suddenly
17 it's not matter of right.

18 COMMISSIONER BOTSTEIN: Yeah, I think that has created
19 some confusion also around what was going on in the community -
20 -

21 CHAIRPERSON HILL: It creates confusion with (audio
22 interference).

23 COMMISSIONER BOTSTEIN: -- and what we're doing. Yes.

24 CHAIRPERSON HILL: All right. So that Mr. Cross, right,
25 go ahead and give us the renderings -- no, I'm sorry, perspective,

1 perspective. I forgot. I'll remember one day. And then --
2 let's see, perspective. Okay. And then I don't know, I guess
3 there's no way that -- and this is where I was confused by this
4 matter of right issue, Mr. Cross, versus what you're proposing,
5 right? There's really not like -- what could you show us that
6 is matter of right? You could show us like a garage that -- an
7 accessory structure that has another story on there going 22-
8 feet tall, right? Can you make a brick block and show us what
9 that looks like?

10 MR. CROSS: Yes, yes. We can show that to you. And I
11 have done a little bit of math while we were talking and confirm
12 that that structure would work on the unsubdivided lot, so we
13 could add that to the presentation. That is the mass that is
14 modeled into our solar studies. It's creating the shadow from
15 which we're creating the net difference. So we can, obviously,
16 get that rendered out for you and show you what that mass would
17 be.

18 CHAIRPERSON HILL: Okay. Okay. That's great. Okay.

19 Does anybody else got anything?

20 Commissioner Turnbull.

21 COMMISSIONER TURNBULL: Mr. Chair, I -- the only thing
22 that came up with the witnesses and I don't know whether my
23 colleagues agree or not, but I think it was Ms. Hoffman, Sandra
24 Hoffman, was going back to some of the references that Mr. Cross
25 had made as to other sites within the block or so that he thought

1 were similar and she was basically refuting that saying no,
2 there's a side yard. there's this.

3 I guess I would like, if Mr. Cross could, do a
4 comparison of what those lots look like compared to the lot that
5 -- it sounds like she was saying that what Mr. Cross said was
6 not quite accurate, that there is a difference and they're not
7 quite apples to apples. So I think maybe if we could see a
8 comparison of what the lots were that Mr. Cross had mentioned,
9 that might be worthwhile, I don't know, but I'll leave it to my
10 colleagues.

11 CHAIRPERSON HILL: Mr. Cross. Mr. Dungan, I'll give
12 you a second.

13 Mr. Cross, do you understand what he's asking?

14 MR. CROSS: Yes. I understand what he is asking. We
15 have done some analysis in house here, but I think that it would
16 be best for us to get that on paper for you to review yourself
17 to see how they stack up. Glad to provide it.

18 CHAIRPERSON HILL: Okay.

19 Mr. Dungan, you had your hand up.

20 MR. DUNGAN: I was just going to say yes, that's what
21 Mr. Cross said, will be great. I have reviewed them. I know
22 that 610 Upshur is 1,532 square feet, the lot size, compared to
23 the 1,500 we're proposing. And has a greater lot coverage density
24 than what would be allowable now, and then what we would be doing,
25 but I'll let the drawings speak for themselves, so all right.

1 CHAIRPERSON HILL: Okay.

2 Does anybody else?

3 Ms. John.

4 VICE CHAIR JOHN: So Mr. Cross, on page 13 of the ANC's
5 report is a photograph of the rear yard of 4103 New Hampshire
6 Avenue. And I wasn't quite sure in looking at the sun studies
7 how this three-and-a-half story building, three-story -- the
8 three-story plus cellar would impact this garden in the back. So
9 if you can help me understand that. You might be able to do it
10 from the sun studies that you've already prepared.

11 MR. CROSS: Yes. My apologies. I'm working (audio
12 interference) of that letter, so I understand the photo you're
13 referencing.

14 VICE CHAIR JOHN: (Audio interference) photograph that
15 (audio interference) of 4103 New Hampshire Avenue, which is right
16 next to the garage at 4105. And I don't quite recall where --
17 what the sun study impact was on 4103 New Hampshire.

18 MR. CROSS: Sure. I am looking at the photo, Exhibit
19 3A, which as you said is page 13 on Exhibit 29A. Is that --

20 VICE CHAIR JOHN: Yes. That's correct.

21 MR. CROSS: So I do think that that is likely covered
22 in our existing solar studies. We could back up to -- in the
23 -- well, it's going to be sheet BZA 9B in our architectural plan,
24 it's what is on the presentation or the plans themselves.

25 VICE CHAIR JOHN: I'm looking at it now and to tell you

1 the truth, I had difficulty with this sun study because I always
2 like to see existing and proposed for the same time, so that I'm
3 not looking back and forth over four slides to try and understand
4 what the difference is. So I like to see existing proposed for
5 -- and as well as for the matter of right, so that I can easily
6 see what the difference is without having to flip through
7 different slides to figure out what's going on, but that's just
8 my general comment.

9 MR. CROSS: Yeah.

10 VICE CHAIR JOHN: So if you can just help me with the
11 impact on 4103.

12 MR. CROSS: Yes. And your point is duly noted. We
13 can reformat those. We tried to provide some of that by providing
14 the red hatch to show the difference, but we can outline it in a
15 different way for the resubmission. So 9B, BZA 9B, shows equinox,
16 spring and fall. And the property that you're looking at in that
17 photograph is 4103, I believe.

18 VICE CHAIR JOHN: Yeah.

19 MR. CROSS: Which is the property just to the left or
20 to the west of the existing garage that's going to remain.

21 VICE CHAIR JOHN: Yes, I agree.

22 MR. CROSS: And so when we look at the 9:00 a.m.,
23 there's not anticipated to be any additional shadow based on the
24 proposed structure over the existing or the matter of right on
25 4103's garden. It is already shaded at that time due to the

1 existing structures. At 12:00 p.m., it is assumed to be receiving
2 full sun. At 3:00 p.m., it is also receiving full sun, and at
3 5, it is starting to be shaded by the structures along New
4 Hampshire Avenue themselves. So on the equinoxes, I would say
5 there is no anticipated impact on the garden at 4103.

6 VICE CHAIR JOHN: Okay.

7 MR. CROSS: So if we then go to exhibit or page BZA
8 10B showing the summer solstice, starting again at 9 o'clock, it
9 seems like this is where the greatest impact on that yard will
10 be. Again, the area shown in gray is the area that's anticipated
11 to already be shaded at that time. So the impact would be the
12 additional area that's up closer to the house that may or may
13 not be shown in the photograph that you were looking at earlier.
14 By 12:00 p.m., we're showing that there's no impact to the garden
15 that you were looking at in that photograph. And the -- again
16 at 3:00 and 5:00 p.m., still no impact, and then the impact is
17 from the structures along New Hampshire Avenue.

18 VICE CHAIR JOHN: Okay. Mr. Cross, I think I have --

19 MR. CROSS: And I guess just to finish that, with the
20 winter solstice which is on 11B. those show that that area is
21 largely shaded on that day most times of the day already and that
22 the net increase is not anticipated to affect that area, 4103's
23 garden.

24 VICE CHAIR JOHN: Okay. Thank you. I appreciate that.

25 MR. CROSS: Yep.

1 CHAIRPERSON HILL: Okay. One final question.

2 Mr. Dungan, can you hear me? This is a for sale IZ
3 unit, correct? You're still on mute. Okay. You nod. Is this
4 a for sale IZ unit, yes, or no? Can you hear me? Mr. Dungan,
5 can you hear me? All right. We'll come back to you.

6 Mr. Moy, is there somebody else who wants to testify;
7 is that correct?

8 MR. MOY: Yes, sir. She's on the phone whenever you're
9 ready, sir.

10 CHAIRPERSON HILL: Okay.

11 Mr. Young, could you please allow the person who
12 testified. Do you know if they took the oath, Mr. Moy?

13 MR. MOY: I do not know, but probably not.

14 CHAIRPERSON HILL: Okay. Let's get through this then.
15 Can the person on the phone hear me?

16 MS. SHANNON: I can hear someone. Yeah, I can hear
17 you.

18 CHAIRPERSON HILL: Okay. What's your name, ma'am?

19 MS. SHANNON: My name is Simone Shannon.

20 CHAIRPERSON HILL: Ms. Shannon. Okay. Ms. Shannon,
21 could you introduce yourself for the record, please?

22 MS. SHANNON: Yes. My name is Simone Shannon. I own
23 the home at 517 Taylor Street.

24 CHAIRPERSON HILL: Okay. Ms. Shannon, just a quick -

25 -

1 MS. SHANNON: The applicant. Yes, go ahead.

2 CHAIRPERSON HILL: Can you listen to Mr. Moy? He is
3 going to administer the oath to you. Okay.

4 MS. SHANNON: I took it already.

5 CHAIRPERSON HILL: When you signed up?

6 MS. SHANNON: No, when I just called. I called about
7 five minutes ago and a guy on the phone read me the oath and I
8 took the oath. I mean (audio interference) again, I mean --

9 CHAIRPERSON HILL: Okay. That's fine. That's fine.
10 That's all I need to know. All right. So you have three minutes
11 to give your testimony and you can begin whenever you like.

12 MS. SHANNON: Okay. My problem - I have a few problems.
13 Okay. I'm on Taylor Street, so my house sits on the side. Well,
14 it will be on the same street as this new structure coming up.
15 But ever since the construction of the unit on New Hampshire,
16 I've had so many sewage problems and plumbing problems in my
17 home, and I've lived there for over 17 years, and I'm not sure
18 what really is going on. And also, with the construction where
19 he built these -- I don't know if they're apartments or condos,
20 I don't know what they are. But the back yard, all the dirt runs
21 into my home, into my drain. So there's problems there. So I'm
22 figuring, I guess, with this new construction or this new stuff
23 going on, I'm just kind of like, I'm done at this point, and no
24 one is addressing the issues. You know, they said we was going
25 to have grass. There's not a blade of grass back there. It's

1 all this orange or yellow dirt and it's going into where I live.
2 You know, he said he was going to go out there and he was going
3 to sweep it. I don't want it swept, I want it done. And I also
4 want to address my issues with my sewage. I've never had this
5 problem.

6 CHAIRPERSON HILL: Okay. I think those areas actually
7 are things that have to deal more with construction, which aren't
8 part of our BZA purview, but if you reach out to DCRA, they will
9 be able to kind of direct how those issues can get resolved.

10 MS. SHANNON: Okay.

11 CHAIRPERSON HILL: Okay?

12 MS. SHANNON: Yeah.

13 CHAIRPERSON HILL: All right. Thank you for your
14 testimony. Does the Board have any questions of the witness?
15 Okay. I'm going to go ahead and excuse the witness then, Mr.
16 Young. All right. Ms. Cross, can you hear me? Okay. So I
17 guess we're at the perspective, Taylor Street. Mr. Dungan, can
18 you hear me still?

19 MR. DUNGAN: Sorry. It crashed before right as I tried
20 to put my headset back in. Can you hear me?

21 CHAIRPERSON HILL: Yeah, I can hear you. I mean, I was
22 just trying to confirm. I know you mentioned this before, but
23 the unit is for sale, the IZ unit, correct?

24 MR. DUNGAN: Whatever the city needs more of. I mean,
25 whatever the Department of Housing and Community Development

1 would prefer is what we'll do.

2 CHAIRPERSON HILL: I don't know what that means.

3 MR. DUNGAN: It's for sale, if that's what they want;
4 or for rent, if that's what DHCD wants. I've been dealing with
5 the IZ specialists that run the program for the affordable
6 housing, I don't know what they would prefer to see more of. If
7 they say, "Look, everything just gets sold by developers. We
8 want a unit that is kept for rent," then I would go that route.
9 Or if they want for sale, I'd go that route. Or I've also said,
10 (audio interference) whatever the community wants.

11 CHAIRPERSON HILL: Okay. Mr. Dungan, I'm sorry. You're
12 just kind of confusing me a little bit.

13 So, Mr. Cross, can you hear me?

14 MR. CROSS: I can.

15 CHAIRPERSON HILL: Have you gone through this before?
16 I don't think -- there's not, like, whatever anybody wants, right?
17 Like, you guys are proposing something, correct?

18 MR. CROSS: Yes. I can double check now. I believe
19 that it is proposed at present to be for sale. I can confirm
20 that.

21 CHAIRPERSON HILL: Right, at 80 percent.

22 MR. CROSS: Again, that's my understanding. I'm
23 looking that one up.

24 CHAIRPERSON HILL: Maybe you can clarify that when you
25 come back. I don't know if we're going to come back. Now I

1 don't know whether we're going to come back and have a continued
2 hearing or not, or whatever, because, Mr. Dungan, you kind of
3 confused me a little bit, which is to say that the community, I
4 don't know. They just said, if you got the 60 percent AMI, it
5 might have been a different conversation, right? And so if you
6 rent, I think you have to be at 60 percent AMI. You are a
7 business owner, so you probably know the difference. So you've
8 kind of confused me now, that if you're saying it doesn't matter
9 to you either way, then I would have tried to rent at 60 percent
10 and try to get the ANC on board. So I'm just confused, but that's
11 okay. You can talk to Mr. Cross about it.

12 MR. DUNGAN: Right, and I understand what you're
13 saying, and I was confused a lot as well throughout the ANC
14 process, because I was hearing a lot of negativity and opposition
15 towards anybody that rents in general, it felt like. "I'm the
16 slumlord; the renters have no rights." 4105 has submitted support
17 for this and they're the most affected. So I think that I would
18 say, "Oh, okay. Sure it can be a rental at 60 percent then.
19 That's fine. I'll do 60 percent." But they don't want rentals.
20 They're all saying no rentals.

21 CHAIRPERSON HILL: Mr. Dungan, you said you own 4105.

22 MR. DUNGAN: Yes, sir.

23 CHAIRPERSON HILL: So you submitted a letter on your
24 behalf.

25 MR. DUNGAN: No, (audio interference).

1 CHAIRPERSON HILL: Oh, there's a tenant. Okay.
2 There's a tenant that rents there. Okay. I got confused. Okay.
3 So, Mr. Cross.

4 MR. CROSS: Yeah, I guess I just wanted to clarify the
5 current CIZC that's in the application is for 80 percent AMI and
6 for sale. That's what it lists.

7 CHAIRPERSON HILL: Okay. So, Mr. Dungan, you can talk
8 to Mr. Cross, and you're not going to get back to us for a little
9 while, because we have a lot of stuff that we have to do and
10 there are things that we need to hear from you. So if you think
11 there's any opportunity to go back to -- and the ANC Commissioner,
12 I'm a little bit confused also about y'all's position, and I'll
13 talk to you in a minute what I'm confused about. And so, you
14 know, if there is any benefit to have Mr. Dungan, you know, we
15 present at 60 percent rental AMI and he can somehow get ANC on
16 board, because, you know, Mr. Dungan, you know that if you get
17 the ANC on board and you got -- if you don't have any opposition
18 that has any standing, then you can get your order sooner rather
19 than later. You do know, this, correct?

20 MR. DUNGAN: I don't. I didn't know that.

21 CHAIRPERSON HILL: Mr. Cross. Do you know this, Mr.
22 Cross?

23 MR. CROSS: Yes, I'm aware of it.

24 CHAIRPERSON HILL: You can explain it to Mr. Dungan,
25 then. We're currently running about eight months behind. Okay?

1 So, I mean, before you get your order, if there's opposition from
2 the ANC or the Office of Planning or someone who has standing,
3 and nobody has standing right now except for the ANC, right? So
4 if for some reason you can get the ANC, you're going to get your
5 order a lot faster than if you don't. And Mr. Cross can explain
6 that to you. Okay? So that's number one.

7 Number two, just to the Commissioner now, and I'll just
8 -- Commissioner, I'm getting a little bit of mixed messages even
9 from just hearing all the testimony and everything that's going
10 on. I mean, and I'll give you my opinion again. It is within
11 the regulations at 80 percent that he's offering this home for
12 sale. It is technically an IZ unit and \$325,000 for a three-
13 bedroom unit, it is a lot less than market rate, right? So
14 whatever you think about it, it is an IZ unit. So I just want
15 to say right there, right? Then after that, God, everybody's
16 talking about, like, Wards 7 and 8. I mean, Councilmember Trayon
17 White and Councilmember Gray would be, like, losing their minds
18 right now, you know. They'd be, like, you know, "You guys are
19 saying it as though -- just put it over there." You know, I'm
20 just like, so I just want to say that obviously that's not what
21 you want to convey from your community.

22 And then -- yeah, so that's it. So then I'll go ahead
23 and say we'll come back. I mean, Mr. Cross, when do you think
24 you might be able to do all this? Commissioner, when do you guys
25 meet next?

1 COMMISSIONER BOTSTEIN: We have an August recess, so
2 September. Yeah, I think our Commission is very pro deeply
3 affordable housing, but I thought financially you were saying
4 that being in the 80 percent was the max you could -- or that
5 was the minimum, that's how low you could go for the IZ, but if
6 there is a different AMI percentage that's lower, I think that
7 would definitely -- I'd be happy to have an offline conversation
8 with you. I think that the neighbors can (audio interference)
9 agree with you, Chairman Hill, but I think that most of the
10 neighbors' concerns are outlined in the letters, but I agree that
11 that comment was not reflective of my position, our position --
12 the same.

13 CHAIRPERSON HILL: I'll get you in one second,
14 Commissioner. When are you meeting again in September, you said?

15 COMMISSIONER BOTSTEIN: The second Wednesday, so it
16 could be once I could post the date.

17 MR. CROSS: So the 15th of September?

18 CHAIRPERSON HILL: Right.

19 COMMISSIONER BOTSTEIN: Actually, we're going to meet
20 on the 8th.

21 CHAIRPERSON HILL: Oh, I'm sorry. So the 8th of
22 September. So if you got something -- so, Mr. Cross, do you
23 think you could try to figure all this out in a month and see if
24 you want to get back to the ANC by the 8th of September, or do
25 you want another month?

1 MR. CROSS: I hope we're able to prepare all the
2 drawings in a very short amount of time. I think we could have
3 those to you by next week. I'm guess I'm not sure if it's in my
4 client's interest to go back to the ANC, but I'll let him make
5 the final decision.

6 CHAIRPERSON HILL: Give me a second, Mr. Dungan. That's
7 all right. Hold on. Because I don't think I can get back to
8 you, Mr. Dungan, until then anyway. We're also on recess in
9 August, right? So, Commissioner Turnbull, you had a thought?

10 COMMISSIONER TURNBULL: I just wanted to confirm with
11 Commissioner Botstein that you're not opposed to rental units,
12 then?

13 COMMISSIONER BOTSTEIN: No.

14 COMMISSIONER TURNBULL: Okay.

15 CHAIRPERSON HILL: Okay. So there seems to be some
16 confusion at least, right? So it might be worth a shot with the
17 ANC, Mr. Dungan. I don't know, but you can decide. But either
18 way, I'm doing my best to get you back here as quickly as
19 possible, and I can't get you back here any quicker than the 15th
20 of September. If you've been watching all day, I think we already
21 piled up -- now we have 10 cases, I think, on that day. And is
22 that our first day back, Mr. Moy?

23 MR. MOY: Yes, sir. So this will be the eleventh case
24 for the 15th of September. What's one more, right?

25 CHAIRPERSON HILL: Yeah, what's one more? We've had a

1 nice long break on the sun, you know? Okay. So we'll come back

2 -

3 VICE CHAIR JOHN: Mr. Chairman.

4 CHAIRPERSON HILL: Yes, ma'am.

5 VICE CHAIR JOHN: Do you see me shaking my head
6 vigorously this way?

7 CHAIRPERSON HILL: No. Well, other than that, then,
8 with Mr. Moy then, we're not good, because then you've got the
9 22nd is jammed, the 29th is jammed, right?

10 MR. MOY: That's correct.

11 CHAIRPERSON HILL: What's the 22nd.

12 MR. MOY: The 22nd, you have nine cases and one
13 decision.

14 VICE CHAIR JOHN: There you go.

15 CHAIRPERSON HILL: All right. Fine. We'll put you on
16 the 22nd.

17 VICE CHAIR JOHN: Thank you.

18 CHAIRPERSON HILL: Mr. Dungan, you're trying to say
19 something, it looks like.

20 MR. DUNGAN: Yeah, just on the 80 percent versus 60
21 percent, I thought we had clarified with OP that if this was
22 rental it would be at 60, but if it was for sale, it's at 80. So
23 that was always what was, you know, part of what was (audio
24 interference). For simplicity's sake, we can just say if the
25 application currently reads it's for sale, seems like that's what

1 was wanted based on the ANC meetings that they would prefer for
2 sale, but that was hard to decipher because I think it was just
3 generally no for a lot of other reasons.

4 CHAIRPERSON HILL: All right, Mr. Dungan. Let me just
5 give it -- like, I don't know. You can talk to the Commissioner
6 that has been here, Botstein -- Botstein, Botstein?

7 MR. DUNGAN: Botstein.

8 COMMISSIONER BOTSTEIN: Either way, that's fine.

9 CHAIRPERSON HILL: So Commissioner Botstein is on the
10 line, so you can talk to her, and you guys can even figure out
11 whether it's worth it or not, right, talking to Mr. Cross. There
12 seems to be a lot of confusion, and what I'm trying to clarify
13 is that the Commissioner seems to be saying that if you were at
14 60 percent, which you have to be if it's a rental, then maybe
15 you got a deal. I don't know, right? If you don't have a deal
16 either way, you and Mr. Cross can figure out whatever you want
17 to do and come back to us on the 22nd. Okay?

18 So, Mr. Moy, if the ANC is meeting on the 8th -- Mr.
19 Moy, can you hear me?

20 MR. MOY: I can hear you.

21 CHAIRPERSON HILL: All right. So if the ANC is meeting
22 on the 8th, and then I guess, can you tell me what we need from
23 anybody for everybody until the 22nd to get back here?

24 MR. MOY: Okay. If the ANC is meeting on the 8th, if
25 the ANC can submit their resolution or a letter by the end of

1 the week. I know I'm pushing the date here, to Friday, September
2 the 10th, and I'm assuming rightly or wrongly that the applicant
3 is preparing all his materials that the Board has discussed,
4 because the ANC is going to need that, and file that into the
5 record at the same time prior to September 8th for the ANC's
6 meeting. I believe Mr. Cross said he could do this in a week's
7 time. So if the applicant makes his filing by -- today is the
8 14th. Let's say let's give him until Friday, July the 23rd as a
9 buffer to make your filings, and those will be the materials that
10 I'm assuming he's going to be presenting before the ANC when they
11 meet on September 8th.

12 CHAIRPERSON HILL: I don't know. Mr. Cross, you got
13 your hand up.

14 MR. CROSS: Yeah, if you don't mind, if we're not being
15 heard until the 22nd and we're going to the ANC again potentially
16 the first part of September, I may ask to delay the posting a
17 bit so that we can have some offline conversations and try to
18 work through any of that, you know (audio interference).

19 CHAIRPERSON HILL: Yeah, that's fine. So then I guess
20 if you guys give us whatever you think you're going to have ready
21 by the 27th of August, okay, that gives a week for the ANC to
22 respond if they want to or not, even before their meeting, because
23 you guys might not be meeting at all, right? You don't know,
24 right? And so that gives the ANC -- I'm sorry, Mr. Moy, I'm
25 hijacking your schedule here. The applicant will give us all

1 their stuff by the 27th of August. The ANC will have until
2 September 3rd to respond to those filings, which is a week. If
3 you all meet on the 8th with the applicant, then you'll have
4 until the 10th of September to give us something from that
5 meeting. Okay? The applicant will then have a week to respond
6 to whatever that is if they wanted to. That would be the 17th
7 of September, and then we'd have our meeting on the 22nd of
8 September. Okay. And now I'm asking my Board members, and I'm
9 looking to you, Ms. John, first. Do we want a continued hearing?
10 I don't even know. Okay. You don't have an answer?

11 VICE CHAIR JOHN: Probably limited scope just on the
12 documents submitted.

13 CHAIRPERSON HILL: Okay. So limited scope on the
14 documents submitted for the 22nd of September.

15 VICE CHAIR JOHN: Yes.

16 CHAIRPERSON HILL: Okay. Mr. Moy, you got that?

17 MR. MOY: Yes, sir. I've got it.

18 CHAIRPERSON HILL: Okay. Does anybody have any
19 questions for me? Okay. All right. Well, this was fun. So,
20 okay. You guys have a nice holiday month.

21 COMMISSIONER BOTSTEIN: Thank you.

22 CHAIRPERSON HILL: Closing the record and the hearing
23 except for everything we asked for.

24 Ms. John, this should be like a baton thing, man, and
25 I should just like pass a baton through the screen, and you should

1 just take it from my hand. All right. That concludes 9/22. All
2 right.

3 Can we take five? Do y'all mind? Okay. Let's take
4 five. And we got two more, and both of them, I think, are taking
5 time.

6 COMMISSIONER TURNBULL: Mr. Chairman, with technology
7 developing as it is, we may have that baton thing fairly soon.

8 CHAIRPERSON HILL: Yeah.

9 (Whereupon, there was a brief recess.)

10 CHAIRPERSON HILL: Okay. All right. Ms. Cain, are you
11 there?

12 MS. CAIN: Yes, I'm here.

13 CHAIRPERSON HILL: Before we call this, there is a
14 party status request, right?

15 MS. CAIN: Yes.

16 CHAIRPERSON HILL: Is it timely?

17 MS. CAIN: So this is for 20475?

18 CHAIRPERSON HILL: 20495.

19 MS. CAIN: Are we jumping ahead to that one and not
20 20475?

21 CHAIRPERSON HILL: Yeah, because there were some
22 scheduling issues and so now --

23 MS. CAIN: Okay. Got you. Yes. So the party status
24 request from 20495 is timely.

25 CHAIRPERSON HILL: It's timely?

1 MS. CAIN: Yes.

2 CHAIRPERSON HILL: Okay. All right. Okay. Mr. Moy,
3 you can go ahead and call it.

4 MR. MOY: The Board is back in session after a quick
5 recess, and the time is at or about 4:00 p.m. The next case
6 before the Board is Application No. 20495 of MPD 1338 Wisconsin,
7 LLC. This is captioned and advertised for a special exception
8 from the minimal rear yard requirements of Subtitle G, Section
9 405.2. This would construct a rear addition to an existing
10 attached three-story with basement, mixed-use building in the ND
11 MU-4 Zone, property located at 1338 Wisconsin Avenue, NW, Square
12 1231, Lot 137.

