

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 28, 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 9:58 a.m. EDT, Lorna L. John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA L JOHN, Vice Chairperson  
CARL BLAKE, Board Member  
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

JONATHAN KIRSCHENBAUM  
MATT JESICK  
CRYSTAL MYERS  
ELISE VITALE

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JOHN K. RICE, Esquire  
ALEXANDRA CAIN, Esquire

The transcript constitutes the minutes from the  
Regular Public Hearing held on July 28, 2021

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

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

(9:58 a.m.)

1  
2  
3 VICE CHAIR JOHN: Mr. Moy, can you call the first  
4 hearing case?

5 MR. MOY: Yes. Okay, so here we go again. So this is  
6 the first case on the Board's hearing session. And this is case  
7 application number 20467 of Geoff Anderson and Harriet Tregoning.  
8 This is request for zoning relief for special exception from the  
9 lot occupancy restrictions, Subtitle E, Section 304.1, rear  
10 addition restrictions of special exception, Section 205.4, which  
11 would construct a three-story with cellar and roof deck, rear  
12 addition to an existing, attached two-story with cellar, principal  
13 dwelling unit in the RF-1 Zone. The property is located at 232  
14 10th Street, Southeast, Square 969, Lot 83.

15 Madam Vice Chair, there are preliminary matters in this  
16 application. Primarily, the first is request to waive the 21-day  
17 filing deadline. The applicant is requesting that we be able to  
18 allow in the record their updated plans and shadow studies that  
19 was dated July 12, I believe. Also, as you know, in the case  
20 record there are a number of requests for party status in  
21 opposition. The only change in that is that yesterday, yeah,  
22 Tuesday, one of the party status requesters withdrew their request  
23 for party status. That was the concerned homeowners south of 232

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1 10th Street, Southeast. So if we can allow that into the record,  
2 that would be appropriate.

3 And I think those are the majority matters, Madam Vice  
4 Chair.

5 VICE CHAIR JOHN: Thank you, Mr. Moy. Yes, I would be  
6 interested in seeing those exhibits. So I would waive the late  
7 filing if no one else objects.

8 (No response.)

9 VICE CHAIR JOHN: No? So you can let them in, Mr.  
10 Young. Mr. Moy, did you have your hand up? Okay. Good morning.  
11 Good morning. I see Ms. Fowler. Good morning, Ms. Fowler. And,  
12 let's see, we have the -- who do you have with you today, Ms.  
13 Fowler?

14 MS. FOWLER: Good morning, everybody. I have the  
15 homeowner, Geoff Anderson is also on the meeting.

16 VICE CHAIR JOHN: Okay. Thank you. And is  
17 Commissioner Holtzman here?

18 (No response.)

19 VICE CHAIR JOHN: I don't see the commissioner.

20 MS. FOWLER: I see him on the list. He's on the list.

21 MR. HOLTZMAN: Yes. I'm sorry. I see you folks. Steve  
22 Holtzman, ANC 6B05. Yes, I am present.

1 VICE CHAIR JOHN: There you are. Thank you. And, Mr.  
2 Moy, do we have the party requesters who did not withdraw here? I  
3 see Mr. --

4 MR. MOY: I believe so. I believe so, Madam Vice  
5 Chair.

6 VICE CHAIR JOHN: Okay. So --

7 MR. MOY: And I'll ask Mr. Young to bring them into the  
8 room.

9 VICE CHAIR JOHN: Thank you. So I reviewed the record  
10 and the request for party status, and I reviewed the applicant's  
11 response as well. So it's very confusing. There's so many  
12 requests. So Mr. Sherry and Ms. Kiddler (phonetic), there you  
13 are.

14 MR. SHERRY: Yes.

15 VICE CHAIR JOHN: Are you choosing to turn off your  
16 video?

17 (No response.)

18 VICE CHAIR JOHN: So good morning. I want to clarify  
19 whether you are withdrawing your party status?

20 MR. SHERRY: No, we're not withdrawing our party status.

21 VICE CHAIR JOHN: Okay. And so you submitted a letter  
22 with some concerns, but you're still now withdrawing. I believe  
23 you're at 234 10th Street?