13 As you'll recall, Mr. Chairman, there are three
14 preliminary matters. The first is, the applicant is requesting
15 to waive the notarization requirements, probably to the
16 affidavits. Number 2, there's a party status request from a
17 Robert Bell. And finally, the applicant tried to upload his
18 PowerPoint presentation within that 24-hour block.

19 CHAIRPERSON HILL: Okay. Let me see if I can do this
20 here. All right. Mr. Kadlecek, can you hear me?

21 MR. KADLECEK: Good afternoon, Chairman Hill. Yes, I
22 can hear you.

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

25 MR. KADLECEK: Yes. Hi. Good afternoon, or I guess

1 almost evening, members of the Board. I'm Cary Kadlecek with the
2 law firm of Goulston and Storrs, on behalf of the applicant in
3 the case.

4 CHAIRPERSON HILL: Let's see. Mr. Bell, are you there?

5 MR. BELL: I'm here.

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

8 MR. BELL: My name is Robert Bell. I'm the owner of
9 the property next door, and my residence is about 80 feet from
10 the structure in question.

11 CHAIRPERSON HILL: Got it. Mr. Bell, can you turn on
12 your camera?

13 MR. BELL: Certainly.

14 CHAIRPERSON HILL: Okay. Great. Thank you. Mr.
15 Kadlecek, who is here with you?

16 MR. KADLECEK: There are three people here with me, the
17 property owner, the restaurant owner, and the architect, and I
18 will let them introduce themselves. So that's Chris Martin,
19 Cesar Varela, and Ernesto Santalla.

20 CHAIRPERSON HILL: Okay. Mr. Martin, can you introduce
21 yourself for the record?

22 MR. MARTIN: Good evening. My name is Chris Martin.
23 I'm the property owner of MPD 1338 Wisconsin, LLC. I also own a
24 number of the adjacent buildings.

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

1 Mr. Kadlecek, you got Mr. Varela and who else? Who else do you
2 have?

3 MR. KADLECEK: Ernesto Santalla, who's an architect.

4 CHAIRPERSON HILL: Mr. Santalla, can you hear me? Okay.
5 Commissioner Murphy, are you there?

6 COMMISSIONER MURPHY: I am.

7 CHAIRPERSON HILL: Commissioner Murphy, could you
8 introduce yourself for the record, please?

9 COMMISSIONER MURPHY: Richard Murphy. I reside at 4136
10 P. I'm the chair of ANC 2E, and my Single Member District 2E03
11 is the District in which this property lies.

12 CHAIRPERSON HILL: Got it. Commissioner Murphy, this
13 is your first time witnessing since the pandemic, right?

14 COMMISSIONER MURPHY: This is my first time doing it
15 on Webex.

16 CHAIRPERSON HILL: Well, welcome, Commissioner. I'm
17 so used to seeing you live and in person. Okay. Let's see.

18 So, Mr. Bell, can you tell me why you believe you should be
19 granted party status? You're on mute, Mr. Bell. Sorry.

20 MR. BELL: I own the building next door, including the
21 party wall, which makes up the wall of the court we are
22 discussing. I own half of that wall. I also own two other
23 buildings within 100 feet of that area, and I reside myself,
24 personally, 80 feet from the area we are speaking about.

25 CHAIRPERSON HILL: Do you live in the building that's

1 directly behind the pergola?

2 MR. BELL: I live in one of the buildings two doors
3 down, but it opens up.

4 CHAIRPERSON HILL: I'm just curious. Are you in Block
5 142?

6 MR. BELL: My residence is 3218 O Street, NW I own
7 3214 O Street and 3212 O Street, NW.

8 CHAIRPERSON HILL: Could you tell me that again? I'm
9 sorry.

10 MR. BELL: I reside in 3218 O Street, rear. I own 3214
11 O Street and I own 3212 O Street, which has -- we share the party
12 wall, which is the wall of the court we are discussing.

13 CHAIRPERSON HILL: Okay. Got it.

14 MR. BELL: I actually built that wall.

15 CHAIRPERSON HILL: Okay. So if the staff would go
16 ahead and please upload Mr. Kadlecek's PowerPoint, because I want
17 to be able to look at it. And then we can just kind of click
18 back and forth when we get there.

19 Unless the Board has any objection, I think that Mr.
20 Bell should be awarded party status due to the proximity of the
21 pergola that we're talking about. I also see that he has a
22 PowerPoint presentation already loaded up into the record at
23 Exhibit 47.

24 Mr. Kadlecek, do you have any thoughts on that?

25 MR. KADLECEK: I'm sorry. On the party status?

1 CHAIRPERSON HILL: Yes.

2 MR. KADLECEK: No, we don't object to Mr. Bell being
3 granted party status, but I did note that he requested an hour
4 for his presentation, and we will not be taking anything close
5 to that, so be just mindful of the parity in time of the two
6 presentations.

7 CHAIRPERSON HILL: Got it. Mr. Bell, I didn't realize
8 you asked for an hour for your presentation. It's okay.

9 MR. BELL: I'm an architect. I didn't -- I put down an
10 hour because I saw that on other applications. I have no absolute
11 commitment. I'll be as succinct as possible. I see everybody
12 is a little tired, and of course, I'm sitting three hours away
13 in Flagstaff, Arizona, in woods, so we have a nice breeze flowing
14 through, so I'm much more comfortable.

15 CHAIRPERSON HILL: Right. You're now losing points,
16 Mr. Bell.

17 MR. BELL: I won't talk about that.

18 CHAIRPERSON HILL: All right. Okay. So I'll get to
19 you, Ms. John, in one second.

20 So, Mr. Bell, what that means again is that I'm not
21 going to rush necessarily anybody, but you get the same amount
22 of time as the applicant. So if the Applicant takes 15 minutes,
23 you get 15 minutes, right? And that's how that kind of works.
24 And Mr. Kadlecek's going to do his presentation the way that we
25 normally do it, which I usually give that 15 minutes. And if it

1 goes a little bit longer, whatever. But that's kind of in general
2 what's going to happen to you. And so --

3 MR. BELL: I found that out afterwards. I apologize.
4 I found that out afterwards.

5 CHAIRPERSON HILL: That's all right. I'm just trying
6 to explain to you what's going to happen. So Mr. Kadlecek's
7 going to present. You'll get an opportunity to ask questions of
8 Mr. Kadlecek, right? Then the ANC is going to give their
9 testimony, right? You'll have an opportunity to ask questions
10 of the ANC, right? Then the Office of Planning will give their
11 testimony. You'll have an opportunity to ask the questions of
12 the ANC. Then you'll give your testimony and everybody will get
13 to ask questions of you. Then we'll go to see if there's anybody
14 here from the public, and then throughout this whole process, the
15 Board themselves will be asking questions at different times.
16 Okay?

17 So the only thing, Mr. Bell, that I did make note of,
18 and it's not to confuse your presentation too much, is that -
19 and I'm going to turn to Ms. Cain, who's with the Office of the
20 Attorney General. Ms. Cain, are you there?

21 MS. CAIN: Yes.

22 CHAIRPERSON HILL: So again, Mr. Bell, don't let this
23 discourage you, but I'm just providing some clarity on this, that
24 the restaurant is allowed to be there, correct, Ms. Cain?

25 MS. CAIN: That is correct.

1 CHAIRPERSON HILL: Right. So we are currently talking
2 about the pergola and what the pergola is, and you can even argue
3 that since the pergola is there, it causes more noise your way.
4 But we're really arguing about the pergola, just to kind of set
5 that up to a certain extent.

6 Ms. John, you had a question?

7 VICE CHAIR JOHN: No, Mr. Chairman. I was thinking of
8 another case.

9 CHAIRPERSON HILL: Okay. Great. All right. Okay.
10 So, Mr. Kadlec -- Mr. Bell, you want to say something?

11 MR. BELL: From my reading of the rules, the Board is
12 to take not just the exact thing, i.e., the pergola, but the
13 context of the pergola as the issue.

14 CHAIRPERSON HILL: Yeah, as we go through this, I mean,
15 you read the Office of Planning's report also, Mr. Bell?

16 MR. BELL: I have not seen that. I'm sorry.

17 CHAIRPERSON HILL: Okay. That's all right. Okay. Do
18 you have access there in the file?

19 MR. BELL: I could go look it up.

20 CHAIRPERSON HILL: Yeah, if you can, if you want to go
21 ahead and go to the D.C. BZA website, and then go to the -- you
22 can look up cases on your IZIS, I-Z-I-S, put the number in there,
23 and then the Office of Planning's report is Exhibit 42.

24 MR. BELL: Okay.

25 CHAIRPERSON HILL: Okay. And you can look that up

1 while Mr. Kadlecek is giving his presentation.

2 MR. BELL: Okay.

3 CHAIRPERSON HILL: Okay. All right, Mr. Kadlecek. You
4 can begin whenever you like.

5 MR. KADLECEK: Thank you, Chairman Hill, and members
6 of the Board. Again, I'm Cary Kadlecek.

7 As captioned, we are here to present the application
8 for special exception relief from the rear yard requirement to
9 allow construction of a noise mitigating pergola over the below-
10 grade outer patio for a restaurant for the existing building in
11 Georgetown zoned MU-4.

12 The pergola, as you probably saw on the record, is the
13 requirement of an extensively negotiated and widely supported
14 settlement agreement for the restaurant's liquor license. The
15 pergola will be consistent with the height of the wall already
16 surrounding the patio and will be below the windows of the three
17 other properties that are adjacent and overlooking the patio.
18 Thus, the pergola will not adversely impact light, air, or the
19 privacy of neighboring properties, and it will satisfy the
20 specific criteria for approval under Subtitle G, Section 1201.1,
21 as explained in the filings, and it will be described a little
22 bit more later in our presentation.

23 We're pleased to have the support of the Office of
24 Planning, the unanimous support of ANC 2E and multiple neighbors.

25 Just as a kind of a quick introductory matter, and more

1 for the record, I know the Board is already aware of a lot of
2 this, but I want to frame the application before you with respect
3 to the opposition that Mr. Bell has already filed in the record.
4 As just noted, a restaurant is a matter of right use in the zone,
5 and MU-4, which is the zone of this property, is also in the zone
6 of the surrounding properties. So all of the surrounding and
7 adjacent properties, including Mr. Bell's, are also zoned MU-4.
8 Use of the outdoor patio therefore is permitted as part of that
9 restaurant use that's permitted as a matter of right. The zoning
10 regulations don't govern hours of operation or noise. Hours of
11 operation in this case are tied to the liquor license, which is
12 separately regulated under Title 23 of the DCMR. Noise is
13 separately regulated under Title 20, Chapter 27 of the DCMR.

14 So in other words, if there were no liquor license,
15 there would be no limit on hours of operation and no requirement
16 for noise mitigation provided the noise is within what's
17 allowable by the Code. In fact, the proposed pergola will improve
18 the situation with regard to noise. If the restaurant does not
19 abide by the terms of the settlement agreement, then there is a
20 separate ABRA process for enforcement. As the Board noted, this
21 isn't the forum for those issues and not to re-litigate the issues
22 that were already discussed during the ABRA process.

23 So in accordance with the Zoning Act and the Zoning
24 Regulations, the Board's charge in this case is determined
25 whether the pergola itself, not the use of the patio or its sound

1 attenuation qualities, will tend to unduly adversely affect
2 neighboring properties. And as we described and will hear more,
3 the pergola will not adversely affect neighboring properties with
4 respect to light, air, and protecting the health and safety of
5 the property.

6 First, Mr. Varela, one of the owners of the restaurant,
7 will discuss the community engagement process that led to the
8 pergola. It's on mute. Do you want to speak?

9 MR. VARELA: Can you hear me?

10 MR. KADLECEK: Yes.

11 MR. VARELA: Sorry. One second. Make sure I'm just
12 loading correctly. Okay. So we have -- So Donahue, it's a
13 European style luxury lounge restaurant. We focus on craft
14 cocktails, fine wines, and Neo-American cuisine. We offer a prix
15 fixe menu. We have a tasting menu as well. So we do offer the
16 fine dining experience to all our guests. The pergola was a
17 (audio interference), as Cary mentioned, is a (audio
18 interference) that was negotiated between the ANC, the Citizens
19 Association of Georgetown, and in order to mitigate noise from
20 the rear summer parties that we have. We actually went through
21 an extensive negotiation. We brought in a sound engineer to look
22 at the space and give us a well informed study of how the noise
23 will affect all our neighbors. After that, the conclusion of
24 this study was that the noise was not going to be too high, but
25 we decided with the neighbors, the CAG association, and the ANC,

1 that a pergola would be best to help mitigate noise.

2 In the four months since we opened, we've been able to
3 become an asset to Georgetown. We have had very good engagement
4 with the community. Our guests and neighbors have been able to
5 enjoy the experience at Donahue and we would like to continue
6 being part of the neighborhood. That's -- anything else that I
7 need to add?

8 MR. KADLECEK: Thank you. We'll turn it over to Mr.
9 Santalla, the architect, now, and if you could pull up the
10 PowerPoint presentation for him to go through as well.

11 CHAIRPERSON HILL: You may be on mute, sir.

12 MR. KADLECEK: You can go ahead, Ernesto.

13 CHAIRPERSON HILL: I don't know (indiscernible).
14 Ernesto, can you hear us?

15 MR. SANTALLA: We can hear you.

16 CHAIRPERSON HILL: Yes, I can hear you. You can begin
17 whenever you like.

18 MR. SANTALLA: How about now?

19 CHAIRPERSON HILL: I can hear you.

20 MR. SANTALLA: You can hear me?

21 CHAIRPERSON HILL: Yep.

22 MR. SANTALLA: Okay. Very good. Thank you. Sorry for
23 the delay.

24 My name is Ernesto Santalla. I am the architect for
25 the project, and my address is 3144 Dumbarton Street, NW. And

1 I'll go quickly through the drawings. Thank you for this
2 opportunity.

3 The first page shows, generally speaking -- well, not
4 generally. We are in the Georgetown area, Washington, D.C. The
5 first page of the presentation shows a configuration of the floor
6 where we're on, the bottom floor of 1338 Wisconsin Avenue, and
7 the pergola will be located, the pergola we're seeking special
8 exception for, will be located at the rear end of the property
9 where you see the diagonal line. Next slide, please.

10 So on this exhibit, you see the aerial view. The
11 building, you'll be able to identify it as the one with the red
12 teardrop shape to the right. If you follow the building all the
13 way to the back, you'll see some faint lines down at the basement
14 level, which is where you can see that that would be the
15 configuration of the trusses of this pergola. The next drawing
16 to the bottom left shows a site plan, and you can see the building
17 in green. The beige tone represents neighbors that are in support
18 of the pergola, and then the blue dots represent the neighbors
19 who have written letters of support. And then finally, going up
20 to the site plan, you can see from right to left of the drawing,
21 a three-story building with basement. Then it steps down to a
22 one-story, and then finally, the shaded pink area is where the
23 pergola would be built at the rear of the property. Next slide,
24 please.

25 CHAIRPERSON HILL: Before you move, Mr. Young, can you

1 go back?

2 Mr. Kadlecek, can you hear me? So the opposition's
3 homes are which ones, do you know?

4 MR. KADLECEK: Yes. So the back of the property, that
5 diagonal line, Mr. Bell owns, as far as we understand, that
6 property, and then the two that are adjacent to it as well.

7 CHAIRPERSON HILL: The two farther west?

8 MR. KADLECEK: Yes.

9 CHAIRPERSON HILL: That blue dot, that person is in
10 support of your application?

11 MR. KADLECEK: Correct.

12 CHAIRPERSON HILL: And the other beige people are in
13 support of your application?

14 MR. KADLECEK: That's correct.

15 CHAIRPERSON HILL: The Board --

16 MR. KADLECEK: The people that have submitted letters
17 into the record.

18 CHAIRPERSON HILL: Got it. And then the two orange
19 people to the east of that blue dot; what about those people?

20 MR. KADLECEK: I don't know about them. It's worth
21 noting, though, that because of the configuration of the
22 buildings, they actually don't have a sight line into the patio.
23 You'll see on a later drawing how it's configured. I don't their
24 stance on it, but they don't really have a sight line into the
25 patio in any event.

1 CHAIRPERSON HILL: Got it. Okay. All right. You can
2 continue, please.

3 MR. SANTALLA: Okay. So we're going to move -- okay.
4 So what you see here are, the top left photograph is a view from
5 the street. 1338 Wisconsin is the red brick building, and then
6 you'll see it has a white storefront on the front at ground level.
7 And immediately to the right of that, you'll see that there is a
8 black door. That is the entrance that is shared with the
9 residential portion of the building, and from there, you go down
10 to the basement level.

11 What was just being mentioned by Mr. Kadlecik is the
12 next two images to the right, where you see that blue awning.
13 That's an entrance from O Street, NW, and right off of O and
14 Wisconsin. And then you go down a full level to this courtyard.
15 So in the second photo to the right, you'll see that there is a
16 beige building, that is one of the two buildings that, Mr.
17 Chairman, you were asking about, and that does not have direct
18 sight lines into 1338.

19 And then finally, the three next photos show the
20 enclosing brick walls, brick, and concrete walls, to this rear
21 patio, where you can see that it's in the basement level. Next
22 slide, please.

23 So here are the architectural drawings. I will --
24 again for reference, there is a plan of the space, and you can
25 see that the area that has the diagonal back is where the pergola

1 is going to be. It'll be made -- it's a wood structure. It
2 connects to the building line, but it stays in front of the rear,
3 and side, and side defining limiting walls. Next, you'll see to
4 the right of that a building section. Then from left to right
5 shows Wisconsin Avenue. You go one full set of flight -- a flight
6 of steps to the basement level. You see where the building steps
7 down to a one-story building, and then that rear yard. Then
8 there's a blowup of cross-section through the pergola, you see
9 that there is the lounge space. It opens up to the rear yard,
10 open yard. And one thing that's important to notice is that
11 we're going to be including operable louvers in the structure so
12 that they're also being provided for sound mitigation. And next
13 slide, please.

14 And then finally, here are a series of renderings. I
15 will call your attention first to the aerial view, and it is seen
16 from the hotel at 1310 Wisconsin Avenue, one of the neighbors
17 that wrote a letter of support, and this is what you would see
18 from there, from their parking or even the guest bedroom, a series
19 of roofs, each have a direct view to the building directly to
20 the west of 1338 Wisconsin. And then you see below the structure
21 of the pergola. You can see clearly that there is no obstruction
22 of view or light to the rear building. Then we have two
23 renderings, the most salient one being at nighttime with the
24 louvers closed. And then we're taking additional sound
25 attenuation measures, and what you see here are sound attenuating

1 drapes.

2 And then there is finally another view, and it's
3 daytime, and you see a little bit of light streaming in. But
4 all in all, what we're proposing is a very simple, straightforward
5 space for this pergola and for Donahue to continue to offer the
6 opportunity to its clients and patrons to experience an outdoor
7 space. That concludes my presentation. Thank you very much.

8 MR. KADLECEK: That concludes our presentation,
9 Chairman Hill. We're available for questions.

10 CHAIRPERSON HILL: Okay. Mr. Young.

11 MR. YOUNG: Yes.

12 CHAIRPERSON HILL: If you can maybe kind of figure out
13 how much time that was. You don't have to let me know right now,
14 but just kind of take a little bit of a guess. Let's see. I got
15 -- okay.

16 Does anybody have any questions for the Applicant?

17 MR. BELL: Yes.

18 CHAIRPERSON HILL: Who just said yes?

19 MR. BELL: Robert Bell.

20 CHAIRPERSON HILL: Mr. Bell, I'm not at you yet. I'm
21 sorry. I'm just going to the Board members first, and then we'll
22 come to you.

23 MR. BELL: Sorry.

24 CHAIRPERSON HILL: No problem. Commissioner Turnbull.

25 COMMISSIONER TURNBULL: Yes. Mr. Kadlecek, although

1 you talked about ABRA and the sound and being regulated by other
2 bodies other than the BZA, the architect had mentioned that there
3 were sound evaluations taken. Do you know what the anticipated
4 sound level would be with the pergola in various conditions,
5 whether it's open, whether the louvers are open or closed? Do
6 we know what we might expect from the sound (audio interference)?
7 Is there going to be music back there, or is it just dining only
8 at conversational speech?

9 MR. KADLECEK: There will be some speakers back there
10 as far as I know. The additional sound mitigation measures that
11 Mr. Santalla talked about are meant to mitigate as much noise as
12 possible, but I will let them speak to what the levels are. I
13 don't know those particular facts.

14 COMMISSIONER TURNBULL: Well, it's a projection, I
15 know, but I'm just curious what it might be.

16 (Cross-talk.)

17 CHAIRPERSON HILL: Was that the architect?

18 MR. SANTALLA: Yes.

19 CHAIRPERSON HILL: You can go ahead.

20 MR. SANTALLA: It was determined that without the
21 pergola, it would be about 65 decibels, and I don't remember
22 exactly at what distance, and it was considered to be within the
23 -- well within the range of what's acceptable in this kind of
24 situation. And then they determined with the pergola, it would
25 reduce it to 55 decibels, which was considered significant

1 mitigation of sound.

2 COMMISSIONER TURNBULL: Okay. I'm just curious. I
3 know it's hard to measure your -- it's theoretical and you base
4 it upon materials you're using, but I was just curious what we
5 might expect. Thank you.

6 MR. SANTALLA: Okay. You're welcome.

7 CHAIRPERSON HILL: Okay. Anyone else for Mr. Kadlecek
8 from the Board? Okay.

9 Mr. Bell, can you hear me?

10 MR. BELL: Yes.

11 CHAIRPERSON HILL: You had a question for Mr. Kadlecek?

12 MR. BELL: I have a couple of questions.

13 First, the blue dot on the lower side of the (audio
14 interference) on O Street is 3210 O Street, and the owner of that
15 property is actually a witness for me today. He is in opposition
16 of it, so the blue dot that they said is somebody who's written
17 to support it is actually today as a witness in opposition to
18 it.

19 CHAIRPERSON HILL: We can clarify that. Mr. -- the
20 blue dot that I was talking about, Mr. Kadlecek, and we can figure
21 it out later, was the one that was north of the pergola.

22 MR. KADLECEK: Exactly.

23 CHAIRPERSON HILL: So I'll let Mr. Kadlecek take a look
24 at that.

25 What's your next question, Mr. Bell?

1 MR. BELL: Next question is, I believe it is the burden
2 of proof to publicly present your acoustical findings, and I
3 cannot find, nor do I believe, there's ever been a public expert
4 or a public paper provided that proved what the architect just -
5 - they've referred to having an expert, but it's their burden of
6 proof to show that that's in the public record at some point,
7 and I don't see it ever.

8 CHAIRPERSON HILL: I can ask OAG and the Office of
9 Planning. I've never heard of anything about a burden of proof
10 concerning noise, but I can ask OAG and/or OP to look into that
11 when we get to them as well, Mr. Bell. What's the next question?

12 MR. BELL: I did look up the speakers that are called
13 out. I personally looked them up and checked out their sound
14 rating, and each of them has about an 80-decibel sound. So they
15 have two four-inch speakers on their outdoor area at 2:30 in the
16 morning, and each of those speakers has approximately 80
17 decibels, so it would be 120 from the two of them, I believe.

18 CHAIRPERSON HILL: So that's your question, or that's
19 a statement?

20 MR. BELL: My question is, well, can you answer exactly
21 what the decibel -- I based my research on those two speakers.
22 Is that in conflict with your technical information on speakers,
23 if the architect or the developer --

24 MR. KADLECEK: I'll let Chris Martin, who is the
25 building owner, attest to that, but I will note that we didn't

1 testify as to the volume of the speakers. We just noted that
2 there would be speakers, and that study that was performed would,
3 as Mr. Santalla testified, mitigate the sound, that the pergola
4 rather would mitigate the sound. But, Chris, if you have
5 additional information on that.

6 MR. MARTIN: Certainly. To clarify -- thank you. To
7 clarify, the blue dot immediately to the north of the proposed
8 pergola was from the tenant of the building, not the owner of
9 the building. So the gentleman who's testifying on behalf of Mr.
10 Bell is the owner of the building. That's the distinction of
11 the conflict there.

12 As it relates to the sound report, we produced the
13 sound report with Phoenix Sound Engineers and provided that to
14 CAG and ANC in our community meetings to evaluate the settlement
15 agreement. So there was consistent sharing of that report and
16 working through that to work towards mitigating the sound. So
17 whether or not it's a matter of the public record, it was heavily
18 discussed with CAG and reviewed with the neighbors at the time.

19 The third thing that I would mention relative to the
20 speakers is that the settlement agreement -- this is not a
21 discussion about sound, but the settlement agreement very clearly
22 has a probationary period to see how Donahue operates, and based
23 off of how they operate, there are specific regulations in terms
24 of how much noise they can use and what hours they can use that
25 noise. Thank you.

1 CHAIRPERSON HILL: Okay. I'm going to interrupt you
2 one second, Mr. Bell. So, Mr. Bell, basically at this point,
3 you're asking questions of whatever the testimony was that the
4 applicant gave, and then you'll have an opportunity to give your
5 presentation or whenever it is you would like to give your
6 presentation. So that's why Mr. Kadlecek was kind of clarifying
7 they talked about the sound, but do you have any questions based
8 upon their presentation?

9 MR. BELL: No.

10 CHAIRPERSON HILL: Okay. So then --

11 MR. BELL: Other than the blue dot, which is now
12 clarified.

13 CHAIRPERSON HILL: Got it. Okay. Great. Thank you.
14 So, Ms. Cain, and -- well, I'll wait until I get to the Office
15 of Planning. Okay. So let's see. Now, I think -- I always
16 forget which the order is. Actually, I'm going to, Ms. Cain --
17 Ms. Cain, is the ANC next or is it Office of Planning?

18 VICE CHAIR JOHN: Office of Planning, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. We'll go --

20 MS. CAIN: Yes, the Chair is correct.

21 CHAIRPERSON HILL: All right. Okay. Can I go to the
22 Office of Planning, please?

23 MS. ELLIOTT: Good evening, Mr. Chairman and members
24 of the Board. I'm Brandice Elliott representing the Office of
25 Planning for this case. I know Steve Cochran wrote the report,

1 so I'm (audio interference). This is for BZA Case 20495.

2 OP does recommend approval of the requested rear yard
3 release, where the applicant, or where the proposed pergola would
4 provide a rear yard of 0 feet and 15 feet as required. We did
5 find that the proposal is in harmony with the general purpose and
6 intent of the zoning regulations. The proposed use of the rear
7 yard is consistent with the MU-4 zone. It does permit moderate
8 density mixed-use development, and it does not prohibit the use
9 of the rear yard for commercial purposes, with or without the
10 proposed pergola. So in reverse, the use is permitted.

11 The proposal should not adversely affect the use of
12 neighboring property. The pergola would be located at the
13 basement level and would not be taller than the walls around it,
14 so it should not block light to neighboring properties. The
15 pergola is mandated by the ABRA settlement in order to mitigate
16 noise from the establishment, and the agreement further limits
17 the hours during which the pergola can be used and includes
18 additional specifications for sound attenuation.

19 There are some additional special exception criteria
20 for rear yard relief in the MU-4 zone. Some of those don't quite
21 apply because the pergola is not considered a building. So, for
22 instance, there are no windows that are associated with an
23 apartment building. There are no windows that are associated
24 with an office building. In terms of the sight lines, we did
25 not find that there would be a great impact to the sight lines,

1 and in fact, the proposed pergola would provide additional
2 screening. There are no loading or service requirements because
3 this is a contributing property to a historic district, so there's
4 also no parking provided or required.

5 And then finally, the pergola should not impact the
6 property's ability to handle trash. So that concludes our
7 analysis. I'm happy to answer any questions that you have.

8 CHAIRPERSON HILL: Okay. Thanks. So, Ms. Elliott, as
9 I -- and I'll let my fellow Board members go ahead, but this was
10 the problem that I was having as I was reading through the case
11 and everything, which is that we're not -- the use is allowed,
12 right? Like, the fact is that they can have people out there.
13 They can have music out there. It's an MU-4 District, right?
14 The thing that we're here to do and look at is the pergola itself,
15 and the regulations relate to again sight lines, windows, you
16 know. It's not talking about noise, correct?

17 MS. ELLIOTT: Correct. Now, I mean, there are instances
18 where issues of noise might raise a red flag, and the special
19 exception criteria would allow us to sort of address issues of
20 noise, because it could adversely affect neighboring properties.
21 But in this case, the use is permitted. The use of that space
22 for the restaurant is allowed, and in fact, the pergola would be
23 reducing that noise. So it didn't raise any issues for us with
24 this particular case.

25 CHAIRPERSON HILL: Right. And that's right. I'm sorry.

1 I'm getting into Mr. Bell's presentation a little bit, but, like,
2 the pergola is there to reduce the noise, right? Okay. All
3 right. You're nodding your head.

4 Does anybody have questions, meaning my Board members
5 first, for Ms. -- Commissioner Turnbull.

6 COMMISSIONER TURNBULL: I just have one question. Good
7 afternoon, Ms. Elliott, actually good evening.

8 I'm assuming, since it's in the Georgetown Historic
9 Area, OGB would look at this?

10 MS. ELLIOTT: You know, I believe it was reviewed by
11 OGB. I cannot remember from the case file. Mr. Kadlecek might
12 be able to -- I'm sorry.

13 COMMISSIONER TURNBULL: I can redirect it to Mr.
14 Kadlecek. Thank you, Ms. Elliott.

15 MS. ELLIOTT: Thanks.

16 CHAIRPERSON HILL: Okay. Fellow Board members -- I'm
17 sorry. Go ahead, Mr. Kadlecek.

18 MR. KADLECEK: If you want me to answer that, it has
19 been approved by OGB. That's correct.

20 CHAIRPERSON HILL: Okay. My fellow Board members,
21 anyone else for the Office of Planning?

22 Ms. John. I can't hear you, Ms. John. You're on mute.

23 VICE CHAIR JOHN: So sorry. I was muted.

24 I just want to clarify that the application seeks
25 review from the rear yard department, so the Board needs to look

1 at what are the adverse impacts from having this pergola in the
2 rear yard. Is that how you see it?

3 MS. ELLIOTT: That is correct.

4 VICE-CHAIR JOHN: Okay. All right. Thank you.

5 MS. ELLIOTT: You're welcome.

6 CHAIRPERSON HILL: Okay. Anyone else from my Board
7 members? All right.

8 Mr. Bell, do you have any questions for the Office of
9 Planning?

10 MR. BELL: Yes. Does the Office of Planning make the
11 distinction between a pergola and a structure?

12 MS. ELLIOTT: We have a long-standing interpretation
13 from the zoning administrator, and I do believe that he actually
14 did weigh in specifically on this case. So the pergola structure,
15 because the crossmembers are spaced over 24 inches on center, it
16 is not considered a building. So certain development
17 requirements, certain development standards do not apply to the
18 structure. And because it's not technically a building, there
19 are certain things that, you know, for instance, lot occupancy
20 does not apply because it's not a building, but just rear yard
21 does.

22 MR. BELL: So you're -- the Board or the -- your review
23 decided that the supporting members for the pergola and not the
24 louvers between it -- they -- the louvers had nothing to do with
25 the pergola?

1 MS. ELLIOTT: Our review did not make that
2 determination, the Zoning Administrator determines what
3 constitutes a building versus a structure, and that was his --
4 that is a long-standing determination that he has made, and it
5 applies to this case.

6 MR. BELL: All right. And that's 24 inches, normally,
7 right?

8 MS. ELLIOTT: 24 inches on center.

9 MR. BELL: Greater than 24 inches on center. Okay.

10 CHAIRPERSON HILL: Okay. All right. And Commissioner
11 from the ANC -- Commissioner Murphy, I forgot to ask you, did
12 you have any questions of either the applicant or the Office of
13 Planning?

14 MR. MURPHY: I did not, thank you, Mr. Chairman.

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

17 All right. Let's see, Commissioner Murphy, I think
18 you're up next, actually.

19 MR. MURPHY: Thank you. Thank you for the opportunity
20 to speak to this. Chairman Hill, members of the Board, my name
21 is Rick Murphy.

22 CHAIRPERSON HILL: Commissioner Murphy, your camera is
23 getting all weird.

24 MR. MURPHY: Oh, what happened here?

25 CHAIRPERSON HILL: I don't know, but it's getting

1 weird.

2 MR. MURPHY: Well, I have a very nice ear. It was
3 working. Let's see, stop my video, start it again. See how that
4 works. There we go. Little did I know that I was so computer
5 adept.

6 My name is Rick Murphy. As I mentioned earlier, I
7 reside at 3136 P Street, NW, in Georgetown. I am the Chair of
8 ANC 2E, which is comprised of Georgetown and Burleith. The
9 property that is the subject of the pending application lies in
10 my Single Member District.

11 I'm testifying today to provide some historical
12 context, which I believe will help you to conclude, as the Office
13 of Planning recommended, that the application should be approved,
14 because the construction and existence of the pergola, in and of
15 itself, would not adversely -- tend to adversely affect these
16 neighboring properties.

17 1338 Wisconsin has a bit of a history. It's been the
18 site of an ABRA licensed establishment for over 20 years. The
19 ABRA license for the location includes a summer garden
20 endorsement, which authorizes the holder of the license to serve
21 patrons in the rear yard of the establishment, and there is
22 nothing in the Zoning Code to prevent this commercial use in the
23 MU-4 zone.

24 The prior holder of the license operated an
25 establishment called "Smith Point." It was very successful and

1 very noisy. It's where President George W. Bush's daughters and
2 their friends went to party years ago. As you can imagine, this
3 led to contentious relations with nearby neighbors. After Smith
4 Point closed, the ABRA license remained valid but dormant, 1338
5 West Wisconsin Avenue joined the ranks of vacant properties along
6 the 1300 and 1400 blocks of Wisconsin.

7 Eventually, the applicant acquired the building and
8 leased the former Smith Point space to a new tenant that agreed
9 to purchase the ABRA license from the former owner. This is
10 where ANC 2E and the Citizens Association of Georgetown came into
11 the picture. When applicant's tenant applied to ABRA for transfer
12 of the license, ANC 2E and CAG protested, and the parties then
13 entered into good faith and good natured, but very detailed,
14 negotiations that resulted in a settlement agreement intended to
15 mitigate, as much as possible, the adverse impacts operations at
16 the premises might otherwise have on the surrounding
17 neighborhood. Nearby neighbors worked with ANC 2E and with CAG
18 as the negotiations progressed, but Mr. Bell, the opponent here
19 today, did not ask to participate.

20 The parties to the ABRA negotiations eventually reached
21 an agreement that calls for, among other things, the construction
22 of what we're calling "the pergola" to attenuate sound emanating
23 from the rear yard. That agreement was accepted by the ABRA
24 Board and is now part of the ABRA license. As has already been
25 noted, but for the efforts of ANC 2E and CAG, the current holder

1 of the ABRA license would be entitled to serve patrons in the
2 rear yard without the installation of any sound attenuation
3 devices.

4 Mr. Bell asked you to reject the application, because
5 he doesn't think the pergola would adequately control sound, and
6 he does (audio interference).

7 CHAIRPERSON HILL: Commissioner Murphy --

8 MR. MURPHY: (Audio interference) noise.

9 CHAIRPERSON HILL: Commissioner Murphy.

10 MR. MURPHY: Yes, sir.

11 CHAIRPERSON HILL: Can you turn of your camera and just
12 go with sound?

13 MR. MURPHY: Okay. How's that?

14 CHAIRPERSON HILL: Okay. And now can you go back to
15 -- you started breaking up when you said that you thought Mr.
16 Bell didn't think that the noise reduction was going to help --
17 that the pergola wasn't going to help noise reduction.

18 MR. MURPHY: Yeah. Mr. Bell -- what Mr. Bell was here
19 today -- and I read all his papers and I've had some conversations
20 with him, he's here asking you to reject this application for
21 zoning relief, because he doesn't think the pergola would
22 adequately control sound emanating from the rear yard. He does
23 not claim that the pergola, itself, would be the cause of any
24 noise. The noise would be caused by patrons being served in the
25 rear yard pursuant to the ABRA license.

1 I respectfully submit that Mr. Bell has picked the
2 wrong forum. The argument that he makes here today should have
3 been made to the ABRA Board during the license transfer
4 proceedings, a proceeding of which he had ample notice and in
5 which he chose not to participate.

6 Put simply, the issue for the Board today is not whether
7 the pergola will work as a sound mitigation device, it's -- the
8 issue is whether the existence of the pergola, in and of itself,
9 will tend to adversely affect the use of neighboring properties.
10 It will not. Therefore, the application for the special exception
11 to permit its construction should, in the view of ANC 2E, be
12 approved.

13 Thank you for the opportunity to support this
14 application. I'd be happy to answer any questions you may have.

15 CHAIRPERSON HILL: Thanks, Commissioner. Commissioner,
16 do you know right now, do they have their ABRA license?

17 MR. MURPHY: They do.

18 CHAIRPERSON HILL: And so they have their ABRA license
19 right now to use that patio?

20 MR. MURPHY: They have their ABRA license. They are
21 not using the patio, pending construction of the pergola. They've
22 been in operation since early this year.

23 CHAIRPERSON HILL: Got it. Got it. But they're not
24 using that patio right now until the pergola comes?

25 MR. MURPHY: That's correct.

1 CHAIRPERSON HILL: Okay. All right. Let's see. What
2 was I going to say? Does the Board have questions for the
3 Commissioner? No. No. All right.

4 Mr. Bell, do you have any questions for the
5 Commissioner?

6 MR. BELL: Yes. Were you presented a formal report by
7 a sound engineer at your ANC hearings to support the claims of
8 the applicant? Do you have the actual report?

9 MR. MURPHY: I have seen the actual report. There was
10 not an ANC hearing on the terms of the settlement agreement. The
11 way the ANC's process works is the ANC votes to protest an
12 application, in this case an application for a transfer of the
13 license, and then it designates a commissioner to represent the
14 ANC in negotiating the terms of the agreement. Both Ms. Cruse -
15 - Tammany Cruse and myself, Ms. Cruse representing the Citizens
16 Association of Georgetown, and I were presented with and saw the
17 (audio interference) report, and other neighbors also saw it.
18 They were involved in the discussions which led to the
19 negotiations and the settlement agreement.

20 MR. BELL: But my question is, is this part of the
21 public record, or was it just -- were you shown it? Was it
22 submitted as a public document, as required?

23 MR. MURPHY: I know of no requirement that it be
24 submitted as a public document.

25 MR. BELL: I think the burden of proof is on the

1 applicant to provide public proof --

2 CHAIRPERSON HILL: Mr. Bell, I'll get back to you. I
3 don't know anything about this sound public record thing. I've
4 already mentioned that to you before, and I guess I forgot to
5 ask OAG. I mean, again, we're here for the pergola and whether
6 the pergola is meeting the regulations. Right. And so, but do
7 you have another question for Mr. -- Commissioner Murphy?

8 MR. BELL: When you passed the ANC agreement, you were
9 not aware that building this structure would be not allowable by
10 zoning; is that correct?

11 MR. MURPHY: No, I was quite surprised when the Zoning
12 Administrator, at your request, reviewed the issue and concluded
13 that there would be rear yard relief.

14 MR. BELL: So when you passed the resolution, you
15 weren't aware that it actually was a building that was illegal?

16 MR. MURPHY: It was -- it's -- I was not aware when we
17 negotiated the settlement agreement that there would be the
18 necessity of the point of applying for and obtaining the zoning
19 relief. And how that has worked out is the applicant is here
20 applying for zoning relief. It's -- there's not any --

21 CHAIRPERSON HILL: Okay. All right. Okay. Mr. Bell,
22 anything else?

23 MR. BELL: No.

24 CHAIRPERSON HILL: Okay. All right. Mr. Bell, you now
25 have an opportunity to give your presentation, and I'm going to

1 put 15 minutes on the clock just so I know where I am, and you
2 can begin whenever you like. I guess, you're in Exhibit 48, I
3 think?

4 MR. BELL: Okay. Can we just run my -- I have a slide
5 show there.

6 CHAIRPERSON HILL: Yes. He's pulling it up. Mr. Young?

7 MR. BELL: Okay. This is a picture of the rear yard
8 -- my rear yard of one of the buildings -- the two buildings that
9 are next to this property. This is -- there's actually an open
10 court, a very nice park-like court with about 15 residents around
11 it that will be affected by the construction of the pergola if
12 the pergola does not meet the requirements they promised to do
13 under the ANC agreement and upon which they are building this
14 building.

15 So for me, the issue here is the pergola was given as
16 a way to stop sound, and therefore, the neighbors withdrew their
17 opposition, because the presentation of the applicant was that
18 nobody would hear -- if we use this pergola, nobody would hear
19 the sound, therefore, we didn't have to have a debate of how late
20 they would be open or any of that. That allowed them, after 9
21 o'clock, to do anything, noise-wise, because that wasn't debated,
22 because it was promised that this pergola would stop the sound.

23 So -- and then I just want to put it in context. The
24 pergola can seat only 15 people. The restaurant seats 115 people.
25 So it's a minimal amount of the restaurant that will be affected,

1 but a huge amount that affects the neighbors. Okay.

2 Next slide.

3 Okay. This slide tells a lot of stories. First, the
4 dark blue building and white windows is my property. The
5 courtyard, which you're looking down in at the brick part, is
6 actually the original courtyard. The applicants, without a
7 permit, started building this structure, with no permit, and
8 there are several things that are interesting about this
9 structure. First of all, you'll notice the beams of the structure
10 actually go over the columns at the left side and are above the
11 wall. Remember, the premise was that this structure would be
12 below the wall. Also the dark structure on the -- with the
13 pyramid or, sort of, a temple-like structure on the left-hand
14 side is the blue dot owner's property where he will be renting
15 people directly related to this area.

16 So when the applicant says there are no windows near
17 his property, no, there are windows that are eight feet away from
18 this property. They are directly looking onto it.

19 Next.

20 And I -- if -- I don't know how easy this is, but if
21 the Board would look at the applicant's Exhibition 11 and look
22 at the photographs on the second page of that application, is
23 that easy for you to see? You will see --

24 CHAIRPERSON HILL: We can see it.

25 MR. BELL: Can you see it?

1 CHAIRPERSON HILL: Yes.

2 MR. BELL: Look in the left-hand corner. And if you
3 notice, there's quite a huge tree that's -- it's a cherry tree.
4 I actually planted it. It was 25 to 30 feet tall. It completely
5 blocked my windows from the courtyard, and that was, with the
6 previous owner, together we built this wall, and we planted this
7 as a garden.

8 Now, you'll notice in the photograph you're looking at
9 where the illegal structure has been built, those trees are no
10 longer there. That's the first thing I noticed. I was never
11 contacted about this sound, even though I -- they said, oh, I'd
12 be contacted. No, I never have, even though I own three buildings
13 next to it.

14 And you can this is going to have tremendous affect on
15 these end four units. And I point out that I just converted one
16 of these in my own building from apartments to my own residence.
17 So quite a few of these people that live here want to have these
18 as their residences.

19 Next.

20 So the red trapezoid at the bottom here shows where
21 this courtyard is. And it shows the effect of the blue areas.
22 All the blue areas are places where people could be sleeping, are
23 residential areas. There's a hotel at the top, three residences
24 on M Street that have had decades of complaints about this
25 courtyard being open and having noise and would never have

1 supported it if (audio interference) had this ANC agreement. In
2 other words, the agreement occurred, and they said, okay, well
3 if you stop sound, that'll take this huge noise away from us.
4 And that's the same which is true with all of the blue area.

5 In that first slide that I showed you, the rear yard -
6 - you see the parking lot running diagonally through that, the
7 whole tract to the right-hand side is a park. It's actually --
8 we call it "The Commons," because all these buildings go there
9 at lunch, we like to have parties in there. It's completely
10 connected to where we're talking about.

11 Next.

12 Just -- I'm not a lawyer, so I'm going to just -- they
13 gave, I believe, in their application, they gave six reasons that
14 they met the standards for a special exception. I have the wrong
15 number there, eight -- I think it's 910. They talked about no
16 apartment windows within 40 feet. Actually, you just saw they
17 were within eight feet. Because the pergola is not an office,
18 and there are no questions of limits on windows and distance.
19 I don't see how (audio interference) could be actually true. The
20 pergola was below grade. Well, first of all, it's not below
21 grade. The pergola is actually on the ground level. You know,
22 this is -- the house I live in was Francis Scott Key's house.
23 The level that this pergola is built on was the ground level.
24 The street (audio interference). The location does not have any
25 parking. Okay.

1 The next slide.

2 Well, the bottom line, here, the ANC agreement. All
3 right. Here's when we come to really the crux of this problem.
4 There was a quid pro quo arrangement with the ANC. The ANC said
5 this: "We don't want this. Our neighbors have complained for
6 decades about this noise -- Smith Point. And we don't want to
7 have it reopened the same way."

8 The applicant came and said, "Look, we understand, but
9 we have this great idea. We're going to install a pergola. And
10 this pergola can be closed at 9 o'clock, and when it is closed,
11 we make these promises: no noise will emanate from the premises,
12 including the summer garden." The second promise they made was
13 there will be no audible sound on O Street or N Street or the
14 hotel.

15 So we make ANC even -- this is why you can't provide
16 these -- this noise and the pergola, because it's a quid pro quo
17 agreement. The pergola, yes, it's a structure. It is a structure
18 to do a specific thing that the community agreed to and dropped
19 their opposition.

20 Next. Next slide.

21 So in the ANC agreement, if you look to the section, I
22 think it's for sound mitigation, you'll see they listed four
23 things that this pergola would do in order to achieve this thing,
24 and therefore, people wouldn't object to the sound problems that,
25 obviously, have been there forever. It would close to prevent

1 sound from emanating. Well, I have an expert witness which will
2 testify and actually give a real testimony about what sound levels
3 are.

4 It will be the same height as the existing walls. Well,
5 I just showed you photographs of where they built it. It was
6 above the existing walls, and they built an illegal structure.

7 It will be built of wood. Now, I'm going to show you
8 what the details of the drawings show, and it's all aluminum.

9 It will completely cover -- and I'm just going to show
10 you it's impossible for the system that they have drawn and
11 presented in this application to cover the structure they say it
12 will cover.

13 Next.

14 CHAIRPERSON HILL: Hey, Mr. Bell. Can you hear me?

15 MR. BELL: Yes.

16 CHAIRPERSON HILL: Just letting you know, you're at 9
17 minutes, and if you have, like, some expert witnesses also -- I'm
18 not going to cut you off, but I'm just going to let know that I
19 do have to, kind of, keep you around the 15 minutes. Okay?

20 MR. BELL: Okay. Do my expert witnesses have to fit
21 in there, too?

22 CHAIRPERSON HILL: Yes. They fit in there, too. I'm
23 sorry.

24 MR. BELL: All right. Now, there's a picture of the
25 structure that they proposed. These are the actual photographs

1 of --

2 CHAIRPERSON HILL: Mr. Bell.

3 MR. BELL: Yes.

4 CHAIRPERSON HILL: I won't take this from your time.
5 I just want to -- Commissioner Murphy, can you turn off your
6 camera again? Thank you.

7 All right, Mr. Bell, go ahead.

8 MR. BELL: Here is what those details, when you blow
9 them up, these are the louvers. Now, that, to me, is what
10 somebody is calling a pergola, you know. It's got open areas,
11 and then what their saying, are they even closable?

12 Well, first of all, it's all aluminum. Second of all,
13 when it's closed, as you can see in this lower structure, it's a
14 building. It's a structure. You can heat it. But you can also
15 see the problem, like, which it will create for us is that the
16 top of that pergola is quote, unquote "that closed structure" is
17 above the fence.

18 Next.

19 And this is the impossibility of the proposal that they
20 show. You cannot (audio interference)with a rectilinear system.
21 I just showed you how that system worked. It's a rectilinear
22 system, rectilinear louvers. This is a trapezoidal court. There
23 is no way that you can cover a trapezoid with a rectilinear
24 system. This is impossible, and this diagram shows it very
25 clearly. Every time you come to the trapezoid side, you end up

1 with a triangle. So (indiscernible) they made a promise to the
2 public, the neighbors are all expecting this to stop the sound,
3 and yet it's absolutely impossible for a rectilinear system to
4 cover a trapezoid.

5 Next.

6 Now, I want to go back to this height problem. They
7 said that it would be below the adjoining walls, which I'm --
8 that's my party wall. Actually, when they started building this
9 illegally, without a permit, you can see this on the left-hand
10 -- right-hand side. It's above my wall. In fact, OTB immediately
11 said this has to be reviewed. I don't believe this pergola has
12 ever been reviewed or seen, because the idea would be that it
13 would be below that wall, and obviously there's no way to build
14 it below the wall. And why not? The diagram down below shows
15 you the fundamental problem here. That if you lowered this
16 pergola to the level that it was below my wall so it wouldn't
17 interfere with what my wall was, you would then be blocking a
18 foot of the doors and windows of the bar. So the bar would have
19 a huge wooden beam going right across the front of the pergola -
20 - of the windows.

21 Next.

22 The other thing, I think that -- I feel, it drives me
23 crazy, but I'm an architect, and when I look at the drawings,
24 they're so incomplete. If you approve these as a design, no one
25 knows what's going to be built. I point out that in these

1 contract documents, these documents -- the only documents you've
2 received as a Board, there's not even a roof plan. They have
3 not shown the pergola as a roof plan even. So you don't know
4 what you're approving if you approve this.

5 They've also, if you look down in the left-hand corner,
6 the only details they show are the aluminum structure that I
7 showed you. Nothing in wood, here, is shown. There's not one
8 single wooden element shown.

9 Next.

10 The height of the wall there is completely drawn
11 incorrectly. In one drawing, it showed it correctly. I built
12 it. I know what the height is, and I know what that window is,
13 because I've dealt with this problem with the previous owner.

14 Next.

15 So in 901.3, the special exception application, has to
16 show the full adverse impact and shall demonstrate such in the
17 public record. Again, I don't believe that there's any public
18 record to show what the applicants are claiming is true here.
19 Second -- and we'll provide testimony that what they're saying
20 is not accurate.

21 CHAIRPERSON HILL: Mr. Bell.

22 MR. BELL: Yep.

23 CHAIRPERSON HILL: You're now at 14 minutes.

24 MR. BELL: Okay. Next. Next slide.

25 These are three experts I'd like you to listen to, but

1 you can look at the acoustics expert's testimony, he's already
2 submitted it, saying that the noise level is above what's legal
3 without the cover and with the cover. Please review those
4 documents, which are actually submitted as public documents, of
5 what the real sound effect is. I think it's worthwhile hearing
6 him.

7 The architectural expert is Dale Overmyer. He is just
8 going to point out how impossible it would be for any contractor
9 or any reasonable person to build from these documents. And then
10 the last person is the blue dot owner, who the applicant claimed
11 his support.

12 CHAIRPERSON HILL: Okay. Where are these people, Mr.
13 Bell?

14 MR. BELL: They should be on waiting, from what I
15 understand.

16 CHAIRPERSON HILL: Mr. Young, do you have these people?

17 MR. BELL: Hello.

18 CHAIRPERSON HILL: Yes. Mr. Young is looking for them
19 right now, Mr. Bell.

20 MR. BELL: Okay.

21 CHAIRPERSON HILL: And then this is your last slide,
22 right? I don't think there's another slide.

23 MR. BELL: There's another slide, I think. Yeah. I
24 think it's the last one, because I think the experts are the
25 important thing.