1 MR. SHERRY: That's correct.

2 VICE CHAIR JOHN: Okay. All right. And Ms.  
3 Billingsley, are you withdrawing your party status?

4 MS. BILLINGSLEY: I am not.

5 VICE CHAIR JOHN: Okay. And who else do we have?

6 VOICE: May I make a quick request before we move on.  
7 I'm sorry, I'm having trouble turning on my camera. I am  
8 concerned that later today when this discussion is had I might not  
9 be available. May I ask another neighbor to speak on my behalf if  
10 I'm unavailable during the discussion?

11 VICE CHAIR JOHN: If you submit something to the record  
12 authorizing that person to speak on your behalf. But we're going  
13 to hear the case now.

14 VOICE: Oh, okay. Understood. Thank you.

15 VICE CHAIR JOHN: We're going to rule on party status  
16 and continue the case.

17 VOICE: Okay. Thank you.

18 VICE CHAIR JOHN: Sorry. And hear the case right now.  
19 So in looking at the application, the Board normally grants party  
20 status to the persons, to property who are adjacent to the  
21 project. And that would be Mr. Sherry and Ms. Kiddler. Did I get  
22 that right?

23 MR. SHERRY: Yes.

1                   VICE CHAIR JOHN:    And so with respect to the property  
2 owner at 230, that would be --

3                   MR. SHERRY:    Mr. Cassel.

4                   VICE CHAIR JOHN:    -- Mr. Cassel.    Thank you for that.  
5 So we thought that there was a sufficient connection between your  
6 property and the project.    And so I would be prepared to recommend  
7 that the Board grant party status to you at 230 10th Street, and  
8 to 234 10th Street.    With respect to the remaining party  
9 requesters, in my view.    Oh, I'm sorry, I believe 228 as well.    So  
10 with respect to the remaining applications, I do not believe there  
11 is sufficient connection, and the parties have not met the  
12 standard which is to show that any harm or any potential adverse  
13 impact would be distinct and more impactful than any other member  
14 of the public.

15                   So I would like to hear from my Board as to whether they  
16 think that any other party's interest would like to be more  
17 significantly, distinctively or uniquely affected in character and  
18 kind than those of the other persons in the general public.    And  
19 that would be any other party requestor except for Mr. Billingsley  
20 and Ms. Ball, and Mr. Sherry and Kiddler, those three.

21                   VICE CHAIR JOHN:    I see OAG?

22                   MS. CAIN:    I just want to point out that the Office of  
23 Zoning did receive several requests to withdraw party status.    I



1 believe those were from David (audio interference) I'm not sure  
2 if those have been uploaded to the record yet, because I believe  
3 they came in late. But if those individuals are in attendance and  
4 just want to clarify whether they're withdrawing their party  
5 status, I think that would make things a little bit simpler for  
6 the Board.

7 In addition, I don't know if it was clarified as to  
8 whether Mr. Sherry is continuing to request party status in  
9 opposition now that they can be more supportive of the project  
10 today. There's no item to clarify for the Board.

11 VICE CHAIR JOHN: I believe I asked that question. Are  
12 you hearing us, Mr. Sherry?

13 MR. SHERRY: Yes, I am. And I'm sorry for the confusion.  
14 We initially filed our status in opposition, and we've since  
15 changed our status, following the back and forth over the last  
16 several months.

17 VICE CHAIR JOHN: Okay. So you're withdrawing your  
18 party status?

19 MR. SHERRY: No. I'm sorry, we're not withdrawing our  
20 party status, we're withdrawing our objections. But are still, we  
21 are still hoping to have our party status but in support.

22 VICE CHAIR JOHN: Okay. So you're switching from  
23 party status in opposition to party status to in support?

1 MR. SHERRY: Yes.

2 VICE CHAIR JOHN: okay, thank you for that  
3 clarification. I'd better go through this one by one. Is the  
4 property owner from 236 here, is it David Fox?

5 (No response.)

6 MR. YOUNG: I do not see him on.

7 VICE CHAIR JOHN: Okay. Do you also see anything in  
8 the record requesting withdrawal of party status from Mr. Fox or  
9 Katherine Fox?