1 CHAIRPERSON HILL: Right. Why don't you -- I'm going
2 to drop the presentation, Mr. Young.

3 MR. BELL: Can I have the last slide, please.

4 CHAIRPERSON HILL: I already -- okay.

5 MR. BELL: Okay. I just want to -- you know, the
6 adverse effect here is you have to look at the whole community.
7 Are you passing the special exception to the advantage of the
8 whole community? This --

9 CHAIRPERSON HILL: I got you, Mr. Bell. Mr. Bell, I
10 got you. Let me get to your experts now.

11 MR. BELL: 15 to 150 people. Next.

12 CHAIRPERSON HILL: Where are your -- okay. Neil Shade,
13 right? Let me see who -- all right. Shade, can you hear me Mr.
14 Shade?

15 MR. SHADE: Yes, I can. Can you hear me?

16 CHAIRPERSON HILL: Yes. Can you introduce yourself for
17 the record.

18 MR. SHADE: Yes, my name is Neil Shade. I'm an acoustic
19 consultant. I've been an acoustic consultant for 40 years and
20 an acoustics professor for 28 years.

21 CHAIRPERSON HILL: Okay.

22 MR. SHADE: I was retained by Mr. Bell.

23 CHAIRPERSON HILL: Okay. Give me a second, now, Mr.
24 Shade. So first of all, did you complete the oath?

25 MR. SHADE: No, I did not. No one asked me about an

1 oath.

2 CHAIRPERSON HILL: Okay. No problem. All right. So
3 that's number one. Number two, Mr. Overmyer, can you hear me?

4 MR. OVERMYER: Yes, I can hear you.

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

7 MR. OVERMYER: Good afternoon, I'm Dale Overmyer, an
8 architect practicing here in ANC 2E for 30 years as a registered
9 architect, and also residing in ANC 2E.

10 CHAIRPERSON HILL: Got it. Thank you. Okay. And then
11 Mr. Arthur, can you hear me? Don't see Mr. Arthur yet. Mr.
12 Overmyer, did you take the oath?

13 MR. OVERMYER: I did the online application.

14 CHAIRPERSON HILL: If you did the online thing, you
15 took the oath. Mr. Shade, did you do the online thing, or you
16 did not?

17 MR. SHADE: Yes, I did do the online thing.

18 CHAIRPERSON HILL: Okay.

19 MR. SHADE: (Audio interference.)

20 CHAIRPERSON HILL: Okay, then you took the oath. I
21 can't see Mr. Arthur anywhere.

22 MR. YOUNG: I don't have Mr. Arthur on the call.

23 CHAIRPERSON HILL: Okay. Okay. You can try to find
24 him. All right. Mr. Shade and Mr. Overmyer, this is my problem
25 here. I don't -- we have to, kind of, admit people as expert

1 witnesses. So I can't necessarily admit you as an expert witness
2 unless somebody has applied to have you admitted as an expert
3 witness, which would have been Mr. Bell, and you would have had
4 to submit your resumes and we would have had to do all that stuff,
5 right. So even though you're not expert witnesses, we still can
6 take your testimonies, and then take that into account, right.
7 And so, Ms. Cain, is that correct?

8 MR. BELL: Mr. Shade did send his resume in as an expert
9 witness.

10 CHAIRPERSON HILL: Okay.

11 MS. CAIN: Yes, that is correct.

12 CHAIRPERSON HILL: So Mr. Bell is saying that Mr. Shade
13 did submit his resume.

14 MR. BELL: Exhibit 48.

15 CHAIRPERSON HILL: And did somebody ask him -- you
16 know, this is where I always get confused. Does somebody have
17 to ask somebody to be an expert witness? Ms. Cain?

18 MS. CAIN: I don't think it has to be asked. The party
19 opponent has proffered him as a witness, and there's evidence in
20 the record to support that expert status. The Board can make
21 that determination. Otherwise, they're just presenting as a
22 witness and not as an expert.

23 CHAIRPERSON HILL: Okay. And then Mr. Overmyer, can
24 you hear me?

25 MR. OVERMYER: Yes.

1 CHAIRPERSON HILL: So you're trying to present --
2 you're presenting as an architect, correct?

3 MR. OVERMYER: Yes.

4 CHAIRPERSON HILL: Can you tell us a little bit about
5 yourself, Mr. Overmyer.

6 MR. OVERMYER: Yes. I've been working as an architect
7 here for 35 years, registered for 30 years. My practice is
8 generally based (indiscernible) here in Georgetown for better
9 than 100 projects (indiscernible) in the neighborhood.

10 CHAIRPERSON HILL: Okay. So unless the Board has any
11 -- I'm now looking through Mr. Shade's resume. I don't have any
12 problem with him being an expert in acoustical design or the
13 architect being admitted as an expert in architecture. Does
14 anyone have any questions for either witness and/or have an issue
15 with what I've just said?

16 COMMISSIONER TURNBULL: No. Mr. Shade is a member of
17 the -- he's an FASA, and Mr. Overmyer is a member of the AIA. I
18 have no problem.

19 CHAIRPERSON HILL: Mr. Overmyer, Mr. Turnbull usually
20 asks for your number. And so, like, you know, since you haven't
21 gotten that, you're -- whatever your AIA number is and the secret
22 handshake. Don't -- please don't tell me. I don't need to know.
23 I don't need to know.

24 All right. So okay. All right. So each of you --
25 we're, kind of, way over on time. I'm going to give you four

1 minutes each. Okay. And I'm going to time you. So Mr. Shade,
2 you can go ahead and start with whatever presentation you wanted
3 to give.

4 MR. SHADE: I don't have a presentation to show, per
5 se, but I will go through my analysis and give you my conclusions.
6 I did calculations with 15 people in the patio area. Assuming
7 that eight people would be conversing, the talking level was 78
8 decibels, sound power level, which is typical for what's called
9 a cocktail party vocal effort. I did calculations for the sound
10 levels without the pergola, with the pergola, designed as shown
11 with the open triangular part, and then I did a calculation with
12 a full pergola covering the entire, let's just call it, "ceiling
13 area." The nearest residents were taken to be 12 feet from the
14 edge of the open pergola, as shown on the drawings that I
15 received, and thus, the noise levels were calculated for the
16 property line of the applicant's property and then across the
17 alleyway to the nearest residence, which is that dark blue
18 building, and then determining the sound level inside the
19 residence.

20 The calculated noise levels were compared to the
21 District of Columbia Noise Ordinance and to data associated with
22 sleep disturbance. I have not seen the other acoustic
23 consultant's report, so I don't know what noise levels were
24 assumed for a talker. There's a variety of levels in the
25 literature, and if you don't use the right levels, the apparent

1 noise level at the property line will be lower than what it may
2 actually be.

3 Case one, the property line with a completely open
4 pergola, is 69 decibels, A-weighted, at the property line, which
5 exceeds the District of Columbia nighttime noise ordinance by 14
6 decibels. The interior noise level at the closest residence is
7 48 decibels, A-weighted. That exceeds the sleep disturbance
8 criteria by a minimum of eight decibels.

9 The Case two property line noise level, that assumes
10 the pergola over the roof area -- excuse me, the patio area but
11 having those open triangle areas, the property line noise level
12 would be 60 decibels, A-weighted, which would exceed the
13 nighttime noise ordinance for a residential zoning. The interior
14 noise level at the nearest residences would be 39 decibels, A-
15 weighted, and the noise level would probably be just at the
16 threshold of sleep disturbance.

17 If the pergola were to be completely closed and there
18 would -- the noise level would be 52 dBA at the property line,
19 and 32 dBA at the interior of the residence.

20 Now, the problem with my calculations, and I'm sure the
21 other expert's calculations is, there is no published sound noise
22 reduction data for this pergola system. So one has to make a
23 calculation based on the construction, and that is fraught with
24 potential --

25 CHAIRPERSON HILL: Mr. Shade, this --

1 MR. SHADE: -- errors.

2 CHAIRPERSON HILL: -- (audio interference), as well.

3 MR. SHADE: Thank you. So I question what the other
4 expert has determined for noise levels, saying these noise levels
5 will be acceptable based on the lack of information that is
6 available on this particular pergola system that the applicant
7 would like to use. In short, I do believe the noise levels will
8 exceed the District of Columbia property line noise levels unless
9 some sort of full closure is made over the patio.

10 And that concludes a shortened version of my summary
11 of findings.

12 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Shade.
13 I'll come back for any questions the Board may have.

14 MR. SHADE: You are welcome.

15 CHAIRPERSON HILL: I will come back for any questions
16 the Board may have from you, as well.

17 Mr. Overmyer, I'll go ahead and give you your four
18 minutes.

19 MR. OVERMYER: Thank you. If Mr. Young could bring up
20 the image that the applicant shows the drawings -- the
21 architectural drawings of the -- what I'm going to speak to is
22 the question of whether the drawings illustrate a system that
23 could actually create sound transmission reduction. The
24 acoustics are making the sound transmission. And what you're
25 really looking for to do that programmatically is an envelope

1 that is uninterrupted. The brick wall that's there is a good
2 acoustic barrier. But even in any sound recording studio, (audio
3 interference) the smallest aperture, sound will get through. The
4 basic rule of thumb is if I can see through it, I can hear through
5 it. And the problem with these drawings is that they are
6 incredibly minimal, and they don't speak to answering the
7 question programmatically of whether this thing will create a
8 contiguous envelope.

9 The drawings we went over, the drawings just explain
10 the building parts, what they are, where they are, and how they're
11 put together. And at this time, we don't know what the columns
12 of the building are, we don't know what the beams of the pergola
13 are. We did have some detail on this system of louvers, but we
14 don't know whether they were 2 by 2's, 4 by 4's, and 8 by 8's.
15 We don't know whether they're toothpicks or telephone poles. We
16 just know that they're made of wood. We also don't know where
17 they are. And we typically do that by dimensions and a plan
18 would show the location of an element, we show three dimensions.
19 It's the precise location. We don't know that in the plan. We
20 also don't have a plan that shows the roof structure. We have a
21 section, and that's the only place that shows the height of the
22 roof, but we also don't know how any of those elements (audio
23 interference). So there's a great deal of information missing
24 on this plan. Perhaps the most important information is the
25 detail of how this roof structure would connect seamlessly, or

1 rather uniformly and uninterruptedly to the brick wall that's
2 there. So there's missing here the knowledge that would give me
3 any comfort, that programmatically, we've created a system that
4 would keep sound from emanating out.

5 So there may be elements of this structure that would
6 prevent sound transmission, and (audio interference), but the
7 problem with (audio interference) is the connection of things.
8 Is there a gap? And even in the architect's drawings, there
9 appears to be a gap that's between the top of the wall and the
10 roof structure. So I would say that it's a very scant
11 representation of the actual structure that's there, and there's
12 really no detail that speaks to how you could close the gap, make
13 for really a solution for stopping the sound from emanating in
14 the direction of neighbors.

15 I'm most concerned about the sound going up through the
16 roof in the direction of the sky than I am of the sound going
17 horizontally to the neighbors beyond. And that's a question that
18 the drawings just don't speak to.

19 CHAIRPERSON HILL: Got it. Okay. Thanks, Mr. Overmyer.
20 Okay.

21 Does anybody have any questions from -- Mr. Bell, you
22 want to -- you're done now. Do you have anything you want to
23 wrap up with, or are you good?

24 MR. BELL: (No audible response.)

25 CHAIRPERSON HILL: You're on mute.

1 MR. BELL: (No audible response.)

2 CHAIRPERSON HILL: You're still on mute.

3 MR. BELL: Sorry. There's a very bad thunderstorm
4 where I am. The -- I think from the drawings -- from the pictures
5 I showed you, what they're actually proposing here, if they can
6 build it, is a new structure completely covering the rear yard.
7 And you can see that the rear yard, from the first picture I
8 showed you to the last picture, is (audio interference) for all
9 the neighbors. The rear yard is not there just as decoration.
10 It's there to add light and openness. And when the pictures that
11 the applicant attached with the cherry trees in it originally,
12 before they chopped them down and built a wooden structure
13 illegally, that's what the garden and the open space for a
14 neighbor meets a different (audio interference) versus looking
15 down on -- what they're actually getting is 15 additional feet
16 in their restaurant, which wouldn't be bad if they have an
17 enclosed structure like that.

18 So either it's (audio interference) is not allowed, and
19 they're just getting extra square footage, and --

20 CHAIRPERSON HILL: Okay.

21 MR. BELL: -- (audio interference) on the environment
22 itself.

23 CHAIRPERSON HILL: Okay. All right, Mr. Bell. Let's
24 see. Does the Board have any questions for either Mr. Overmyer
25 or Mr. Shade before I let them go?

1 (No audible response.)

2 CHAIRPERSON HILL: Okay. Does the Applicant have any
3 questions for Mr. Overmyer or Mr. Shade before I let them go?

4 MR. KADLECEK: Yes. Thank you, Chair, I have just a
5 couple of quick questions.

6 The first is for Mr. Shade. Is it your -- Mr. Shade,
7 are you there?

8 MR. SHADE: Yes, I'm here.

9 MR. KADLECEK: Okay. Thank you. Is it your testimony
10 that the pergola, itself, will generate noise?

11 MR. SHADE: No. The pergola may transmit noise, not
12 generate noise.

13 MR. KADLECEK: Okay. Got it. So in other words, is
14 it your testimony that the presence of the pergola will mitigate
15 noise more than if there was nothing there at all?

16 MR. SHADE: Yes, the difference being only 9 decibels
17 if the pergola is not fully enclosed over the patio area.

18 MR. KADLECEK: Okay.

19 MR. SHADE: It's not (indiscernible) reduction.

20 MR. KADLECEK: Understood. And thank you. And finally,
21 are you aware of anywhere in the zoning regulations where noise
22 levels are regulated?

23 MS. SHADE: It's in Section 2700 of the D.C. Code that
24 -- I can't remember --

25 MR. KADLECEK: But that's not the --

1 MR. SHADE: -- (indiscernible).

2 MR. KADLECEK: -- zoning regulations, correct?

3 MR. SHADE: I'm not an expert on these regulations. I
4 know the D.C. Noise Code, and it's in Section 2700. I don't know
5 if that's zoning or what that may be, but I'm familiar with the
6 District of Columbia Noise Code.

7 MR. KADLECEK: Understood. And then I just have on
8 question for Mr. Bell. Your property, 2012 O Street, Mr. Bell,
9 that's the property that's immediately adjacent to the patio; is
10 that right?

11 MR. BELL: 3212 is the one that's 8 feet from it. Yes.

12 MR. KADLECEK: Right. But that's the one that's
13 immediately adjacent. Right.

14 MR. BELL: Excuse me?

15 MR. KADLECEK: I'm sorry. That's the one that's
16 immediately --

17 MR. BELL: I'm sorry. I can't hear you.

18 MR. KADLECEK: That's the one that's immediately
19 adjacent to the patio; is that right?

20 MR. BELL: Yes.

21 MR. KADLECEK: Okay. And that does not contain any
22 residences; is that right?

23 MR. BELL: It's zoned for residence, and I've had to
24 of my present tenants request that I change it to residential.

25 MR. KADLECEK: Okay. But there's currently no --

1 MR. BELL: (Indiscernible) --

2 MR. KADLECEK: -- (indiscernible).

3 MR. BELL: -- zoned area for residents.

4 MR. KADLECEK: Right, but it currently only contains
5 commercial tenants, right?

6 MR. BELL: At this moment, but I just switched my own
7 --

8 MR. KADLECEK: That's right. And I understand, but
9 -- and because they are commercial tenants, they're not operating
10 at night; is that right?

11 MR. BELL: No, they're not.

12 MR. KADLECEK: Okay. Thank you. That's all I have,
13 Chairman.

14 CHAIRPERSON HILL: Okay. Mr. Overmyer, can you hear
15 me?

16 MR. OVERMYER: Yes.

17 CHAIRPERSON HILL: Can you submit your resume for the
18 record so that we have a complete record?

19 MR. OVERMYER: Yes, I will.

20 CHAIRPERSON HILL: Okay. Can you do that kind of fast?

21 MR. OVERMYER: As in right now?

22 CHAIRPERSON HILL: No, but, like, in the next couple
23 days.

24 MR. OVERMYER: Sure. Of course.

25 CHAIRPERSON HILL: Okay. Good. All right. Thanks.

1 Okay. All right. Well, Mr. Overmyer, thank you so much. Mr.
2 Shade, thank you so much, and we will let you go.

3 Okay. All right. Does the Board have questions of the
4 party status?

5 (No audible response.)

6 CHAIRPERSON HILL: Okay. Well, I'm going to start a
7 little. Mr. Bell, can you hear me?

8 MR. BELL: Yes, I hear you now.

9 CHAIRPERSON HILL: Okay. I mean, I feel like -- first
10 of all, I went to the University of Arizona, so I'm really close
11 to where you are. It's very nice, you know, and, like, but I
12 think you're here, kind of, in the wrong forum, like, I really
13 do. Like, I mean, you're talking about noise. Everything that
14 you're talking about is, like, noise mitigation, and so --

15 MR. BELL: So --

16 CHAIRPERSON HILL: Just hear me out. Just hear me out.
17 And that, you know, if this were a pergola for somebody's house,
18 right, that's really why we're here. We're like, you know, what
19 is it -- we're not here to decide whether or not the pergola is
20 created -- is doing what's, supposedly, it was supposed to do for
21 the ANC, that's not why we're here. Right. We're here to
22 determine, within the regulations, if this pergola should be
23 allowed, right. And it's not about noise. It has nothing to do
24 with noise, right. And so, to me, it seems like you should have
25 been here when the ANC was trying to fight about the ABRA thing,

1 right, or when the ANC was trying to fight with the -- I'm just
2 giving my opinion, I'm not even, necessarily -- I might have a
3 question at the end, but I just wanted to clear this -- just tell
4 you where I am right now, right. Is that the ANC, when they were
5 fighting with the property owner, that's when maybe you kind of
6 argue whether the louver actually didn't do sound mitigation,
7 when everything going on. You've been there a pretty long time,
8 right?

9 MR. BELL: In Georgetown?

10 CHAIRPERSON HILL: Yes. Like, you've owned that
11 building for a while.

12 MR. BELL: Yes.

13 CHAIRPERSON HILL: Right. So I mean, I wasn't --

14 MR. BELL: But I was never notified of this issue,
15 ever.

16 CHAIRPERSON HILL: Say -- you were there when it was
17 the Point, right? And even --

18 MR. BELL: Yes.

19 CHAIRPERSON HILL: And even before the Point, it was
20 something else. I forget --

21 MR. BELL: Yes, exactly.

22 CHAIRPERSON HILL: I was never cool enough to go to the
23 Point, by the way. That was, like, beyond my time, also, but
24 nonetheless, it's always been an outdoor bar area.

25 MR. BELL: Well, actually, Smith Point made a covering

1 just like the one their proposing, and I went to the Zoning and
2 to the D.C. Government, and I got that removed, because it was
3 illegal at the time, and what they're proposing is to do the
4 exact same thing again. And --

5 CHAIRPERSON HILL: Wait. Just hear me out. Give me
6 one second --

7 MR. BELL: Okay.

8 CHAIRPERSON HILL: -- another few seconds. Like, at
9 ABRA -- because I wasn't at the ABRA hearing. So maybe ABRA was
10 going to approve this thing anyway, right. I mean, it's always
11 had this kind of a liquor license, and maybe the ANC was able
12 to, like, argue something and get something done so that they
13 just didn't get their ABRA license reestablished. And I mean,
14 there's a lot of factors in here that are outside our purview.
15 I'm just giving you my statement, right. And so that's all.
16 There's really no question I have.

17 Do you have a question -- I'll let you ask your
18 questions now, as well. But I do have a question for the
19 applicant, which is in terms of the beams that they're talking
20 about. Like, what you submitted to OP, is that where -- like,
21 where does that beam fall? Are the beams falling above the brick
22 wall?

23 MR. KADLECEK: Yeah. I'll let Mr. Santalla answer
24 that, specifically. Also, the photo of the structure that Mr.
25 Bell showed, that is no longer there. That's why we're before

1 the Board, because at the time, it was understood that this was
2 a permitted structure, and subsequently the Zoning Administrator
3 said no. That has been removed and that's why we're before the
4 Board. But I'll let Mr. Santalla answer that question,
5 specifically, about how the pergola lays out.

6 MR. SANTALLA: Okay. Can you hear me?

7 CHAIRPERSON HILL: Yes, Mr. Santalla.

8 MR. SANTALLA. Okay. Good. Thank you. The height of
9 that wall varies, and so there will be some sections of that wall
10 where the beams will be slightly higher.

11 CHAIRPERSON HILL: Okay. And that's the same set of
12 plans that you submitted to the Office of Planning, correct?

13 MR. SANTALLA: Yes.

14 CHAIRPERSON HILL: And that's the same set of plans
15 that we have, correct?

16 MR. SANTALLA: Correct.

17 CHAIRPERSON HILL: Okay. All right. Does the Board
18 have any additional questions of Mr. Bell? Mr. -- I mean, Mr.
19 Turnbull.

20 COMMISSIONER TURNBULL: No, Mr. Chair. I was going to
21 ask Mr. Santalla a question about what he had just said.

22 CHAIRPERSON HILL: Okay. Go ahead.

23 COMMISSIONER TURNBULL: Mr. Santalla, the drawings --
24 we don't have -- I mean, they're very minimal, but am I -- are
25 you showing -- it looks like you are not showing a beam or

1 anything going over the wall, or on top of the wall.

2 MR. SANTALLA: Yes.

3 COMMISSIONER TURNBULL: You're showing it right next
4 to the wall?

5 MR. SANTALLA: That is correct, right next to the wall.

6 COMMISSIONER TURNBULL: Okay. Thank you.

7 MR. SANTALLA: What Mr. Bell was showing has been
8 completely removed, and it was never -- it is not the intent to
9 go over the wall.

10 COMMISSIONER TURNBULL: Okay. Thank you.

11 MR. SANTALLA: You're welcome.

12 CHAIRPERSON HILL: Okay. Mr. Bell.

13 MR. BELL: Yes.

14 CHAIRPERSON HILL: Would -- you want to go ahead. So
15 I'm going to go to conclusions, and normally, we don't --well, I
16 always give -- I usually give the party opponent a conclusion
17 just because I want to hear whatever they have to --whatever
18 they're thinking at the end. And so if you just want to, kind
19 of, go ahead and give us a conclusion. Then I'm going to give
20 -- Mr. Kadlecek is supposed to have rebuttal, and so he'll get
21 rebuttal, and then he'll get a conclusion. So do you have any
22 conclusion to give?

23 MR. BELL: (No audible response.)

24 CHAIRPERSON HILL: I can't hear you, Mr. Bell. Sorry.

25 MR. BELL: Are you speaking to me?

1 CHAIRPERSON HILL: Yes. Do you have a conclusion to
2 give?

3 MR. BELL: Yes. I think that that's -- that it is
4 impossible what the architect has said that the beams don't come
5 over it. In fact, I sent the pictures. The structure that they
6 built without a permit that they just started putting up, that
7 structure is accurate. And that structure shows that it does go
8 over the wall. And the reason that it's accurate is that there
9 is a beam across the window where the doors are from the bar,
10 and those beams have to be above that, or otherwise they would
11 (audio interference).

12 CHAIRPERSON HILL: Mr. Bell, I'm sorry. I'm just
13 letting you know. I'm not trying to get further testimony. If
14 you have any other conclusion, like, I have -- and I know you're
15 saying this, but, like, I have another hearing after this one,
16 and that one's going to go another hour or something as well.
17 And my Board members are going to start to revolt. So do you
18 have any conclusions?

19 MR. BELL: (No audible response.)

20 CHAIRPERSON HILL: You're still on mute.

21 MR. BELL: I just -- I believe that this is inconsistent
22 with the general harmony of it, because, first of all, it covers
23 up the open space, you know, it destroys what was there. Second,
24 it doesn't do what this quid pro quo agreement was -- which is
25 to ignore that, for the Zoning to ignore this agreement is to

1 ignore the context of the problem, because I would not be here
2 to complain if it actually did the things they promised, that it
3 was completely silent, but it doesn't do what it promised. So
4 it's like, okay, we can do what we want, because we made a
5 promise. But now, when we come and look at what they said they
6 were going to do, they didn't do that. So we have -- as though
7 they had no promises (audio interference). (Audio interference)
8 about the sound, yes.

9 CHAIRPERSON HILL: Okay.

10 MR. BELL: It couldn't occur if they hadn't made this
11 promise about what the pergola would be.

12 CHAIRPERSON HILL: Okay. I got you. All right, Mr.
13 Bell. Mr. Kadlecek, do you have rebuttal?

14 MR. KADLECEK: I don't have rebuttal, I just have a few
15 closing remarks, if I could.

16 CHAIRPERSON HILL: Okay. Does the Board have any
17 questions of anybody before I go to Mr. Kadlecek's closing
18 remarks?

19 (No audible response.)

20 CHAIRPERSON HILL: Okay. Commissioner Murphy.

21 MR. MURPHY: Yes, Commissioner Hill.

22 CHAIRPERSON HILL: Do you remember what was there
23 before the Point?

24 MR. MURPHY: I knew -- Smith Point was there when I
25 moved to Georgetown in 2003.

1 CHAIRPERSON HILL: Okay.

2 MR. MURPHY: I do have just one thing, if the Chair
3 would allow.

4 CHAIRPERSON HILL: Sure.

5 MR. MURPHY: I'd just like -- Mr. Bell is (audio
6 interference) about what the ordinance says, but he seems to
7 leave out the most important part, which is the provision that
8 precedes the provision about the pergola. It says, "No music
9 played inside the premises or noise emanating from the premises,
10 including the summer garden, shall be audible outside the
11 premises, particularly in any residence fronting on O Street or
12 M Street or Wisconsin Avenue or the hotel."

13 So the point here is, the agreement is now part of the
14 ABRA license, and if the holder of the ABRA license violates the
15 agreement, Mr. Bell's got -- he's got recourse. He goes to ABRA
16 and gets them sanctioned for violating their ABRA license.

17 CHAIRPERSON HILL: Okay. Mr. Murphy, Commissioner
18 Murphy, you should turn off your camera again. That's right. I
19 don't know what your camera is doing, but all of a sudden it's -
20 - just so you know for future things, it certainly -- it's just
21 zooming in on your face, really. I don't know why.

22 MR. MURPHY: I apologize.

23 CHAIRPERSON HILL: Oh, you don't need to apologize.
24 I'm just letting you know for your ANC meetings.

25 Okay. Okay. Thank you, Commissioner. Commissioner,

1 I graduated high school in '86, so we used to be down there in
2 '84, '85, and so like, you know --

3 MR. MURPHY: It's been there forever, and it's had a
4 summer garden endorsement. There have been people in that back
5 yard forever, and they'll be there again.

6 CHAIRPERSON HILL: Okay. So I understand the ABRA
7 license clarification, and thank you for sharing that.

8 All right. Mr. Kadlecek, you want to go?

9 MR. KADLECEK: I'll be very brief. Thank you, Board
10 members and Chairman Hill. I know it's been a long hearing. I
11 just want to conclude with a few things that I think are just
12 worth ending on.

13 One is, as Commissioner Murphy put it so well, there
14 is a forum, that is not this one, for Mr. Bell to contest any
15 issues with not abiding by sound mitigation. That is not before
16 the Board today. So that is very clear, and I thank the
17 Commissioner for making that clear.

18 The use of the patio without the pergola is permitted,
19 notwithstanding the liquor license, as the Board clearly
20 understands, and the pergola itself actually makes things better.
21 That's the point here. And the pergola is intended to limit
22 sound. We did not, and we are not, testifying in this case as
23 to the efficacy of the pergola. That was an issue related to
24 the liquor license and the ABRA agreement -- and the settlement
25 agreement. There was no testimony in the hearing today that the

1 pergola itself will adversely affect neighboring properties. And
2 that's the key point that I want to end on, that the pergola
3 itself does -- will not affect -- adversely affect property. And
4 the testimony that you heard from Mr. Bell is totally about the
5 use, which is permitted.

6 So with that, we would like to conclude our hearing,
7 and we thank you again for the Board's time.

8 CHAIRPERSON HILL: Okay. Great. All right. I'm going
9 to make one statement, then I'm going to -- does the Board have
10 anything else they'd like to say, because I'm going to make a
11 statement.

12 (No audible response.).

13 CHAIRPERSON HILL: Okay. Which is that I don't know
14 -- I'm ready to deliberate. So I don't know if this is going to
15 pass or not going to pass or whatever, but if it were to pass,
16 then the sooner this gets resolved and gets tested and the --
17 oh, never mind. Forget it. I'm not making a statement.

18 Okay. All right. It is getting late. Okay. All
19 right. I'm going to go ahead and close the hearing, close the
20 record.

21 Mr. Young, if you could excuse everybody, please, from
22 the room.

23 (Pause.)

24 CHAIRPERSON HILL: Okay. I'm ready to deliberate. Are
25 you all ready to deliberate? Okay. So Ms. Cain?

1 MS. CAIN: The question in terms of closing the record,
2 do you still want the party opponent's architect to submit their
3 resume into the record?

4 CHAIRPERSON HILL: Yes. I'll leave it open for that.
5 Okay. So we'll leave the record open for the architect's resume.

6 Does somebody else want to start? Mr. Smith, would you
7 mind going? I mean, I know what I know, and (audio interference).

8 BOARD MEMBER SMITH: I would prefer to defer.

9 CHAIRPERSON HILL: Oh, really. Okay. Then I'll go
10 first.

11 BOARD MEMBER SMITH: Please.

12 CHAIRPERSON HILL: So I just think we're in the wrong
13 forum on this. As I said it before, the -- if this were a pergola
14 for somebody's house, we're not here deciding whether or not this
15 pergola is or isn't soundproof, right, whether or not this does
16 or doesn't create sound mitigation. We're here as to whether or
17 not this is going to create any adverse impact to light and air
18 or whether anybody's view is going to get changed.

19 I mean, you're not -- this is the first time I've ever
20 heard anybody saying, I want to look into somebody's backyard,
21 right. So Mr. Bell is saying that his view into somebody's
22 backyard is the view that he wants to have, right. And so the
23 pergola is going to stop that view, and I don't think that, I
24 mean, this is -- that argument's a new one on me. So I don't
25 think the pergola has a problem with that view, right. And so

1 he doesn't have a right to the view into somebody's backyard.

2 And so, you know, the Zoning Administrator has already
3 approved that that pergola is a pergola, and we're here for the
4 rear yard relief. So I think they meet the criteria for the rear
5 yard relief. And I agree with the Office of Planning, and I even
6 agree with the ANC, even though the ANC completely had to deal
7 with, like, all of the noise stuff. And I know I'm, kind of,
8 sharing how long I've been in the area, but that that thing has
9 been this outdoor club by -- I mean, by right, they can have
10 people outdoors there. Right? Well, that's not true. It all
11 got messy now because of the ABRA thing, right. But before the
12 ABRA thing, I mean, who knows -- as I've said before, who knows,
13 ABRA might -- they might not approve it anyway. And they just
14 -- and the ANC got more bang for their buck by getting a pergola.
15 The pergola is there and is preventing sound. The pergola is
16 going to make it less sound than more. So I don't see how you
17 can deny the pergola, but that's me.

18 Who wants to go next? Ms. John.

19 VICE CHAIR JOHN: Okay. So we're here because the
20 applicant seeks rear yard relief, and the issue is by placing the
21 pergola in the rear yard, what would be the adverse impacts on
22 the neighborhoods -- on the neighborhood? And as you said and
23 OP and the applicant and the ANC have also noted, the use is
24 approved. They can have people in the back yard.

25 The only reason that there's an issue is because the

1 ANC negotiated an agreement that there should be a pergola to
2 help mitigate noise. And we're not a party to that agreement.

3 Had this been before the BZA and the BZA had determined,
4 which I don't think -- yeah, we don't know what we would have
5 done, but that there's some potential noise impact, and the BZA
6 had ordered that mitigation, then the BZA could look at whether
7 or not the applicant is complying with an order of the BZA. But
8 this is not an order of the BZA. This is ABRA's condition.

9 And so I agree with you, Mr. Chairman, that the
10 applicant (sic) is in the wrong forum. And so I also agree with
11 the applicant's summation of what the applicant's request is and
12 how the Board should look at it. I also agree with OP's analysis,
13 and I give great weight to OP's analysis and recommendation of
14 how the application meets the requirements.

15 So I would approve the pergola, and -- because I don't
16 see where having the pergola causes any adverse impact in terms
17 of noise, light, and air. Right. The existence of the pergola,
18 itself, does not cause adverse impact to noise. And I agree with
19 you, Mr. Chairman, that it is -- if we were looking at this as a
20 new application, we would say, "Well, the pergola does mitigate
21 noise." So we would look at it from that perspective.

22 So these are just a few thoughts just to continue the
23 discussion, and I'll be happy to hear what everybody else has.

24 CHAIRPERSON HILL: Okay. Commissioner Turnbull.

25 COMMISSIONER TURNBULL: I would agree with all the

1 comments so far. If we're just talking about a pergola in the
2 rear yard, I don't think there's an issue. They have -- we can
3 approve the special exception, no problem.

4 Is it the right pergola? Probably not, but that's just
5 me looking at it from what I've heard. But they're entitled to
6 the pergola. I think they can put a pergola up. I -- looking
7 at what we've heard, a pergola is fine.

8 The only thing that troubles -- and I agree with the
9 OP, but the only thing that bothers me with the OP report is the
10 section -- is the second element of the special exception, which
11 -- just follow me down this yellow-brick road for a little bit
12 just to figure out -- "The proposed pergola and reduction in size
13 of the rear yard," blah blah. "The pergola would be no taller
14 than the walls" existing, blah, blah, blah. And then it says,
15 "The existence of the pergola and the opening and closing of the
16 sound baffles would not generate noise, but would rather tend to
17 reduce potential noise that could be generated by this by-right
18 use. The pergola maintained" -- "mandated by the ABRA settlement
19 agreement" -- which, again, do we care about, not necessarily,
20 "is intended to mitigate possible spillage of noise from that" -
21 - "during hours when the additional might most impact nearby
22 residents."

23 It's this little paragraph, this number two, that OP
24 has concentrated on, which they're saying that you're going to
25 have noise, and that's going to impact the neighbors. So that's

1 the only thing I had trouble with, and that is something that
2 should be mitigated, but are we responsible for that? They're
3 putting up a pergola, they're putting baffles up, they're doing
4 something. Is it going to work? Well, according to the
5 opponent's sound engineer, he doesn't think so. But again, I
6 think the remedy is to go to ABRA again. So I -- I mean, the
7 only thing I struggled with here was Section 2, is that are we
8 supposed to be dealing with the mitigation.

9 But I'm willing to go along with this. I think it is
10 primarily an ABRA concern, but I'm just wondering if there is a
11 little bit of -- I don't want to get into redesigning the pergola.
12 That's up to them. I mean, it's their pergola, there's going to
13 be a pergola, so I'm willing to go ahead with this.

14 CHAIRPERSON HILL: Mr. Blake?

15 BOARD MEMBER BLAKE: Sure. I agree with the comments
16 that have been made by all of you up to this point. Clearly,
17 the pergola will not have an adverse impact on the neighboring
18 properties.

19 At the end of the day, the two experts that talked
20 about the noise, actually were pretty much about the same, about
21 10 decibels would be the reduction overall. So I'm not saying
22 that they -- they know it will do something. It may not solve
23 the problem totally, but they -- both experts agree that it would
24 do something.

25 There's a forum on which this can be decided, and it

1 will be evaluated. And so ABRA is that forum, not this one. So
2 I'm very comfortable supporting the pergola relief for the --
3 rear yard relief for the pergola.

4 CHAIRPERSON HILL: Mr. Smith -- I mean, Mr. Blake, I
5 mean, Mr. Smith.

6 BOARD MEMBER SMITH: It's late. So I won't belabor the
7 point. I agree with everybody's analysis on this. The question
8 before us is about the structure itself, not the use that would
9 occur under the structure. From the beginning, the issue of
10 noise and how to attenuate that noise or regulate that noise has
11 always been with ABRA. And I -- there was nothing in this
12 testimony that I heard that swayed my opinion of that in any way,
13 shape, or form.

14 I do agree with Mr. Turnbull that is this the right
15 pergola to attenuate the noise or properly mitigate the noise?
16 Probably not, but that, you know, that's the reason for this
17 agreement. That's the reason for the ABRA Board where you can
18 make these legitimate complaints to that Board, and they will be
19 the ones that would enforce that. So I don't believe enforcement
20 of the noise is in the power of the BZA.

21 So with that, I do believe that a pergola would be
22 appropriate in this location, this property. It's the middle of
23 Georgetown. It's in a mixed-use neighborhood with a large --
24 with noise. And I do believe that it would not have an undue
25 adverse impact, the actual structure, itself, not speaking to the

1 use.

2 So with that, I would support the application.

3 CHAIRPERSON HILL: Okay. Thank you all very much. I
4 think that ABRA also, I mean, they're the ones that, you know,
5 it's in the agreement that if they don't -- if the noise thing
6 isn't addressed, then they're going to go back and fight it there
7 at the ABRA level.

8 I keep saying ABRA's the only job that I would want
9 less than this job, you know. If anybody says, "Come do ABRA,"
10 do not say yes. Oh, my gosh. ABRA. All right.

11 I'm going to go ahead and make a motion to approve
12 Application Number 20475, as captioned and read by the Secretary,
13 and ask for a second. Ms. John.

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: Motion has been made and seconded.
16 Mr. Moy, if you could take a roll call.

17 MR. MOY: Thank you, Mr. Chairman. When I call each
18 of your names, if you would please respond with a yes, no, or
19 abstain to the motion made by the Chairman to approve the
20 application for the relief requested. The motion was seconded
21 by Vice Chair John.

22 CHAIRPERSON HILL: Wait a minute. I think -- did I
23 read the wrong -- I read the wrong -- I think I made the wrong
24 motion. I think I read the wrong number. Let me do it again.

25 I make a motion to approve Application No. 20495, as

1 captioned and read by the Secretary, and ask for a second. Ms.
2 John.

3 VICE CHAIR JOHN: Second for the right case.

4 CHAIRPERSON HILL: Right. I read the wrong number,
5 didn't I?

6 VICE CHAIR JOHN: And I'm was asleep, you know. It's
7 late. I just wasn't listening, but you know, you do such a great
8 job. So --

9 CHAIRPERSON HILL: So 20495. So, as captioned and read
10 by the Secretary, as asked for a second. Ms. John.

11 VICE CHAIR JOHN: Yes. Second.

12 CHAIRPERSON HILL: All right, Mr. Moy, please go ahead
13 and do what you need to do.

14 MR. MOY: All right. Thank you, Mr. Chairman. I'm
15 good with that. So the motion was made by Chairman Hill to
16 approve, seconded by Vice Chair John.

17 Zoning Commissioner Michael Turnbull.

18 COMMISSIONER TURNBULL: Yes.

19 MR. MOY: Mr. Smith.

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake.

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John.

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill.

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as 5-0-0, and
3 this is on the motion made by Chairman Hill to approve, seconded
4 by Vice Chair John to approve. Also in support of the motion to
5 approve is Zoning Commissioner Michael Turnbull, Mr. Smith, and
6 Mr. Blake. Motion carries on a vote of 5-0-0.

7 CHAIRPERSON HILL: Okay. All right. Thank you all
8 very much. We've got one more case, but I don't know if I can
9 do it. So we're going to see what the applicant has to say.
10 They're asking for a postponement. One party is. Let's see what
11 happens. Let's call the next case, and let's see what happens.
12 Okay. Mr. Moy, call the next case.

13 MR. MOY: Okay. This would be case Application No.
14 20475, of Amy Titus, captioned and advertised for special
15 exception from the lot occupancy requirements of Subtitle D,
16 Section 1204.1; variance from the minimum lot width and minimum
17 lot area requirements of Subtitle D, Section 1202.1; and this
18 would construct a two-story, with basement, rear addition to an
19 existing two-story, with basement, principal dwelling unit in the
20 R-20 Zone. The property is located at 1404 27th Street, N.W.,
21 Square 1260, Lot 820.

22 Mr. Chairman, as you know, there are preliminaries to
23 this. The first one is a request for party status from a Mr.
24 Fishman, who's represented by attorney Cynthia Giordano, and
25 depending on the Board's decision on that party status request,

1 they are also seeking a postponement of the hearing. The
2 applicant has responded to that motion to postpone. That's in
3 the record. And I think I'm just going to leave it at that for
4 the moment. Thank you, sir.

5 CHAIRPERSON HILL: Okay. Have you found Ms. Giordano?
6 Do you guys have her?

7 MS. GIORDANO: Hello.

8 CHAIRPERSON HILL: Yes, can you hear me?

9 MS. GIORDANO: Yes. Can you hear me? This is Cynthia
10 Giordano with Saul Ewing Law Firm.

11 CHAIRPERSON HILL: Okay. Sorry, Ms. Giordano, I didn't
12 see you on the screen.

13 MS. GIORDANO: Right. I (audio interference).

14 CHAIRPERSON HILL: No problem. Mr. Sullivan, can you
15 hear me?

16 MR. SULLIVAN: (No audible response.)

17 CHAIRPERSON HILL: Could you introduce yourself for the
18 record, please.

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

21 CHAIRPERSON HILL: Who's here with you, Mr. Sullivan?

22 MR. SULLIVAN: We have the Applicant, the property
23 owner, Amy Titus, and the architect Dale Overmyer.

24 CHAIRPERSON HILL: Mr. Overmyer, so nice to see you
25 again, now that you're an expert.

1 MR. OVERMYER: (Indiscernible.)

2 CHAIRPERSON HILL: All right. Okay. Ms. Giordano, can
3 you hear me?

4 MS. GIORDANO: Yes, I can.

5 CHAIRPERSON HILL: Okay. Can you --

6 MS. GIORDANO: So we have --

7 CHAIRPERSON HILL: Can you tell me why you think you
8 got -- your client should be given party status?

9 MS. GIORDANO: Okay. So first of all, they're -- I'm
10 asking for a waiver of the 24-hour submission rule, because I was
11 just recently retained.

12 CHAIRPERSON HILL: Okay. So that's your first thing.
13 All right.

14 MS. GIORDANO: Yes.

15 CHAIRPERSON HILL: So a waiver of the 24-hour
16 submission rule, because you want to submit something into the
17 record that you are now of counsel?

18 MS. GIORDANO: Yes.

19 CHAIRPERSON HILL: Okay. Okay. Is your client here?

20 MS. GIORDANO: Yes, he is.

21 CHAIRPERSON HILL: Can you introduce yourself for the
22 record, please, Mr. Fishman?

23 MR. FISHMAN: Yes. My name is Jared Fishman, and I
24 reside at 2703 O Street, NW.

25 CHAIRPERSON HILL: Okay. So a couple things. I guess,

1 Ms. Cain, you're saying is this one untimely, the party status,
2 or no?

3 MS. CAIN: Yes. So the applicant -- or the requestor
4 for party status has requested a waiver of the filing deadline
5 for party status. So the Board will need to consider that as a
6 preliminary matter before moving on to the party status, itself.

7 CHAIRPERSON HILL: Okay. How late was it?

8 MS. CAIN: So it was filed on June 25th, and just to
9 clarify for the record, party status is taken from the first
10 hearing date that's scheduled, which in this case was June 9th.
11 So that would be the date that party status would come from.

12 CHAIRPERSON HILL: So it was --

13 MS. GIORDANO: (Indiscernible.)

14 CHAIRPERSON HILL: Ms. Giordano --

15 MS. GIORDANO: (Indiscernible.)

16 CHAIRPERSON HILL: Ms. Giordano, give me one second.

17 MS. GIORDANO: Okay. All right.

18 CHAIRPERSON HILL: Just give me one second. So right.
19 So this one was originally scheduled for June 9th, correct? And
20 party status came in on June 25th. Ms. Cain is nodding her head
21 yes.

22 All right. Ms. Giordano, why is it that you think it
23 was later? Why do you think it's appropriate for us to consider
24 party status?

25 MS. GIORDANO: Okay. As outlined in my letter, the

1 zoning regulation is not entirely clear that it's the first
2 hearing date. And I think a -- someone who is not a zoning
3 attorney might assume that the deadline is actually the hearing
4 that is going to be held. The first hearing was administratively
5 postponed, and if we look at it from the standpoint of today's
6 hearing date, it was well within the 15-day requirement.

7 CHAIRPERSON HILL: Okay. All right. Okay. So anyway,
8 so you --

9 MS. GIORDANO: And (audio interference) has not
10 objected to the party status.

11 CHAIRPERSON HILL: No, I got it. But I'm just saying,
12 like, we've -- and I mean, I think it's great that the applicant
13 did not object to the party status, but they did object to the
14 postponement, which is another question we're going to get to;
15 however, in the past, we have taken this timeliness thing really
16 seriously, right. And in the past, even if we initially postponed
17 it, it was that date, like, it's untimely.

18 And so -- and I'll look to my own -- the attorney on
19 call today, which is Ms. Lorna John, to tell me -- help me, kind
20 of, go through this. I'm fine with it, too -- the party status,
21 that is, but I'm just letting you know, we used to -- we took it
22 seriously, right, the timing thing. Right.

23 So all right. Let's get through a couple of things.
24 As far as the 24-hour waiver to allow Ms. Giordano to be the
25 applicant's -- I'm sorry, the lawyer for this person who is asking

1 for party status, I don't have an issue with that.

2 Does anybody on the Board have an issue with that?

3 (No audible response.)

4 CHAIRPERSON HILL: Okay. Nobody has an issue with
5 that. So Ms. Giordano, we're going to allow that into the record,
6 and now you are the attorney of record. Okay.

7 MS. GIORDANO: Okay. Thank you.

8 CHAIRPERSON HILL: Okay. Great. So that's number one.
9 Number two, now -- so Mr. Sullivan, you're not opposed to the
10 party status application?

11 MR. SULLIVAN: Yes. We didn't object to that.

12 CHAIRPERSON HILL: Okay. Great. And you objected to
13 the postponement, which you might not have any choice over in a
14 minute or two, but we'll see how that goes.

15 So now I'm back to my Board members. What do you all
16 think about the timeliness issue?

17 (No audible response.)

18 CHAIRPERSON HILL: I'm kind of stuck. I'll start there,
19 okay.

20 MS. GIORDANO: (Audio interference.)

21 CHAIRPERSON HILL: Wait, Ms. Giordano. I'll give you
22 a chance to respond in a second, but I want to hear from my Board
23 members. Okay.

24 MS. GIORDANO: Okay.

25 VICE CHAIR JOHN: Since my name was invoked, Mr.

1 Chairman, I will take into consideration the fact that the
2 applicant's attorney does not object to party status. And I
3 agree with you that in the past, we have strictly construed that
4 rule, and I don't agree with the applicant's -- with the private
5 requestor's attorney that (audio interference). So, yes. I
6 would allow the party status request.

7 CHAIRPERSON HILL: Okay. All right. Mr. Turnbull.

8 COMMISSIONER TURNBULL: I'll follow Ms. John's lead.
9 She's the attorney.

10 CHAIRPERSON HILL: Okay. Mr. Smith.

11 BOARD MEMBER SMITH: I will follow with attorney Lorna
12 John's request.

13 CHAIRPERSON HILL: Mr. Blake.

14 BOARD MEMBER BLAKE: (No audible response.)

15 CHAIRPERSON HILL: You're going to follow -- okay. I'm
16 on the record on this one. Okay. I'll let you come back, Ms.
17 John. I'm on the record on this one, and I want somebody else
18 to help me remember this, that the reason why is because the
19 attorney -- that applicant didn't object. Okay. Because
20 otherwise, I'm not on board with this. Okay. So Ms. John, you
21 were about to say something?

22 VICE CHAIR JOHN: I would just like to note that the
23 attorney of record (audio interference) for all who are
24 interested.

25 CHAIRPERSON HILL: Yes. No, I agree. I was not --

1 the attorney -- Ms. Cain, you're the -- you're OAG's attorney on
2 this, correct?

3 MS. CAIN: That is correct.

4 CHAIRPERSON HILL: Great. Okay. All right. Okay.
5 All right. So that's number one. Number two, Ms. Giordano, can
6 you hear me?

7 MS. GIORDANO: Yes.

8 CHAIRPERSON HILL: I don't know if we're going to do a
9 postponement. I'm just talking this through. If we did a
10 postponement, where are you trying to get the postponement to?

11 MS. GIORDANO: I think, at this point, September. You
12 are in recess, I believe, until August -- or during August.

13 CHAIRPERSON HILL: Wait a minute, okay. Because you
14 don't know anything about the case, really, right now; is that
15 correct?

16 MS. GIORDANO: That's true. And the other issue is
17 that the applicant has made a couple of untimely submissions
18 themselves, including the late submission of the shadow study.
19 And my client would like to have an opportunity to review that
20 with someone who has some expertise in that area.

21 CHAIRPERSON HILL: Okay. Mr. Sullivan, I'll let you
22 get a chance to convince us not to do it, but the -- oh. Can
23 you tell me again just a little about the ANC? They're in, like,
24 they're in conditional denial. I'm trying to figure out what
25 happened at the ANC, Mr. Sullivan.

1 MR. SULLIVAN: So I took it as conditional approval or
2 conditional non-objection, and what they said was they're -- they
3 object -- well, I'll get the language exactly. "Recommends the
4 application not be approved until and unless the shadow study is
5 performed and made available." So we met that condition. So I
6 would read that as they are in support at this point.

7 CHAIRPERSON HILL: Okay. So it is a little confusing,
8 because they got the shadow study, but it doesn't say whether or
9 not they agree with the shadow study. Right. So I'm a little
10 confused.

11 MR. SULLIVAN: I'm confused about the wording myself,
12 but --

13 CHAIRPERSON HILL: Yes. So when does that ANC meet
14 again; do you know? And they were just here a minute ago.

15 MR. SULLIVAN: I don't know offhand.

16 CHAIRPERSON HILL: Okay. Mr. Young, Commissioner
17 Murphy isn't still in there, is he?

18 MR. YOUNG: No, he's not.

19 CHAIRPERSON HILL: Okay. All right. Okay. So all
20 right. So when is -- now I'm turning to -- okay. So Mr. Sullivan,
21 do you want to make your argument to hear the case today?

22 MR. SULLIVAN: I do. And we were scheduled for about
23 four hearings before this, and then apparently, back line, a non-
24 party made a request to move us to the end without conferring
25 with us. And that was granted. And so we wouldn't be in this

1 position, perhaps -- I know it's the end of a long day which
2 influences this, somewhat, but regarding the comment that there
3 were a couple filings late, the shadow study was within the 21-
4 day period, yes, because we weren't even going to do a shadow
5 study. When you see the plans and what we're proposing here,
6 you will see that a shadow study was never necessary. But the
7 ANC requested it, and so we did it. It shows nothing.

8 This -- the party, Mr. Fishman, knew about this in
9 March. He submitted a letter in May to the file. And one of
10 the reasons they are using it is that he's not familiar with
11 zoning law, but he is a lawyer. So if even a lawyer is going to
12 get this kind of accommodation, then everybody gets it.

13 It's incredibly unfair to Ms. Titus, the homeowner,
14 here, who lives in a small house trying to do a very, very small
15 addition that has zero impact on light and air of Mr. Fishman's
16 property. And I just think it would be extremely unfair to go
17 to -- to make her wait a couple more months, especially since
18 he's going to be granted party status, which we didn't object to
19 just as an accommodation, but if I had known that the postponement
20 was going to be a question, I certainly would have objected to
21 it for that reason, just because delay is quite punitive to Ms.
22 Titus in this case.

23 And I don't think it's going to take the Board,
24 actually, that long to understand what's the --

25 CHAIRPERSON HILL: Okay. Okay.

1 MR. SULLIVAN: -- application.

2 CHAIRPERSON HILL: All right. So this is -- I'm a
3 little -- all right. I'm taking it to my Board members now, and
4 they're going to -- the --

5 MS. GIORDANO: Do I get an opportunity to respond to
6 Mr. Sullivan's statement?

7 CHAIRPERSON HILL: Sure, you can, but just give me one
8 second.

9 The -- I guess -- so I mean, now I'm again stuck and
10 I'm looking at my Board members. So I don't -- so to go back to
11 the other thing, is that if Mr. Sullivan had objected to -- if
12 the applicant had objected to the party status, I don't know if
13 that would have -- by the way, I don't think we would have awarded
14 party status yet. We awarded the attorney to be the attorney,
15 right. So if Mr. Sullivan had -- and hold on, Mr. Sullivan. If
16 Mr. Sullivan had objected to party status, would that have changed
17 the discussion on the Board's level. And I'm going to go through
18 these hoops. So you guys can think about that for a minute.