10 (No response.)

11 VICE CHAIR JOHN: Okay. And so if they're not present  
12 at the hearing their status, request for party status is  
13 withdrawn.

14 MR. ROLE: Madam Vice Chair?

15 VICE CHAIR JOHN: Yes.

16 MR. ROLE: This is Gerald Role from 238 10th Street.

17 VICE CHAIR JOHN: Yes.

18 MR. ROLE: And we, with the David Fox's, had submitted  
19 a withdrawal for request for party status yesterday. As concerned  
20 homeowners off of 232 10th Street, Southeast. As Ms. Fowler  
21 pointed out, our submission was not within the Board's 24-hour  
22 period. We, therefore, ask that the Board recognize our  
23 withdrawal, admit the written withdrawal into the record.

1 VICE CHAIR JOHN: Okay. We will admit that request.  
2 So let me be clear about the parties who are requesting  
3 withdrawal. That would be Gerald Role and Susan Role, at 238 10th  
4 Street. And that would also include the Fox's at 236 10st Street?

5 MR. ROLE: That's correct, Madam Chair.

6 VICE CHAIR JOHN: Okay. Now, 230 -- we also have Mr.  
7 Core (phonetic). I believe there should be a request for  
8 withdrawal in that as well. Mr. Young, do you see anything from  
9 231 10th Street, Greg Rapport?

10 MR. YOUNG: I do not see them on.

11 VICE CHAIR JOHN: Okay. Are you available, Mr. Core?

12 (No response.)

13 VICE CHAIR JOHN: And so we will withdraw that status  
14 request because the requester is not present. And Mr. Young, do  
15 you see anything in the record from 222 10 Street, Southeast?

16 MR. YOUNG: Mr. Role?

17 MR. ROLE: Yes.

18 VICE CHAIR JOHN: Mr. Role, R-O-H-D-E?

19 MR. ROLE: Role, R-O-L-E. Yes. That was us for 236  
20 and 238.

21 MR. SMITH: SO I just have a question. Did you also  
22 state that the concerned homeowners south of 232 10th Street,  
23 Southeast, would be withdrawn as well?

1 MR. ROLE: Yes. That was the four of us at 236 and 238  
2 or concerned homeowners. That's correct.

3 MR. SMITH: Okay. Thank you.

4 VICE CHAIR JOHN: Okay. So there's nothing in the  
5 record from Mr. Role at 222 10th Street, Southeast, Mr. Young?

6 (No response.)

7 VICE CHAIR JOHN: No? Okay. So we will construe his  
8 request as also withdrawn.

9 Now, as to 228 10th Street, Ms. Billingsley and Ms. Ball  
10 (phonetic), you're still requesting party status, which we -- I  
11 propose to allow. And Mr. Sherry and Ms. Kiddler are now in  
12 support. And Ms. Opper-Weiner at 233 10th Street. I'm proposing  
13 not to allow party status on that request.

14 So now I'll turn to my Board members to see if they have  
15 any comments. And this is in response to the proposal to allow  
16 party status in support for 230 10th Street, and 228, Ms.  
17 Billingsley and Ms. Ball in opposition. And I believe those are  
18 the two, four left, 228 and 230. So are we -- is that clear to  
19 everyone?

20 (No response.)

21 VICE CHAIR JOHN: Do I have any comments from the Board  
22 members?

1           MR. HOOD:    Madam Chair, I do have question.  And first,  
2 let me applaud you for going through all that.  Because I was  
3 getting confused of where we are.  But I do see -- I kind of  
4 understand as you went through it.  But you mentioned -- I wasn't  
5 sure of the status of Ms. Ellen Oppenheimer, who in her  
6 submission said she was diagonally across the street.  So I wasn't  
7 sure, were you going to deny her, give her party status?  I wasn't  
8 sure where we were on that.

9           VICE CHAIR JOHN:    So I'm proposing to deny her party  
10 status because she's separated by 10th Street.  The rear of her  
11 property would not be, you know, significantly impacted by the  
12 project.  So not the rear, her property.  Because her property  
13 faces 10th Street.  So I did not see where she would meet the  
14 criteria in the regulation to be uniquely affected in character or  
15 kind from the project.