19 So I'm going to turn to Ms. Giordano. Ms. Giordano,
20 what was your response that you had?

21 MS. GIORDANO: Well, I just -- Mr. Sullivan made a
22 number of statements in his remarks that have not been proved,
23 including that this has no impact on Mr. Fishman's property and
24 that -- I mean, is he testifying here? He's the attorney.

25 And as to whether a shadow study was necessary to begin

1 with, obviously the ANC thought it was necessary. And his
2 statement that it wasn't necessary to begin with, is also a
3 finding of legal conclusion that, you know, it has no basis here
4 for him to advocate.

5 As far as the postponement today, we only went one
6 further case beyond what we were supposed to be initially.

7 CHAIRPERSON HILL: All right. Just let me stop you one
8 second. I'm getting a little confused here, as well (audio
9 interference) also. As far as the postponement and everything,
10 Mr. Sullivan, we try to do the best with everybody, and I try to
11 do the best with you also. So it just happened to be a bad roll
12 of the dice. Okay.

13 So, you know, and Ms. Giordano, who I know you know
14 this as well, we bumped you to the back. Right. So you got
15 bumped two cases. Right. So at the end --

16 MS. GIORDANO: Just one.

17 CHAIRPERSON HILL: No. No. I think it was two, but
18 even it was just one, it was the one that mattered. So now I'm
19 just going to - now, I'm back to getting tired. So now I just
20 don't know what to do.

21 MS. GIORDANO: Okay. If I could -- the ANC --

22 CHAIRPERSON HILL: No. Give me a second, Ms. Giordano.
23 Give me a second. I'm looking to my Board members to decide what
24 they want to do. What do you guys want to do?

25 VICE CHAIR JOHN: I say we hear the case.

1 CHAIRPERSON HILL: Okay. Mr. Sullivan -- I mean, Mr.
2 Turnbull.

3 COMMISSIONER TURNBULL: I'm just trying to figure where
4 Mr. Fishman's property is in relationship to the applicant.

5 CHAIRPERSON HILL: It's right -- if you look on -- it's
6 an adjoining property. It's Square 820. And so you can think
7 about it for a second. Mr. -- and we might even take a break
8 and then think about it. Hold on, Mr. Sullivan.

9 COMMISSIONER TURNBULL: Is it to the north or the south
10 of that?

11 CHAIRPERSON HILL: It is to the north of the property.
12 Actually, I don't know. South?

13 COMMISSIONER TURNBULL: Is it the north if you're
14 looking at that map?

15 MR. SULLIVAN: South.

16 CHAIRPERSON HILL: Mr. Smith, what do you think about
17 hearing this case or not?

18 BOARD MEMBER SMITH: I believe we should hear the case
19 now. I was leaning that way before, but I do agree.

20 CHAIRPERSON HILL: Mr. Blake.

21 BOARD MEMBER BLAKE: I'm comfortable hearing the case
22 now.

23 CHAIRPERSON HILL: Okay. Ms. Giordano, I'm sorry, I
24 didn't mean to cut you off. I can't see your face, and it's --
25 I'm kind of getting tired. What did you start to say?

1 MS. GIORDANO: I was just going to say that the ANC
2 meets next August 30th. So if we were trying to, you know,
3 revisit with the ANC, they could meet August 30th and we could
4 postpone to September, which wouldn't be a big postponement.

5 CHAIRPERSON HILL: That's good. I appreciate that.
6 Actually, somebody just told me it's August 4th is the next one,
7 which, I guess, they're meeting that last day in August, which
8 is interesting, because we do have an August 6th hearing.

9 And so okay. So Mr. Sullivan, I guess -- all right.
10 Well, I'm going to take one last question here to Mr. Sullivan.
11 The only thing that I was still kind on confused about is actually
12 what the ANC is saying. Right. And if you got something from
13 the ANC on August 6th -- I'm sorry, August 4th that clarified
14 what they're saying and we're here August 6th, that's only two
15 weeks later. And you might get a fresher Board. But I'll kind
16 of leave it up to you, because I also think that maybe it'll work
17 today. I don't know.

18 MR. SULLIVAN: Okay. First of all, I'd like to -- if
19 the Board hasn't decided on party status, I would like to withdraw
20 the non-objection and object to party status, because the timing
21 of this might end up being a problem anyway. So if that is
22 something that's possible, I would like to do that. So we do
23 object to the party status, because of the late filing.

24 And secondly, if it -- the Board needs more information
25 or anything, then two weeks is not a problem, but we really want

1 to go forward today, but we don't want to September or October,
2 of course.

3 CHAIRPERSON HILL: Okay.

4 MR. SULLIVAN: And I just -- I wasn't making any
5 conclusions. I was just saying I think the case is
6 straightforward, and the Board would see that. That's what I
7 think the Board will see.

8 CHAIRPERSON HILL: I go you. Okay. So back to Ms.
9 Cain for a second. Can you hear me? Wow, this is going to take
10 longer.

11 MS. CAIN: Yes.

12 CHAIRPERSON HILL: Ms. Titus, can you hear me?

13 MS. TITUS: Oh, yes. I can hear you.

14 CHAIRPERSON HILL: Go ahead and introduce yourself for
15 the record, Ms. Titus.

16 MS. TITUS: Sure. So I'm Amy Titus, and I'm the owner
17 of 1404 27th Street, NW. And I'm the person who's asking to make
18 an addition to the back of my house. It is a small addition.

19 CHAIRPERSON HILL: Okay. All right great, Ms. Titus.
20 I just wanted to give you -- have a chance to say hello.

21 MS. TITUS: Thank you.

22 CHAIRPERSON HILL: All right. Ms. Cain, so can they
23 -- we haven't actually made a decision on party status yet, even
24 though I guess we kind of did. I don't know. I didn't say
25 anything. Did we -- can they withdraw their party status support,

1 or what?

2 MS. CAIN: The Board has allowed oral withdrawals of
3 motions before, so I believe they could.

4 CHAIRPERSON HILL: Okay. All right. So I'm back to
5 this one. And this is where, again, this is just, kind of,
6 getting -- it's getting late in the day. It's getting a little
7 silly legal stuff here, which is that I think we all had a
8 discussion about it, and I don't think anybody said we were going
9 to give party status. So I'm curious if that changes anybody's
10 mind about the party status. And I'm going to start with Mr.
11 Smith.

12 BOARD MEMBER SMITH: My opinion hasn't changed.

13 CHAIRPERSON HILL: Okay. I'm going to go to Mr.
14 Turnbull.

15 COMMISSIONER TURNBULL: I'm more than willing to go
16 ahead.

17 CHAIRPERSON HILL: No, I mean the party status.

18 COMMISSIONER TURNBULL: I'll stay the same.

19 CHAIRPERSON HILL: Okay. And Ms. John, are you going
20 to stay the same? Okay. She's nodding yes.

21 Mr. Blake, are you staying the same?

22 BOARD MEMBER BLAKE: I'll stay the same, too.

23 CHAIRPERSON HILL: Okay. All right. Well, since I get
24 to do this, and it's fun, I'm going to deny the party status
25 motion, but you all are going to approve it. So can somebody

1 make a motion to approve party status?

2 BOARD MEMBER SMITH: Sure. I'll make a motion to
3 approve the party status for Ms. Giordano.

4 CHAIRPERSON HILL: And it's not Ms. Giordano. It's for
5 Mr. Fishman.

6 BOARD MEMBER SMITH: Sorry. Mr. Jared Fishman.

7 CHAIRPERSON HILL: Okay. I need a second.

8 VICE CHAIR JOHN: Second.

9 CHAIRPERSON HILL: Ms. John seconds.

10 Mr. Moy, roll call.

11 MR. MOY: Okay. I believe, Mr. Chairman, that the
12 motion was to deny party status to a Mr. Fishman; is that correct?

13 CHAIRPERSON HILL: The motion was to approve party
14 status.

15 MR. MOY: Okay. All right. So when I call your names,
16 if you would please respond with a yes, no, or abstain to the
17 motion to approve party status to Mr. Fishman. The motion was
18 made by Mr. Smith, and it was seconded by Vice Chair John.

19 Zoning Commissioner Michael Turnbull.

20 COMMISSIONER TURNBULL: Yes.

21 MR. MOY: Mr. Blake.

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John.

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Mr. Smith.

1 BOARD MEMBER SMITH: Yes.

2 MR. MOY: Chairman Hill.

3 CHAIRPERSON HILL: No.

4 MR. MOY: Staff will record the vote as 4-1-0. This
5 is on the motion made by Mr. Smith to approve or grant party
6 status to Mr. Fishman. The motion was seconded by Vice Chair
7 John. Also in support of the motion to grant party status is
8 Zoning Commissioner Michael Turnbull, Mr. Blake, Mr. Smith, Vice
9 Chair John. Opposed to the motion is Chairman Hill. The motion
10 carries to grant on the vote of 4-1-0.

11 CHAIRPERSON HILL: Okay. So this is my next proposal,
12 and then we can see what happens. And I'm -- I can go either
13 way. So I think that the ANC meets on the 4th of August. When
14 did you say the ANC meets, Mr. Moy? Oh, the 4th of August? Oh,
15 that's the date that we would have the hearing, right?

16 BOARD MEMBER SMITH: You're on mute, Mr. Moy.

17 MR. MOY: Sorry about that. Okay. Ms. Giordano is
18 correct. The ANC meets August 30, but they don't -- apparently
19 do not meet in September, so they meet October 4th. And they
20 also meet in July, but I think it's July 28th, something like
21 that.

22 CHAIRPERSON HILL: Okay.

23 MR. MOY: In other words, we meet August 4th.

24 CHAIRPERSON HILL: Got it. Got it. Got it. Okay. So
25 I'm -- since we've now given party status to Mr. Fishman, right,

1 and I'm going to go around the table again, and I can go either
2 way. We either allow some -- we either allow Ms. Giordano to
3 put something in the record as to what Mr. Fishman's arguments
4 are so that we have those, and then we come back here on the 4th,
5 or we go ahead and hear it today. And I'm also -- I can tell by
6 Mr. Sullivan's reaction that he's not interested, necessarily,
7 in the 4th, but I don't know. Right. So do you -- so, Mr.
8 Sullivan; is that correct? You're still not interested in the
9 4th, correct?

10 MR. SULLIVAN: I don't have a good poker face. No, I
11 -- we would really like to go forward today. I was thinking if
12 something came up today, that there were questions that you have
13 that would work as a relief valve, I guess.

14 CHAIRPERSON HILL: Okay.

15 MR. SULLIVAN: And I think the ANC letter is actually
16 clear in the end that the shadow study was submitted --

17 CHAIRPERSON HILL: Okay.

18 MR. SULLIVAN: So --

19 CHAIRPERSON HILL: That's -- I don't want to do the
20 whole testimony thing right now. All right. So okay. So that's
21 fine. So they want to still go. If you all want to go, I'll
22 go. So I think you all wanted to go. Let's just go, 'cause then
23 it gets finished. Mr. Turnbull's giving me a thumb's up.

24 We're going to take a break, by the way, before we go.
25 And so we're going to take a 10-minute break, and then we're

1 going to come back, and we're going to go and do this. Okay.

2 Ms. Giordano, can you hear me?

3 MS. GIORDANO: (No audible response.)

4 CHAIRPERSON HILL: Okay. So you get party status, but
5 we're going today. Okay.

6 MS. GIORDANO: Are you asking me if it's okay with me?

7 CHAIRPERSON HILL: No. No. No, I'm not asking you if
8 it's okay. I'm letting you know that's what we're doing.

9 MS. GIORDANO: I hear you. Thank you.

10 CHAIRPERSON HILL: Okay. All right. We come back in
11 10 minutes.

12 COMMISSIONER TURNBULL: Mr. Chair, I guess my only
13 problem is I think that Ms. Titus has waited so long, and this
14 case has dragged on, I think she deserves a hearing today.

15 CHAIRPERSON HILL: Okay. Thank you, Commissioner
16 Turnbull. It's your last day, buddy. You get to pick whatever
17 you want. Okay. All right.

18 COMMISSIONER TURNBULL: (Indiscernible) any way you
19 want.

20 CHAIRPERSON HILL: Okay. All right. Oh, really? Wow.
21 That's good. Okay, bye.

22 (Whereupon, the above-entitled matter went off the
23 record at 6:26 p.m., and reconvened at 6:36 p.m.)

24 CHAIRPERSON HILL: All right. Okay. Mr. Moy, can you
25 call us back.

1 MR. MOY: Thank you, Mr. Chairman. The Board is back
2 in session for the last case of the day on the docket, and the
3 time is at or about 6:36 p.m.

4 CHAIRPERSON HILL: Okay. Great. Do you need to call
5 the case, or no?

6 MR. MOY: (No audible response.)

7 CHAIRPERSON HILL: All right. So we're with
8 Application No. 20475 of Amy Titus, just to be clear. Right.

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

11 MR. SULLIVAN: Yes. Marty Sullivan from Sullivan &
12 Barros, on behalf of the applicant.

13 CHAIRPERSON HILL: Got it. Mr. Overmyer, can you
14 introduce yourself for the record.

15 MR. OVERMYER: Dale Overmyer, architect, Overmyer
16 Architects.

17 CHAIRPERSON HILL: Ms. Titus, could you introduce
18 yourself for the record.

19 MS. TITUS: (No audible response.)

20 CHAIRPERSON HILL: You're on mute, Ms. Titus.

21 MS. TITUS: Thank you. Amy Titus, and I'm the owner
22 of 1404 27th Street, NW.

23 CHAIRPERSON HILL: Great. Thank you. Ms. Giordano,
24 can you introduce yourself for the record.

25 MS. GIORDANO: Cynthia Giordano with Saul Ewing Law

1 Firm.

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

4 MR. FISHMAN: Jared Fishman or 2703 O Street, NW.

5 CHAIRPERSON HILL: Mr. Sullivan, if you could please
6 give your presentation as to why you believe the applicant is
7 meeting the criteria for us to grant the relief in question.
8 I've got 15 minutes on the clock, and you can begin whenever you
9 like.

10 MR. SULLIVAN: Thank you, Mr. Chairman. I have a --
11 we filed a PowerPoint on Monday, but I'm not sure if this one
12 has the shadow study in it or not, but we'll just go with this
13 one, because the shadow study is in 44A, and we can refer to that
14 at the end.

15 So I'll go through this quickly, and next slide,
16 please.

17 It's an overview. This property is a small two-story
18 single family, semi-detached building proposing to construct a
19 two-story and cellar level rear addition, and that will increase
20 lot occupancy from 33 percent to 47 percent. The maximum
21 permitted for a semi-detached building in the R-3 Zone is 40
22 percent. So we're asking for special exception in order to go
23 to 47 percent. The maximum under special exception is 50 percent,
24 but the applicant has just -- as you'll see in Mr. Overmyer's
25 portion of the presentation, is just going back as far as the

1 adjacent building -- or the adjoining building.

2 This is a tax lot. It needs to be created -- turned
3 into a record lot, although it has historically been in this
4 configuration for many, many years, and -- since well before
5 1958, of course, so we're asking for variance relief from lot
6 width and lot area, as well.

7 Next slide, please.

8 I believe we do have conditional support of ANC 2E,
9 support of DDOT, Office of Planning, and this project was also
10 approved -- concept approved by Old Georgetown Board. And I'll
11 turn it over to Mr. Overmyer to take you through the plans.

12 MR. OVERMYER: Thank you, Marty. Yeah. I would just
13 point out that the (audio interference) was presented, the
14 concept application for architectural designs for addition, to
15 the Old Georgetown Board, and during that process, we did notify
16 neighbors. We did receive a no objection from the Advisory
17 Neighborhood Commission on this project. And we prevailed with
18 the Old Georgetown Board granting its approval to our concept
19 application. So these are the slides I'd like to show you.

20 Next slide, please.

21 So the subject property is the end house of a short row
22 of (audio interference). It's adjoining on the north side --
23 that's the upper part of the page, and there's a little bit of
24 alley on the south side. There are two structures just south of
25 it and then another row dwelling at the rear, that's the left

1 side of the image on the west side of the property, as well.

2 If we could go to the next slide.

3 All right. It's the yellow house, subject property,
4 it's one in a row of dwellings. They are all about the same
5 size. They're, sort of, two and a half stories, really with the
6 lower level (audio interference).

7 Next slide, please.

8 This -- you can see the side view of the structure. It
9 does have some windows along that -- rather it does not have
10 windows on the south side, but on the (indiscernible).

11 Next slide, please.

12 All right. This shows both the front and the rear of
13 the building. You can see that the building immediately to the
14 north, at the rear, extends farther back. It stands about 10
15 feet farther back, and it's in that notch of space that we'd like
16 to just project out with an addition that goes just as far as
17 the neighbor's house there. And therefore, just reinforcing the
18 pattern of language and the volume of buildings that have existed
19 there for quite some time.

20 Next view, please.

21 So this is just a zoom in of the site plan showing that
22 the footprint is really just to extrapolate the width of the
23 building back and to stop at the same connection as the adjacent
24 neighbors, maintaining about a three-foot alley on the side of
25 the building, which is on the south side of the building.

1 Next slide, please.

2 This just shows a before and after with just a little
3 bit of manipulation to the ground height of the garden, but other
4 than that, no fences, or rather things are changing to give the
5 property just a little bit of service area in the rear yard and
6 this addition in the rear.

7 Next slide, please.

8 This just shows the lowest level -- the basement level,
9 which has the kitchen in it. And as you can see, the interior
10 of this space is only about nine feet wide. The outer dimensions
11 of this building are 12 feet wide. It's just a little bit under
12 -- or rather it's probably about 10, 10 and a half feet with a
13 staircase taking up some volume. So on the first floor it's
14 really about creating a dining room for the addition. It's shown
15 in the dark gray space.

16 The next slide, please.

17 On the next level, this really shows the first floor
18 -- the floor that you enter into from the street with the steps
19 and the (audio interference), it just shows basically the living
20 room level.

21 And if you go to the next slide.

22 Thank you. In the -- on the second floor, the house
23 as it is right now is sort of a one and a half bedroom. It's
24 really just a one bedroom, one bath on that top floor. And what
25 we'd like to do is add this bedroom such we can have a two-

1 bedroom, two-bath, such that Ms. Titus can invite friends and
2 family to stay over. And so we were able to really, in a very
3 small amount of space, impact a modest but very useful and
4 programmatically necessary guest bedroom.

5 Next slide, please.

6 This is just a roof plan.

7 Next slide.

8 The side view shows that the addition is basically at
9 the same height as to lowest portion of the three-level structure,
10 and it's a very modest three stories. Not only is it modest in
11 plan, but it's modest in height, as well. So as you can see in
12 the lower, middle elevation, this is the front, facing south,
13 that the roof slopes gently down, and we have totally created an
14 addition to meet the height at the lowest point of that existing
15 roof.

16 And now the one -- just one window facing the south,
17 and then the rear elevation, keeping a collection of windows
18 that's similar to the windows that are already there with just a
19 little bit more (audio interference) so that that affords the use
20 looking out into the garden. We worked with the Old Georgetown
21 Board and their staff to develop a scheme which is similar, and
22 yet just slightly distinct in terms of tone and area,
23 historically, of what was original and then what was new, but
24 really it very traditional form of architecture (audio
25 interference).

1 The rooms on the inside, and even on the outside, it's
2 a 10-foot by 12-foot space, on the inside that's about a 9-foot
3 by 11-foot perimeter, but it really does solve the problem very
4 nicely.

5 And in the process, we notified the neighbors, received
6 no objection from the ANC, and approval from the Old Georgetown
7 Board for this concept.

8 I believe that's it for the architectural drawings.
9 This is one. Okay. We do have a shadow study. I think this is
10 the slide. So if you notice, the subject property is on the
11 north -- this is north of some of the -- the neighbor who has an
12 issue with shadow. And when the sun comes up, it's always coming
13 up to the south, so we just rendered in red the only places that
14 there's any impact from the 5 feet of this addition that exceed
15 the zoning-allowable envelope. So it's really only -- it's a 10-
16 foot addition, but only five feet of it are what we are requiring
17 relieve for. As you can see, this would -- early in the morning,
18 there's no -- there's no shade -- there's no extra shade. It's
19 somewhere in the 9 a.m., midmorning hours does any shade show up,
20 and that really falls immediately in the owner's own property,
21 and a little bit to the north on properties that have expressed
22 no objection to this design. And then, of course, in the
23 afternoon, because it's ability to set in that sort of notch,
24 there is no shading implication whatsoever. And so we've done
25 the shade study in the solstice, and also we've looked at it --

1 rather the equinox, this would be March and September. And then
2 I believe we have another image.

3 Next image, please, that would show -- we're through?

4 MR. SULLIVAN: Dale, can I ask you a question, please.

5 MR. OVERMYER: Shoot.

6 MR. SULLIVAN: So the red -- the dark red is showing
7 the delta in shade from the matter of right, five-foot addition,
8 and the proposed 10-foot addition; is that correct?

9 MR. OVERMYER: That's correct. Thank you for the
10 clarification there.

11 MR. SULLIVAN: Could you show --

12 MR. OVERMYER: This shows the impact on what we're
13 asking for relief for, as a (audio interference) the structure?

14 MR. SULLIVAN: And Mr. Fishman's building is the one
15 that's almost perfectly square in this --

16 MR. OVERMYER: That's correct.

17 MR. SULLIVAN: Okay.

18 MR. OVERMYER: It's not the corner building, but it's
19 the building, sort of, in the middle of that composition, the
20 square one.

21 CHAIRPERSON HILL: Is that -- I was going to ask you,
22 Mr. Sullivan, right, can you -- I guess you can't put your cursor
23 on it, right. Which one is it? It's the square --

24 MR. SULLIVAN: It's the square building. It's actually
25 -- it doesn't even line up with the --

1 CHAIRPERSON HILL: At the bottom of --

2 MR. SULLIVAN: -- (indiscernible) position.

3 CHAIRPERSON HILL: At the bottom of the diagram?

4 MR. SULLIVAN: Right. Correct.

5 CHAIRPERSON HILL: The square building that has, like,
6 you can, kind of, see the windows or something like that?

7 MR. SULLIVAN: Yes, there's a line at the bottom of the
8 square. So it's some sort of -- well, I'll let Mr. Overmyer tell
9 you.

10 MR. OVERMYER: Yes. It's -- I think the one you are
11 referring to, it's at the bottom of the drawing there, in the
12 middle. And as you can see, it casts -- even the building next
13 to it casts a (audio interference) shadow, and most of the shadow
14 actually comes from those buildings. And because our subject
15 property, here, is on the north, it -- the sun doesn't -- the
16 sun is really -- starts from the east and goes to the west, when
17 it's summer, and it doesn't cast a shadow onto those properties.

18 I believe there's another image that would show -- the
19 next image, because it would show -- so this would be in the
20 summer solstice, the sun at its most sort of radical when it --
21 even at that point at 7:00 a.m. in the morning of the solstice,
22 the sun is still at the north, it doesn't actually cast a shadow
23 onto the back yards of the Fishman property. There may be a
24 little bit on the facade of the building next door, but it's not
25 then until later in the day that, not even 10 a.m., that the new

1 addition portion attached starts to create a shadow. But again,
2 that's on the Titus property, itself, and it's shown in red there.
3 And then later in the day, the sun comes around, and there isn't
4 a shadow cast by the structure.

5 So really no additional shadow is created by this
6 structure except for in its own yard and just a little bit in
7 the neighbor next to (audio interference) who has no objection
8 to this. And that is it for architectural presentation. The
9 last image shows the winter solstice at which point the sun is
10 so low in the sky that all the shade really comes from the
11 structures to the south, and there's no impact. You can just
12 see it, finally, when there is just a tiny blip of red in that
13 image second from the left, just an insignificant --

14 CHAIRPERSON HILL: I got it. Mr. Overmyer, I got you.

15 MR. OVERMYER: Sure.

16 CHAIRPERSON HILL: Mr. Sullivan, is that the end of
17 that one?

18 MR. SULLIVAN: Yes, next slide, please, and I'll just
19 go through this -- the criteria.

20 Granting relief --

21 CHAIRPERSON HILL: Mr. Sullivan -- (audio
22 interference). Can you flip back, Mr. Young, one slide? What
23 did that immediate next door neighbor say, the one if you're
24 facing the applicant's house, the one to the left? It's right
25 on the corner. The one right on the corner.

1 (No audible response.)

2 CHAIRPERSON HILL: I can't hear you, Mr. Sullivan.

3 MR. SULLIVAN: Ms. Titus can answer that.

4 MS. TITUS: Sure.

5 CHAIRPERSON HILL: Ms. Titus.

6 MS. TITUS: So the people in the corner, named Sue and
7 Billy Prutting, and I have met with them several times, because
8 of some of their concerns around the window and some of the
9 construction when it takes place and just on the wall, that --
10 our shared wall, but during construction, and we've come to a
11 very good agreement, and that we'll be careful during
12 construction about dust, so it doesn't bother --

13 CHAIRPERSON HILL: I appreciate that. I'm sorry.
14 That's not the one I'm talking about.

15 MS. TITUS: Oh.

16 CHAIRPERSON HILL: If you're facing your door, Ms.
17 Titus --

18 MS. TITUS: Yes.

19 CHAIRPERSON HILL: -- the house to your left.

20 MS. TITUS: That's on the corner, you mean? That's -

21 -

22 CHAIRPERSON HILL: Yes.

23 MS. TITUS: That's the Prutting's.

24 CHAIRPERSON HILL: Have you heard from them?

25 MS. TITUS: Yes. That's who I was saying -- who I met

1 with, Sue and Billy Prutting. They're new. It just -- they
2 moved in in, I think, December, maybe.

3 CHAIRPERSON HILL: Yes, but it doesn't seem like you're
4 sharing a wall with them?

5 MR. SULLIVAN: Yes. Mr. Chair, I think that there's
6 -- it's an actual -- just a wall, like a fence wall, not a party
7 wall.

8 MS. TITUS: Oh, yeah. Yes.

9 CHAIRPERSON HILL: All right. Thanks.

10 MS. TITUS: No, no, no.

11 MS. SULLIVAN: There is actually a three-foot side yard
12 --

13 MS. TITUS: (Audio interference.)

14 CHAIRPERSON HILL: Got you. Got you. Got you. So
15 you talked to them, and they're okay with what's going on?

16 MS. TITUS: Absolutely.

17 CHAIRPERSON HILL: Okay. All right. Thank you. So
18 you're --

19 MR. FISHMAN: No. May I join in, because Mr. Prutting
20 is on the phone, and I know that he will not be able to stay
21 through the entirety of this hearing, and I do not believe that
22 accurately suggests his position. I have spoken to him multiple
23 times, him and Ms. Prutting, and I do not believe --

24 CHAIRPERSON HILL: Is that Mr. Fishman?

25 MR. FISHMAN: -- is his position.

1 CHAIRPERSON HILL: Hello. Hello.

2 MR. FISHMAN: Yes.

3 CHAIRPERSON HILL: Is that Mr. Fishman?

4 MR. FISHMAN: Yes.

5 CHAIRPERSON HILL: Yes.

6 MR. FISHMAN: Yes.

7 CHAIRPERSON HILL: Mr. Fishman, you'll get a chance to

8 --

9 MR. FISHMAN: This is Mr. Fishman.

10 CHAIRPERSON HILL: You'll get a chance to give your
11 presentation. So --

12 MR. FISHMAN: I just wanted to make sure, since she's
13 speaking on behalf of Mr. Prutting, and I don't believe he is
14 going to be able to remain on for the remainder of this hearing,
15 and so I just wanted to be able to correct that for the record.

16 CHAIRPERSON HILL: Okay. That's fine. Just give me a
17 second.

18 MS. GIORDANO: Would it be possible Mr. Prutting --

19 CHAIRPERSON HILL: Wait. Wait. Wait. Hold on, Ms.
20 Giordano. By the way, it's awful that you guys are on the phone.
21 I can't even see anybody.

22 So --

23 MS. TITUS: Well, we've got a statement that -- just
24 to add to that, that we've got a written agreement between the
25 Prutting's and myself to these points that we're in agreement.

1 CHAIRPERSON HILL: Okay. I was just curious, and I was
2 asking a question; however, are you telling me now that -- it's
3 Mr. -- who is it, Pruttings?

4 MR. FISHMAN: Prutting, P-R-U --

5 CHAIRPERSON HILL: Mr. Young --

6 MR. FISHMAN: -- T-T-I-N-G.

7 CHAIRPERSON HILL: -- is there someone in the hearing
8 room, Mr. Prutting?

9 MR. YOUNG: Yeah. I just let him in.

10 CHAIRPERSON HILL: Okay. Can you let him in real quick?
11 Mr. Prutting, can you hear me?

12 MR. PRUTTING: Chairman Hill, I can hear you.

13 CHAIRPERSON HILL: Are you about to leave, Mr.
14 Prutting?

15 MR. PRUTTING: I'd like -- you all have been waiting
16 the entire day for this, five minutes. So I would be happy to
17 weigh in. I just (audio interference). So --

18 CHAIRPERSON HILL: Okay. Wait. Do you have a little
19 bit of time?

20 MR. PRUTTING: Sure.

21 CHAIRPERSON HILL: Okay. Then you --

22 MR. PRUTTING: Yes.

23 CHAIRPERSON HILL: I'm going to give you -- just give
24 me 15 minutes, and we'll come back to you. Okay.

25 MR. PRUTTING: Great.

1 CHAIRPERSON HILL: Okay. Great. Mr. Young, please
2 release Mr. Prutting, and Mr. Prutting, just wait.

3 Okay. So there was some testimony from Ms. Titus about
4 their agreement. I was just curious what the neighbor had to
5 say. Ms. Titus, you gave your testimony.

6 Mr. Sullivan, can you please continue with your
7 presentation.

8 Mr. Young, can you please pull up Mr. Sullivan's
9 presentation.

10 MR. SULLIVAN: Thank you. And so granting the relief
11 will tend to -- will not tend to affect adversely the use of
12 neighboring property in accordance with the regulations, as
13 described. As you saw, there's two properties to the south which
14 are not affected, and then a party-wall property to the north,
15 to which this addition is just going to the rear wall of that,
16 and that property owner is not in objection to this.

17 Next slide, please.

18 The light and air available to neighboring properties
19 shall not be unduly affected, as shown by the shadow study. It
20 amounts to 63 square foot addition. It's a five-foot -- is the
21 relief that we're requesting. And I'll point out, not even going
22 to the full 50 percent, while the properties -- Mr. Fishman's
23 property is probably around 70 percent lot occupancy.

24 And part of the reason, then, is there's such a huge
25 discrepancy -- or disparity between a semi-detached lot occupancy

1 maximum and a rowhouse. So if this was a rowhouse, we could go
2 another 13 percent as a matter of right, which we can't do
3 because there's a three-foot side yard.

4 We're not asking for side yard relief. We're not asking
5 for rear yard relief.

6 Privacy of use and enjoyment -- there is one window
7 facing south. It's not facing Mr. Fishman's building, because
8 his building doesn't line up with this addition, but I understand
9 that some shading on that window is part of that written
10 agreement, which I'm not familiar with it, but I -- that may be
11 a part of that. But at any rate, I don't think that the granting
12 of the relief impacts the privacy.

13 Next slide, please.

14 And the addition or accessory structure, together with
15 the original building, as viewed from the street, alley, and
16 other public way, does not substantially visually intrude upon
17 the character, scale, and patterns. It's not very -- really
18 visible from the front street, and of course, it already -- it
19 has concept approval by OGB.

20 Next slide, please.

21 And regarding the variance relief for the lot area and
22 width, it's --- it would be impossible to do any addition without
23 that variance relief, because it is, since prior to 1958, has
24 been of a non-conforming size. It's only a 900 square foot lot.
25 A semi-detached would require a 3,000 square foot lot and 30 foot

1 in width.

2 Thank you again.

3 CHAIRPERSON HILL: All right. Thank you, Mr. Sullivan.
4 All right. Does the Board have any questions for the Applicant?

5 (No audible response.)

6 CHAIRPERSON HILL: Okay. All right. Ms. Giordano, can
7 you hear me?

8 MS. GIORDANO: I can.

9 CHAIRPERSON HILL: Do you have any questions for the
10 applicant's presentation?

11 MS. GIORDANO: I do.

12 CHAIRPERSON HILL: Okay.

13 MS. GIORDANO: So I'd like to pull up Exhibit 34B.

14 CHAIRPERSON HILL: Okay. Exhibit 34B. You'll give me
15 a second, because, like, I don't -- I'm not sure how this works.
16 Like, I haven't had -- and I can ask Ms. Cain. Like, so I guess,
17 the applicant just gave -- I'm asking Ms. Cain, and Ms. Giordano,
18 I'm just trying to figure out how I'm supposed to do this. Like,
19 you're supposed to give -- you're supposed to have an opportunity
20 to cross based upon whatever the applicant just presented. And
21 so now you're calling up an exhibit that they didn't present upon
22 but it's in the record.

23 So Ms. Cain, is that acceptable?

24 MS. CAIN: Which exhibit is Ms. Giordano asking to
25 cross?

1 MS. GIORDANO: 34B.

2 CHAIRPERSON HILL: 34B, which is --

3 MS. GIORDANO: The plans.

4 CHAIRPERSON HILL: -- the plans. And I guess, some of
5 the plans were in the presentation.

6 MS. CAIN: I think it's allowable.

7 CHAIRPERSON HILL: Okay. All right. Mr. Young, if you
8 could, please pull up 34 B, as in "boy."

9 MR. YOUNG: I'm having an issue with IZIS right now,
10 so I can't access the case file with the drawings.

11 CHAIRPERSON HILL: Okay. Ms. Giordano, do you know
12 which file you're trying to -- which page you're trying to get
13 to?

14 MS. GIORDANO: It's the very first page.

15 CHAIRPERSON HILL: Very first page.

16 MS. GIORDANO: It shows the property, lot 820, in red.

17 CHAIRPERSON HILL: Yes.

18 MS. GIORDANO: And I just -- I believe Mr. Fishman's
19 property is 823. I want to (audio interference) that with the
20 architect.

21 CHAIRPERSON HILL: I believe that's accurate, meaning
22 I'm also looking at the Exhibit you're speaking to. And I would
23 agree that your client's house is 823.

24 MS. GIORDANO: But I'm just asking the architect, it's
25 -- in the shadow study that was presented, it shows the Fishman's

1 house as occupying a much bigger part of the lot than what is
2 shown here on 34B.

3 CHAIRPERSON HILL: Okay. Give me a second. I'm looking
4 at the shadow study now. Okay. So your question is can you --
5 no, he pulled it up. He pulled it up. So you can zoom in now,
6 I guess, a little bit, Mr. Young.

7 So your question, I'm sorry, Ms. Giordano, is that the
8 house it shows is bigger?

9 MS. GIORDANO: Yeah, in the shadow study, all I see is
10 just what is described as the building almost up to the property
11 line of 820. If you look at the two, they just -- something
12 seems out of whack.

13 CHAIRPERSON HILL: What's your question, Ms. Giordano?

14 MS. GIORDANO: Which is accurate?

15 CHAIRPERSON HILL: Okay. So the architect, if you can
16 hear me -- can you hear me, Mr. Overmyer?

17 MR. OVERMYER: Yes.

18 CHAIRPERSON HILL: Okay. So 823, you can see Square
19 823, and I'm now looking at your shadow study, is there -- I
20 guess the question is there a discrepancy? Is that what you're
21 asking, Ms. Giordano?

22 MS. GIORDANO: Yes.

23 MR. OVERMYER: I don't think there is, but should we
24 bring up the shadow study and take another look at that?

25 CHAIRPERSON HILL: Okay. So your answer is there's not

1 a discrepancy?

2 MR. OVERMYER: I'm sure what -- if she could, looking
3 at this drawing, repeat the question.

4 MS. GIORDANO: Okay. So it's the shadow study. I see
5 what was referred to as the "square," which was described as Mr.
6 Fishman's house, and the shaded area being the house footprint,
7 but if you look at 34B, the footprint looks very different if
8 the shaded area there is accurate.

9 MR. OVERMYER: How does it look different? I'm not
10 following.

11 MS. GIORDANO: Well, the shaded area is much smaller
12 on 34B.

13 MR. OVERMYER: It's much what?

14 MS. GIORDANO: Smaller.

15 MR. OVERMYER: Smaller.

16 CHAIRPERSON HILL: I mean, it's your question, Ms.
17 Giordano. Which do you think is accurate? Is that what you are
18 asking?

19 MS. GIORDANO: Yes. And I'm just asking if there's a
20 discrepancy here, because to me, I mean, I'm not an expert, but
21 the shaded area, if that is the building footprint, looks very
22 different in those -- between those two exhibits.

23 CHAIRPERSON HILL: And the architect is saying that
24 there's not a difference. Is that what you're saying, Mr.
25 Overmyer?

1 MR. OVERMYER: There may be a little distance, but I'm
2 not sure what the greater issue is.

3 CHAIRPERSON HILL: Mr. Overmyer, is your shadow study
4 accurate?

5 MR. OVERMYER: It's as accurate as we could make it.

6 CHAIRPERSON HILL: Okay. Ms. Giordano, what's your
7 next question?

8 COMMISSIONER TURNBULL: Mr. Chair, let me just ask --
9 just -- we're looking at two different kinds of drawings. The
10 one is just a very orthogonal drawing. The shadow study is in
11 3-D. So there might be an appearance of something, but they're
12 still the same. There's just a change from going from the
13 orthogonal view to the 3-D for the shadows. I don't think there's
14 a change.

15 MS. GIORDANO: Okay. I said I'm not an expert, and I
16 know you are. But in any event, I also have questions. What is
17 the footprint of the existing building and the building with the
18 proposed addition?

19 MR. OVERMYER: The square footage, or --

20 MS. GIORDANO: Yes. Yes.

21 MR. OVERMYER: Well the existing footprint is 12 and a
22 half feet by 24.2, and the new footprint is 12 and a half and 30
23 feet is the square footage. Are you looking for the square
24 footage?

25 MS. GIORDANO: The square footage of the footprint.

1 MR. OVERMYER: The existing building area is 298 feet.
2 The proposed building area is 419. So it's about 120 square foot
3 addition to a 300 square foot building.

4 MS. GIORDANO: (Audio interference.)

5 CHAIRPERSON HILL: Okay.

6 MS. GIORDANO: (Audio interference) is that I wanted
7 to ask Mr. Fishman if he has any questions of the architect.

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

10 MR. FISHMAN: (No audible response.)

11 CHAIRPERSON HILL: Mr. Fishman?

12 MR. FISHMAN: (No audible response.)

13 CHAIRPERSON HILL: Mr. Young, is Mr. Fishman still
14 there?

15 MR. YOUNG: (No audible response.)

16 CHAIRPERSON HILL: All right. Ms. Giordano, we'll come
17 back when Mr. Fishman arrives. Okay?

18 MS. GIORDANO: Okay. I think he might have gotten
19 disconnected.

20 CHAIRPERSON HILL: Okay. We'll wait for him --

21 MS. GIORDANO: He just texted me and said he got
22 disconnected, but he can hear. So maybe he needs to be admitted,
23 or something. They need to let him back in.

24 CHAIRPERSON HILL: I think he has to call again. Maybe
25 he's listening. If you call through to 202-727-5471, which is

1 the number --

2 MR. YOUNG: I see him on here, and I just admitted him
3 again.

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

5 MR. FISHMAN: Yes. I can hear you. Can you hear me?

6 CHAIRPERSON HILL: Yes. Do you have any questions from
7 the testimony?

8 MR. FISHMAN: Yes. My question -- in the shadow study,
9 can you please point out where my back yard is?

10 CHAIRPERSON HILL: Okay. All right. You want to pull
11 up the shadow study, Mr. Young.

12 (Pause.)

13 CHAIRPERSON HILL: Okay. I see your back yard. Do you
14 see your back yard, Mr. Fishman?

15 MR. FISHMAN: I don't. In the study that I saw, my
16 back yard was omitted. Ms. Giordano, do you see my back yard in
17 the study that he's showing now?

18 MS. GIORDANO: No. I think we might have gone over
19 this point.

20 CHAIRPERSON HILL: Well, Mr. Fishman, you can't see,
21 correct?

22 MR. FISHMAN: That's correct. I'm depending on my
23 counsel for this.

24 CHAIRPERSON HILL: Well, then what was the --

25 MS. GIORDANO: I think that Mr. Turnbull -- his

1 explanation, correct me if I'm wrong, Mr. Turnbull, was that
2 because it's a 3-D exhibit, that explains why you don't see part
3 of the yard; is that correct?

4 CHAIRPERSON HILL: I -- yes. I can see your back yard
5 in the shadow study. And so your question is what, Mr. Fishman?
6 Sorry.

7 MR. FISHMAN: In my review of the documents submitted
8 in advance of this, my yard is omitted from the shadow study.

9 CHAIRPERSON HILL: Okay. I see it in the shadow study
10 right now.

11 MR. FISHMAN: All right. Well, I have no way to see
12 what you're seeing, but I'm calling in from out of the country
13 in order to be able to do this. So this is the best I can do.

14 CHAIRPERSON HILL: Got it. Okay. Well, let -- I do
15 want to hear what your complaints or concerns are, Mr. Fishman,
16 and so I want to get to your presentation. So Ms. Giordano, I
17 know I know you, and so I just -- my brain is just -- so Ms.
18 Giordano, would you go ahead -- oh, no wait. I got to go to OP
19 first. Okay. I got to go to the Office of Planning first.

20 Ms. Thomas, can you hear me?

21 MS. THOMAS: Yes, I can hear you.

22 CHAIRPERSON HILL: Can you give your testimony, please.

23 MS. THOMAS: Thank you. Yes. Good evening, Mr. Chair,
24 members of the Board, Karen Thomas for the Office of Planning for
25 BZA Case 20475.

1 The applicant before us includes -- the application,
2 rather, includes a special exception request for 121 square feet
3 addition to a semi-detached home, which would increase the lot
4 occupancy from 33 percent to 47 percent, and since it is a non-
5 conforming tax lot, variance relief from the lot dimensions would
6 be needed to create a record lot for the purposes of permitting.

7 Our analysis focused on the impact of the addition to
8 light and air and privacy of use of the adjacent properties. The
9 121 square foot addition would align with the rear of the only
10 property it abuts -- it adjoins, rather, to the north, and the
11 property would continue to provide more than the required rear
12 yard, at 25 feet.

13 Based on those (audio interference) requirements, that
14 is the rear yard and rear lot occupancy in this case, light and
15 air to the only abutting neighbor's rear yard should not be unduly
16 impacted beyond what currently exists.

17 Similarly, it is not anticipated that the light and air
18 to the neighbors to the south, fronting on O Street, would be
19 unduly affected. The effective separation of the subject
20 property's side yard and the neighbor's rear yards, would not be
21 reduced by the 10-foot extension or addition. There is existing
22 vegetation -- a tree canopy in the neighbor's rear yard which
23 would not be disturbed by the addition.

24 Given the addition's size and the lot's condition where
25 the rear and existing side yards abut the rear yards of the

1 properties fronting O Street, it is unlikely that the addition
2 would significantly compromise the privacy and use of those
3 neighboring properties. There is a solid brick wall between the
4 applicant's property and the O Street neighbors' rear yards.

5 The first-floor window on the side elevation and the
6 window to the bedroom addition on the second level, should not
7 cause privacy concerns due to vegetation in the rear yards of the
8 neighbors, as well as those of the abutting neighbor at 1406 27th
9 Street to the north. And the fact that it would be a bedroom
10 window, typically anticipated to provide interior screening to
11 protect the occupant's privacy while in that room.

12 So looking at the sun study provided, I was persuaded
13 that there would not be an undue impact to light and air on the
14 neighbors to the south fronting O Street.

15 The addition received concept approval from CFA, as
16 noted in our report, so we don't believe this addition is out of
17 character with the neighborhood.

18 With respect to the variance request, absent the
19 requested variance relief, no addition, even the small one
20 proposed, would be possible on this lot, and this would present
21 a practical difficulty to the owner in maintaining the building
22 and upgrading it to more current standards.

23 Granting relief would allow upgrades to the single-
24 family residence unit consistent with additions anticipated for
25 small row dwellings. The proposed 10 by 12-foot addition would

1 not extend 10 feet beyond its only abutting property to the north,
2 thus maintaining existing light and air to that home. Further,
3 conversion of the tax lot to a record lot to permit the additional
4 living space should not unduly adversely impact light, air, and
5 privacy of homes fronting on O Street, where those rear yards
6 only abut a portion of the subject lot side yard.

7 Additions to homes, regardless of lot sizes, are
8 contemplated by the regulations within the prescribed criteria
9 of Section 5201. So granting the requested variance to allow the
10 tax to record lot conversion would allow the proposed reasonable
11 improvements to the small single-family home in a form consistent
12 with such residences within the neighborhood and should not
13 exceed -- and it does not exceed the height or bulk provisions
14 anticipated in this zone, and it also would not introduce a non-
15 conforming use. So granting the requested relief would not
16 impair the intent of the Regulations.

17 And I'll conclude my comments here, and I'll take any
18 questions you have. Thank you.

19 CHAIRPERSON HILL: Thank you, Ms. Thomas, for your
20 report. Does the Board have any questions for the Office of
21 Planning?

22 (No audible response.)

23 CHAIRPERSON HILL: Okay. Does the applicant have any
24 -- I'm sorry. Does -- Ms. Giordano, can you hear me?

25 MS. GIORDANO: I can.

1 CHAIRPERSON HILL: Do you have any questions for the
2 Office of Planning?

3 MS. GIORDANO: I do not.

4 CHAIRPERSON HILL: Mr. Sullivan, do you have any
5 questions of the Office of Planning?

6 MR. SULLIVAN: No, thank you.

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

9 MR. YOUNG: Yes, we do have one person.

10 CHAIRPERSON HILL: Okay. Then give me a second, because
11 I'm going out of order, then.

12 So now, Ms. Giordano, can you hear me?

13 MS. GIORDANO: Yes.

14 CHAIRPERSON HILL: You can go ahead and give your
15 presentation.

16 MS. GIORDANO: Okay. I am going to ask Mr. Fishman to
17 testify first to the impact which he believes that this addition
18 would have on his property.

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

20 MR. FISHMAN: Yes, I can hear you. Can you hear me?

21 CHAIRPERSON HILL: Yes.

22 MR. FISHMAN: Yes. Thank you for the opportunity to
23 address this hearing. I think it's important to note just how
24 small of a plot of land we're talking about. There are at least
25 four properties that abut the land that the proposed extension

1 would affect.

2 The Applicant knew this when she bought the property
3 within the last year. She knew the size of the property and the
4 size of the house. By extending beyond the 7 percent and asking
5 for a variance 7 percent beyond is not a small request given the
6 close proximity with which all the neighbors live. It will impact
7 light, airflow, privacy, as well as reduce the value of the home.
8 The window of the house, notwithstanding any assertions by
9 opposing counsel, will affect the privacy of our homes.

10 The shadow study, I was told by present counsel when I
11 asked them earlier in this proceeding whether or not they would
12 present them, was not necessary. Accordingly, we did not take
13 efforts to produce opposing light studies, because of that
14 representation. The light study that has recently been proposed
15 is late and has not given us adequate time to address it and to
16 study it. By my reading of that map, it does not show my property
17 line in an accurate format.

18 Furthermore, I would note I've spoken with all the
19 abutting neighbors, and notwithstanding Ms. Titus' assertion
20 otherwise, every neighbor that I have spoken with opposes this
21 building. We are a small, tight community and an extension of
22 this neighbor would have significant impact not only during the
23 period of construction, but the building itself would affect
24 light, air, as well as noise.

25 I have been out of the country --

1 CHAIRPERSON HILL: Mr. Fishman.

2 MR. FISHMAN: -- during this time.

3 CHAIRPERSON HILL: Can I interrupt for one second?
4 When you say that, like, I guess -- and this is what I can't
5 remember, like you're unable to, unfortunately, testify for other
6 neighbors. You're just, in general, saying that you think that
7 there's a bunch of people opposed?

8 MR. FISHMAN: I've talked to all of them. I think part
9 of the problem with the way the hearing is and with understanding
10 the regulations is, for example, I believe Mr. Prutting is on the
11 line. I'll let him speak for himself. Mr. Dean, I have spoken
12 with him, as well. He's the neighbor to the north. I am not
13 entirely sure that they're all aware of their rights and their
14 ability to file appearances in this hearing, but I can tell you
15 that none of them are happy about this extension. And so --

16 CHAIRPERSON HILL: Yes. Mr. Fishman, don't -- I'm
17 just -- I'm trying to help out, right, is that you don't have
18 any documents that say you're representing -- you say,
19 "everyone." And so that doesn't help me to understand who
20 "everyone" is. And so --

21 MR. FISHMAN: Well, and as part of the reason, knowing
22 that this proceeding and being able to try to get an attorney
23 and to try to be able to do this while operating out of the
24 country running a small start-up where I'm working substantial
25 hours a day, I'm trying to defend my rights. And it's quite

1 difficult doing so without being able to be in town to do so. So
2 that's partly why I asked for a continuance to be able to conduct
3 our own air and light study, because I haven't seen any of the
4 documents produced by -- I don't even know what the acronym is,
5 the Office of OPD (sic) or DP (sic), whoever just spoke. I
6 haven't seen any of their documents on whatever light and sound
7 studies they have done. The documents presented by the --

8 CHAIRPERSON HILL: Mr. Fishman.

9 MR. FISHMAN: -- Applicant --

10 CHAIRPERSON HILL: Mr. Fishman, Mr. Fishman, I was just
11 trying to make a comment, which was that you don't have any
12 authority to speak on anyone else's behalf other than yours.
13 That's all I was trying to make a comment on. And so --

14 MR. FISHMAN: And I know Mr. Prutting is here. I'll
15 let him speak on his own behalf.

16 CHAIRPERSON HILL: We'll let Mr. Prutting speak. So
17 I'm still trying to figure out. So you're -- what is it that
18 you're concerned about?

19 MR. FISHMAN: I'm concerned about the noise and the
20 damage to my enjoyment of my home during the construction period
21 of this house. I'm concerned about the light and air flow
22 restrictions that will happen as a result of this. I'm concerned
23 that I haven't had adequate time to put forward a counter-
24 proposal. I have concerns with the drawings only provided to me
25 last Friday.

1 So I have a number of concerns about the impact of this
2 building, and I think it's just worth noting that Ms. Titus knew
3 exactly what she was buying when she bought this property last
4 year. I've been living in this house for 10 years, and it was
5 -- it's inconceivable to me that someone would buy a house
6 thinking they could build 7 percent beyond the allowable lot,
7 impacting their neighbors, and so I have a strong objection to
8 what she's trying to do.

9 CHAIRPERSON HILL: Okay. All right.

10 MR. FISHMAN: And I would also just note that I don't
11 believe the ANC has assented to this, as well. I know they wanted
12 to review a light and air study. This has only come in recently,
13 and so I, again, would request a continuance to be able to allow
14 them to address this issue, as well as to allow us to propose a
15 counter, because from what I saw, it insufficiently showed the
16 effect of the shadows for the entirety of year.

17 CHAIRPERSON HILL: Okay. Ms. Giordano.

18 MS. GIORDANO: Yes. I have some remarks, as well.

19 First of all, the continuance, I believe has been
20 decided, and if the Board doesn't take that up again, we would
21 ask that, at the very least, the record be left open for the ANC
22 and for Mr. Fishman to present a study of his own or an expert
23 evaluation of this -- the shadow study that's been submitted by
24 the applicant.

25 In addition, I wanted to address the criteria for the

1 variance. The first prong of a variance test is that the property
2 be exceptional or unique. And I note that the Office of Planning
3 didn't address that first prong, and I think that the applicant's
4 statement addressed it by saying that it was a small lot and a
5 semi-detached house. It's an older house, and that somehow a
6 confluence of those factors made it exceptional and unique. But
7 I wanted to point out, again, looking at Exhibit 34B, that I can
8 name at least 8 lots -- and if we could pull that up, I think it
9 would be helpful.

10 CHAIRPERSON HILL: Mr. Young, could you pull up the
11 exhibit that she's speaking to?

12 (Pause.)

13 CHAIRPERSON HILL: All right, Ms. Giordano.

14 MS. GIORDANO: And is it possible to blow that up so
15 you can read the lot numbers? If not, maybe you could look at
16 the exhibit online.

17 CHAIRPERSON HILL: Yes. We got you.

18 MS. GIORDANO: Okay. So just looking at that, if you
19 -- I kept the tax assessment records, and if you look at,
20 starting, sort of, at the bottom of that exhibit, lot -- I'm just
21 picking out the semi-detached houses, Lot 821 is 900 square feet,
22 same as the subject property. Going to the right, Lot 120, also
23 a semi-detached house, is 900 square feet; Lot 121, semi-detached
24 house, is 900 square feet; and then going up to Lot 817, semi-
25 detached house, is 800 -- I'm sorry, 900 square feet; Lot 816 is

1 900 square feet; and Lot 822 is 900 square feet. So there are
2 at least 8 properties in the same square with the same conditions.
3 And I think that the court has been pretty clear that that is
4 not a good indication of exceptional -- an exceptional condition
5 when you can point to numerous other properties with the same
6 condition in the same square.

7 CHAIRPERSON HILL: Okay.

8 MS. GIORDANO: And again, if the record is left open,
9 I would like to submit according legal documentation to that
10 point for cases.

11 CHAIRPERSON HILL: Okay, Ms. Giordano. We'll see where
12 we get.

13 MS. GIORDANO: All right. Thank you.

14 CHAIRPERSON HILL: Okay. Does the Board have any
15 questions of the party status individual? Okay. Ms. John.

16 VICE CHAIR JOHN: Yes, one question. Mr. Fishman, just
17 for me to clarify, what is the rear yard of your property? I
18 believe it fronts on, let's see, O Street?

19 MR. FISHMAN: Yes, my house is on O Street. The back
20 yard backs on to Ms. Titus' property.

21 VICE CHAIR JOHN: Yes.

22 MR. FISHMAN: We have an upper area that leads out of
23 the main floor on, sort of a sitting area, a bricked area, and
24 there's an open area down below.

25 VICE CHAIR JOHN: Yes, but the -- do you know what the

1 dimensions of the rear yard are?

2 MR. FISHMAN: I don't. I don't know that off the top
3 of my head.

4 VICE CHAIR JOHN: But it does not abut Ms. Titus'
5 property. I mean, it's --

6 MR. FISHMAN: No, it does.

7 VICE CHAIR JOHN: There -- I'm sorry, not abut. There
8 is a rear yard.

9 MR. FISHMAN: I have a rear yard.

10 VICE CHAIR JOHN: Okay. That's all I wanted to -- to
11 make sure I had the right house that I'm looking at.

12 MR. FISHMAN: I have a rear yard as does my neighbor,
13 I guess that's to the east. Mr. Prutting also has a yard that
14 abuts the same property --

15 VICE CHAIR JOHN: Okay.

16 MR. FISHMAN: -- as does my neighbor to the west. I
17 believe their property also abuts Ms. Titus' property.

18 VICE CHAIR JOHN: Okay. And Ms. Titus' property is
19 about three feet from the property line -- your property line?

20 MR. FISHMAN: I know it's really close. I know the air
21 conditioner, which still rattles, I hear every time the air
22 conditioner is used. It's -- these houses are right on top of
23 each other. This is a small footprint in Georgetown where -- I
24 believe it says five or six houses all abut each other.

25 VICE CHAIR JOHN: Okay. Thank you.

1 CHAIRPERSON HILL: Okay. Mr. Fishman, did you go to
2 the ANC meeting?

3 MR. FISHMAN: No, I was unable to attend that meeting.

4 CHAIRPERSON HILL: Okay.

5 MR. FISHMAN: But I've registered my complaints with
6 our representative.

7 CHAIRPERSON HILL: Okay. All right. Does anybody else
8 have any more questions for the party status individual?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. So I'm a little confused
11 here, but I'm going to go ahead. Mr. Prutting, can you see me?

12 MR. PRUTTING: I can see you.

13 CHAIRPERSON HILL: I'm going to treat you as a member
14 of the public giving testimony, because I guess that's what you
15 are. And so before I do that, Mr. Young, you said there is
16 someone else waiting to testify?

17 MR. YOUNG: No, he's the only one.

18 CHAIRPERSON HILL: Pardon?

19 MR. YOUNG: He's the only one.

20 CHAIRPERSON HILL: Oh, Mr. Prutting?

21 MR. YOUNG: Yes.

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

24 MR. PRUTTING: Sure. My name is William Prutting, and
25 my wife Sue and I own the home at 2701 O Street, Washington,

1 D.C., adjacent to the subject property.

2 CHAIRPERSON HILL: Okay. Could you go ahead? You have
3 three minutes to give your testimony. You can begin whenever you
4 like.

5 MR. PRUTTING: Sure. What I wanted to do is just
6 comment that, all things being equal, this wasn't something that
7 we had anticipated when we bought the home, and certainly, we
8 were not excited about it when we learned about it. At the same
9 time, our objective was to understand what the impact would be
10 to us, and we really raised a number of issues at the ANC, but
11 specifically three issues with Ms. Titus. And from our
12 perspective, the three issues were pretty simple. It was focused
13 on if this was to happen, what the conditions would be. And so
14 our focus was on the window that was proposed and the privacy
15 relative to our back yard. And the second issue was the
16 conditions related to dust and debris and everything that would
17 go along with the construction relative to quality of the air.
18 My wife has respiratory issues. And so that was a focus for us.
19 The third issue was the structural integrity of the common wall
20 between our two back yards.

21 And so we raised those issues and met with Ms. Titus,
22 and I've gone back and forth over the past week or so and are in
23 agreement as to what would happen in the event that this proceeds.
24 And so she and the architect have discussed the issues and
25 addressed them satisfactorily, provided everything goes forward.

1 And we would, obviously, have an interest in some type of
2 construction management agreement.

3 CHAIRPERSON HILL: Okay. So Mr. Prutting, once you
4 -- I mean, I don't -- are you in support, are you in opposition?
5 What is it that you are giving testimony about?

6 MR. PRUTTING: We weren't really stating our testimony,
7 as much as coming to this -- voicing our initial concern,
8 obviously, with the construction, and then just stating that we
9 have met with Ms. Titus and tried to work through the issues that
10 were of concern. So it wasn't in support of that. Again, I'm
11 not sure I know what you're going for, but I know what your
12 question is. We were really just coming to this, because we felt
13 it was important to be represented in this forum. So --

14 CHAIRPERSON HILL: Okay.

15 MR. PRUTTING: -- you can make that decision.

16 CHAIRPERSON HILL: No, I can't make that decision. It
17 doesn't matter. I mean, I know what needs done for the record,
18 but, I mean, you've got what you want from Ms. Titus in terms of
19 an agreement, correct?

20 MR. PRUTTING: We believe we do.

21 CHAIRPERSON HILL: Okay. So you're here just to make
22 sure that you've been heard.

23 MR. PRUTTING: Correct.

24 CHAIRPERSON HILL: Okay. So you're not in opposition
25 or support. You're just showing up to show up?

1 MR. PRUTTING: Correct.

2 CHAIRPERSON HILL: Which is fine. I just wanted to
3 know. So I appreciate you hanging out this long, and I appreciate
4 you not making me try to rush through to get to you earlier.
5 Okay.

6 Does anybody have any questions for Mr. Prutting?

7 MR. FISHMAN: I do.

8 CHAIRPERSON HILL: Hold on.

9 MR. FISHMAN: This is Jared.

10 CHAIRPERSON HILL: Give me a second. I got you Jared.
11 So -- well, I got you Mr. Fishman.

12 Does the Board have any questions for the witness? Mr.
13 Turnbull.

14 COMMISSIONER TURNBULL: Thank you, Mr. Chair. So Mr.
15 Prutting, thank you for showing up today to help clarify your
16 position. I think it's always worthwhile when the community
17 takes an interest in everything. I appreciate your concern.
18 We've had a lot of that kind of concern on other things before
19 us on the BZA.

20 As long as you've gone through everything with Ms.
21 Titus and come to an understanding as to what's going to happen,
22 I think that sort of helps everybody come to a better feeling as
23 to what to expect. And I think that you're right, a construction
24 management agreement is always helpful. That's something the
25 Board can't order or anything, that's sort of like between the

1 parties.

2 So I greatly appreciate you coming before us and
3 letting us know your feelings. And thank you very much.

4 MR. PRUTTING: Pleasure.

5 CHAIRPERSON HILL: Okay. Let's see. Mr. Sullivan, do
6 you have any -- well, no, I got to do it the other way. Mr. --
7 or did somebody raise their hand? Yes. Ms. John.

8 VICE CHAIR JOHN: Just a quick question, Mr. Prutting.
9 So you don't share an adjoining wall with Ms. Titus, right?

10 MR. PRUTTING: We do. We --

11 VICE CHAIR JOHN: Okay. Now, is your -- I'm confused.
12 Is your house at the corner of O Street and 27th?

13 MR. PRUTTING: Yes.

14 VICE CHAIR JOHN: Okay.

15 CHAIRPERSON HILL: Mr. Prutting, just -- you don't
16 share a party wall. You share --

17 MR. PRUTTING: Correct. Correct.

18 CHAIRPERSON HILL: There's brick fence.

19 MR. PRUTTING: We share -- we have a common separation
20 wall. Correct. It is not a party wall.

21 CHAIRPERSON HILL: They're the ones in the bottom of
22 the diagram, Ms. John. See them?

23 VICE CHAIR JOHN: Yes, I thought so. And I was confused
24 when he talked about damage to the wall. I wanted to be sure
25 that I was looking at the right house and that he does not share

1 a party wall. So --

2 COMMISSIONER TURNBULL: No, it's a garden wall.

3 VICE CHAIR JOHN: Okay. And so --

4 MR. PRUTTING: It's a garden wall.

5 VICE CHAIR JOHN: Thank you. And what is the size of
6 your back yard; do you know?

7 MR. PRUTTING: I would be guessing. I'd say
8 approximately 400 square feet.

9 VICE CHAIR JOHN: Do you know the distance between you
10 and --

11 MR. PRUTTING: Maybe 300 square feet.

12 VICE CHAIR JOHN: Okay. I asked the wrong question.
13 Do you know the distance between the rear of your house and that
14 wall -- that dividing wall?

15 MR. PRUTTING: Approximately --

16 VICE CHAIR JOHN: Look on that --

17 MR. PRUTTING: Approximately 10 feet.

18 VICE CHAIR JOHN: Okay. All right. Thank you.

19 CHAIRPERSON HILL: Okay. Mr. Fishman, you had a
20 question for Mr. Prutting?

21 MR. FISHMAN: Yes, thank you. Mr. Prutting, do you
22 want this extension to be approved?

23 MR. PRUTTING: All things being equal, we bought what
24 we bought, not expecting there to be any expansion to the adjacent
25 house.

1 MR. FISHMAN: Let me ask you again. Do you want this
2 to be approved?

3 MR. PRUTTIING: I appreciate your question to box me
4 in, but I would say, from our perspective, we bought the house
5 assuming that there would not be an addition to the house.

6 MR. FISHMAN: And do you believe that the expansion
7 will affect your enjoyment of your property?

8 MR. PRUTTING: During construction, no question that
9 there will be some impairment to the conditions at the house.

10 MR. FISHMAN: Do you believe that the extension, as
11 proposed, will affect your enjoyment of the property?

12 MR. PRUTTING: I can't address it.

13 CHAIRPERSON HILL: Okay.

14 MR. PRUTTING: I don't know the answer to your question.

15 MR. FISHMAN: Mr. Prutting, do you believe that the
16 extension of the house will affect the value of your house?

17 MR. PRUTTING: I think there is a chance that that
18 occurs. Yes.

19 MR. FISHMAN: And is your contention one of believing
20 that you don't have the ability to stop this and so you're trying
21 to do the best you can under the situation that you're dealt
22 with?

23 VICE CHAIR JOHN: Excuse me, Mr. Fishman.

24 MR. PRUTTIING: We don't know the --

25 CHAIRPERSON HILL: Ms. John, you had --

1 VICE CHAIR JOHN: This is cross-examination, and I
2 think we're going way beyond what Mr. Prutting testified to.

3 MR. FISHMAN: I would just add that Mr. Prutting's not
4 answering the questions, because I believe, from my conversation
5 with him --

6 CHAIRPERSON HILL: Mr. --

7 MR. FISHMAN: -- he believes this is a done deal.

8 CHAIRPERSON HILL: Mr. Fishman, I mean, you're not
9 giving testimony, you're just asking questions of somebody. They
10 have an opportunity to respond. They're responding the way that
11 they're responding. You can't bully them into answering the
12 question the way you want them to answer it.

13 MR. FISHMAN: I'm asking for yes or no questions, and
14 he's not giving me yes or no -- he's not giving me yes or no
15 answers.

16 CHAIRPERSON HILL: That's -- welcome to the world of
17 questions.

18 COMMISSIONER TURNBULL: He doesn't have to give yes or
19 no answers.

20 CHAIRPERSON HILL: He can give you whatever answer he
21 wants, and he just gave you his answer. All right. Do you have
22 any more questions for him?

23 MR. FISHMAN: No.

24 CHAIRPERSON HILL: Okay. All right. All right. Let's
25 see. So Mr. Young, you don't have any more witnesses; is that

1 correct?

2 MR. YOUNG: That's correct.

3 CHAIRPERSON HILL: Okay. Ms. Giordano, can you hear
4 me?

5 MS. GIORDANO: Yes, I can.

6 CHAIRPERSON HILL: Do you want to make any comments or
7 conclusions? And then if Mr. Sullivan wants to give a rebuttal,
8 he can, and then he's going to give a conclusion, and we're going
9 to see where we get.

10 MS. GIORDANO: Just very briefly, Mr. Fishman spoke to
11 the impact that he believes the proposed addition will have on
12 his property. I spoke to the fact that the variance criteria
13 have not been met, specifically, the first prong of the variance
14 test. And we have both asked that the record be left open to
15 provide further rebuttal to the shadow study and for me to submit
16 legal support for my conclusions on the variance test. That is
17 all.

18 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have any
19 rebuttal?

20 MR. SULLIVAN: Just closing.

21 CHAIRPERSON HILL: Okay. Go ahead, Mr. Sullivan.

22 MR. SULLIVAN: Regarding the special exception -- or
23 the variance criteria and extraordinary condition, there are
24 several factors with this lot. It's not just the size, it's the
25 fact that it is a tax lot; it's a semi-detached building. There

1 is a record lot under it, but that record lot is not in the same
2 boundaries, and so that prevents us from doing that, as well.

3 And regarding the shadow study and needing additional
4 time to study a shadow study -- a new shadow study is, obviously,
5 not going to have a different location of the sun, and so it's
6 not really going to -- it's still not going to affect the property
7 to the south of this addition.

8 And that's all we have. Thank you.

9 CHAIRPERSON HILL: Okay. Does the Board have any final
10 things that they want? I mean, I'm going to talk with my fellow
11 Board members after we adjourn this hearing as to whether we want
12 anything additionally. The only thing that I might want, and I'm
13 still waiting to see what my fellow Board members have, is if
14 there was something that we could get from the ANC that clearly
15 indicates the whole shadow study issue, and that that's, kind of,
16 like, you know, I got a little confused as to what they were
17 saying in the ANC letter. I don't doubt what has been proposed,
18 and I don't doubt what has been shown, but that's the only thing
19 that kind of I'm interested in, but other than that, I'm kind of
20 just having everybody here right now to see if there's anything
21 any of my fellow Board members want or need before we -- I
22 adjourn this hearing and then we start to talk about it.

23 (No audible response.)

24 CHAIRPERSON HILL: Okay. Nobody's raising their hand.
25 All right. Okay. So I'm going to go ahead and close this hearing

1 and the record and excuse everyone. Thank you all very much for
2 your testimony and thank you for sitting with us for a very long
3 day. Bye-bye.

4 (Pause.)

5 CHAIRPERSON HILL: So I can start. I do think that
6 they have met the variance standard to approve this. I also
7 think that they met the special exception requirement standards
8 to those. I'm actually a little surprised, in terms of the
9 neighbors, as to their concern about this project. I think that
10 it is a very minimal project in that they are actually just going
11 back as far as the adjacent property, and that adjacent property
12 is in support, which is the property that actually will be the
13 most effected.

14 I think the shadow study clearly shows that there is
15 no shadowing impact, if any, on the people that were in opposition
16 -- or at least the one person that was in opposition to this
17 project.

18 I again, for the record, did not vote for the person
19 to get party status, because of the untimely nature of the party
20 status request, and I would agree with, again, the analysis of
21 the Office of Planning. I think it's a very clear,
22 straightforward case, actually, in terms of the -- both the
23 variance, the area variance, and the special exception.

24 The only thing that I might be interested in seeing is
25 just further clarity on the ANC, but if you all think that it

1 seems fairly straightforward, which I could also -- I'm going to
2 read the letter again, the ANC letter, while you guys are telling
3 me your thoughts, then I'm ready to move to approve this
4 application. Again, if you look at the shadow studies and how
5 minimal this addition is, I'm just surprised that anybody has a
6 problem with it.

7 So I will -- I mean, because also I'm going to continue
8 this. Georgetown is dense, like, that's the whole thing about
9 Georgetown, right. You're living in a dense place. You live in
10 a city. Your back yard is small to begin with. It will be small.
11 The whole benefit of living in such a great environment is that
12 you can go to places, go to eat, and -- so I'm, I mean, I'm a
13 little surprised, again, as to the points that were raised.

14 So I will let my other fellow Board members speak. I
15 will start with you, Commissioner Turnbull, as I look to the ANC
16 report.

17 COMMISSIONER TURNBULL: Mr. Chair, I'm going to agree
18 with every -- all the comments that you made and that I would
19 support this. I mean, basically, this -- the houses that are in
20 question -- or the one house that -- Mr. Fishman's house, is to
21 the south of this property, which means that his shadows are
22 going to into her rear yard. And Mr. Prutting, his shadows, too,
23 are going into her yard. So they affect her more than anything
24 else. All the others, when you saw the little bit of red that
25 goes to the south, which is really de minimis. And the addition

1 is de minimis. I mean, this is -- we talk about that -- people
2 who want to go back from their house, and they want to go two
3 feet beyond the next door -- the house that's adjoining. This
4 one is lining up exactly with it. So I mean, this is a very
5 carefully done, architecturally -- what he's -- the architect has
6 done is create a very nice little house. He's added on perfectly.
7 If anything, Mr. Fishman is looking into her yard. He's got a
8 deck that looks into her yard, or a balcony, whatever, that can
9 look into her yard.

10 So I mean, it's a two-way street. And like you said,
11 this is a very urban, dense area. It's like, people want to say,
12 well, I can do -- oh, but you're not going to do it, because
13 you're going to affect me. I think that Ms. Titus' addition
14 added on to her home for her comfort in what is, relatively, a
15 very small house.

16 I think this is a welcome -- I think -- I have no
17 problem with this. I think it's very worthwhile. I think it's
18 very de minimis, she isn't asking for a lot. And I think some
19 of the concerns are a little bit over -- she's worked out
20 something with Mr. Prutting, and he was mainly concerned about
21 the construction part and his wife's, you know, allergies, or
22 whatever, and I think they've come to an agreement. And it sounds
23 like they're going forward on a path that we always ask applicants
24 to do, work with their neighbors. They've come to an agreement
25 with the most effected one, Mr. Prutting.

1 Mr. Fishman's house is down -- is a little bit on the
2 corner. He may be a little bit affected, but he's -- they both
3 have back yards. I can't see when you have back yards coming
4 together -- I think (audio interference). And I want to -- don't
5 want to downplay any of these comments, but I think -- I felt
6 very terrible for Mr. Prutting. It sounded like he was trying
7 to browbeat him into saying you don't want this, do you. You
8 should agree with me and say no. I really didn't like that. For
9 me, that was very uncomfortable.

10 But no, I think after hearing all the testimony and
11 listening to the evidence, review of the shadow study, I think
12 I'm -- I agree with your comments before. I think I agree with
13 the Office of Planning report. I think the ANC -- I don't think
14 the ANC's going to find anything wrong with that shadow study.
15 It's very simple. It's a very straightforward shadow study. And
16 I would be in support of approving this.

17 CHAIRPERSON HILL: Okay. I read the letter again, and
18 I don't see as though -- they are in approval if a shadow study
19 is performed and made available to all interested parties. A
20 shadow study was performed and made available to all interested
21 parties. So I don't need -- I believe this is an approval based
22 upon information that was provided. So I'm comfortable moving
23 forward.

24 Mr. Smith, may I go to you next?

25 BOARD MEMBER SMITH: I was about to jump and say just

1 that about ANC letter where I feel comfortable with moving forward
2 with this approval without some form of a limited scope hearing
3 where this would go back to the ANC, because they did, in effect,
4 approve it, as long as it was released to all interested parties.
5 And based on what was submitted, any light impacts is fairly de
6 minimis.

7 Chairman Hill, I completely agree with your statements
8 that you made. And Mr. Turnbull, I completely agree with your
9 statements, as well. This is a very small house in one of the
10 densest neighborhoods in the District of Columbia. The proposal
11 has been vetted through the Old Georgetown Board. The addition,
12 again, is de minimis. We've seen much larger additions that,
13 like you said, Mr. Turnbull, where they were trying to extend
14 even further than that 10-foot wall. So to me, there would be
15 -- the applicant was trying to reduce its -- reduce the impact
16 that she would have in any potential addition that she was
17 proposing.

18 Just as you also stated, the testimony that we heard
19 today was from a property owner to the south, and the property
20 owner is separated from the applicant's property -- they are
21 fairly, I would say for Georgetown, a fairly sizable side yard
22 and a rear yard for the, I think, the party in opposition, that
23 would not have major shadowing issues because of the orientation
24 of the lots and the location of the alley. So based on the sun
25 study, and I'm comfortable with the sun study, the -- everything

1 will be fairly de minimis when it comes down to impacts to the
2 adjacent property owners. And I do believe that, as stated on
3 the record, of the OP staff report, that I would be support of
4 this variance and this special exception.

5 I would also state, one of the comments that was made
6 was that when they moved there, they didn't contemplate an
7 addition to the adjacent property. I would just go on the record
8 and say the only thing that is constant is change. So just keep
9 that in mind, you know, going forward. So with that, I would
10 support the request before us.

11 CHAIRPERSON HILL: Thank you. Ms. John.

12 VICE CHAIR JOHN: I don't really have anything else to
13 add. I think you all covered everything that I wanted to say.
14 So I'm in support of the application. I believe the applicant
15 met the criteria for granting an area variance. This is not a
16 use variance. And so I believe that I -- I mean, I'm able to
17 support the application.

18 One more thing, I agree that the ANC's letter was not
19 ambiguous at all. The ANC basically said we support the
20 application, but we believe that the shadow study should be shared
21 and evaluated. The Board is required to give great weight to
22 the recommendations of the ANC. It doesn't mean we have to agree
23 with them, but we have to consider what the ANC has proposed. So
24 in this case, I don't believe that the ANC is saying that it is
25 opposed to the application based on the fact that the applicant

1 has complied with the condition, if that's what it is, that the
2 ANC established. So.

3 CHAIRPERSON HILL: Okay. Thank you, Ms. John. Mr.
4 Blake.

5 BOARD MEMBER BLAKE: I don't think there's anything
6 else that can be said at this point. I support the variance and
7 the special exception request based on all the criteria being
8 met.

9 CHAIRPERSON HILL: Okay. Thank you. I'm going to make
10 a motion to approve Application Number 20475, as captioned and
11 read by the secretary, and ask for a second, Ms. John.

12 VICE CHAIR JOHN: Second.

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

15 MR. MOY: Thank you, Mr. Chairman. When I call your
16 names -- each of your names, if you would please respond with a
17 yes, no, or abstain to the motion made by Chairman Hill to approve
18 the application for the relief being requested. The motion was
19 seconded by Vice Chair John.

20 Zoning Commissioner Michael Turnbull.

21 COMMISSIONER TURNBULL: Yes.

22 MR. MOY: Mr. Smith.

23 BOARD MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake.

25 BOARD MEMBER BLAKE: Yes.

1 MR. MOY: Vice Chair John.

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill.

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: Staff would record the vote as 5-0-0, and
6 this is on the motion made by Chairman Hill to approve the
7 application for the relief requested. The motion was seconded
8 by Vice Chair John in support. Others in support of the motion
9 to approve is Zoning Commissioner Michael Turnbull, Mr. Smith,
10 and Mr. Blake. The motions carries on a vote of 5-0-0.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. So
12 Commissioner Turnbull, I guess we'll still see you on August --

13 COMMISSIONER TURNBULL: On the 4th.

14 CHAIRPERSON HILL: -- 4th for something. And then --
15 there was even something that might get sucked back in. I forget
16 -- we talked about it. I don't remember what it was.

17 COMMISSIONER TURNBULL: I don't think they're doing
18 that until September, though.

19 CHAIRPERSON HILL: All right. So we'll see what
20 happens.

21 COMMISSIONER TURNBULL: Yes.

22 CHAIRPERSON HILL: I'm just so glad that you could be
23 here for the 10 and a half hour send off.

24 COMMISSIONER TURNBULL: I love being with you guys.

25 CHAIRPERSON HILL: All right. Well, we love having

1 you. You have a nice time out there on the upper plane.

2 COMMISSIONER TURNBULL: Yes. We'll see you on the 4th.

3 CHAIRPERSON HILL: Okay.

4 COMMISSIONER TURNBULL: Okay. You all take care.

5 CHAIRPERSON HILL: Bye. We're adjourned.

6 (Whereupon, the above-entitled matter went off the
7 record at 7:54 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 07-14-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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Walter Murphy

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