16           MR. HOOD:    That's good, Madam Chair.  I just wasn't  
17 sure.  I didn't hear exactly where we were.  I follow your  
18 recommendation.  I think it's warranted, and I agree with you.  
19 But she and others will have an opportunity to testify.  So thank  
20 you, Madam Chair.

21           VICE CHAIR JOHN:    Yes.  And the same for Ms. Oppenheimer,  
22 who I know has submitted testimony into the record.  And  
23 so because of her location across the street, I don't I believe

1 that her interest -- I believe that her interest could be just as  
2 supported by the parties who are closer to the project. So and  
3 the same thing for Mr. Gogue.

4 So I believe we're at the point now where the only  
5 persons have been granted party status, the property owners at  
6 228 and 230, and 234.

7 MS. FOWLER: Excuse me, 230 did not apply for party  
8 status. That's the Cassel's. There is no party status request.  
9 It's 234 is the Sherry request.

10 VICE CHAIR JOHN: Okay.

11 MS. FOWLER: Just to clarify. Thank you.

12 VICE CHAIR JOHN: Okay. So let's clarify again. So  
13 we're looking at 228 and 234. And 228 is in support, and 234 is  
14 in opposition? Okay.

15 MS. FOWLER: The other way around.

16 MR. SHERRY: The other way around.

17 VICE CHAIR JOHN: Oh, my goodness. I thought I had  
18 this, you know, very clear last night. I just have read this a  
19 million times. But anyway, so let's start over. So we have 234  
20 in support. This is the south facing, the property to the south.  
21 And 228 in opposition, that's the house with the shadow. Okay.  
22 And that's a north property. Okay. So do my Board members have  
23 that now? The property owner to the north, 228, is in opposition,

1 and the property owner to the south is in support, that's Mr.  
2 Sherry and Ms. Kiddler are now in support.

3 MR. SMITH: Yes.

4 VICE CHAIR JOHN: All right. So I don't believe I need  
5 a Board vote on -- I mean, a roll call on this. So I'll go ahead  
6 and just admit those parties, and move on with the hearing.

7 So now that you've been granted party status you'll be  
8 given all of the rights. So any other parties you will be given  
9 the same amount of time as the applicants to present your  
10 statement. You'll be allowed to cross-examine witnesses. We hope  
11 that your testimony will not be redundant, but you will be given  
12 the same rights as any other witness. As any other party. If you  
13 are not granted party status you may still testify, and you will  
14 be limited to three minutes.

15 Okay, I believe we're ready to move on with the hearing.  
16 So let the applicant begin her case.

17 MS. FOWLER: Thank you everybody.

18 VICE CHAIR JOHN: Can you introduce yourself?

19 MS. FOWLER: My name is Jennifer Fowler. I'm the  
20 architect representing the homeowners on this case. I do have a  
21 PowerPoint that I submitted, that I was hoping to share. Thank  
22 you.

1           Okay. I know that you're all familiar with the plan, so  
2 I will try to go through quickly, just to kind of summarize  
3 things. This is a proposal for a rear addition, two stories.  
4 We're asking for the occupancy relief and the rear set back  
5 relief. Next slide.

6           You can see some photos. The property to the right with  
7 the open porch is 230, and then the white siding at the rear is  
8 232. Next slide, please.

9           Okay, so just to quickly summarize. We originally filed  
10 back in February. We had a May hearing date. And the original  
11 proposal was almost 70 percent coverage. We were asking for 17  
12 and 26 feet beyond the adjacent rear yard, rear walls. We also  
13 included a third floor addition with a roof deck off the back. We  
14 did meet with the neighbors back in April and heard everybody's  
15 concerns. And so at that point we revised for our second filing  
16 that you saw in the case, where we, at the request of Mr. Sherry  
17 I believe, when he was dealing with our homeowners, we kept the  
18 rear wall to 10 feet beyond their enclosed porch. So the second  
19 proposal we were seeking the 10 feet beyond that porch, but  
20 because the house at 230 has an open porch, and because of the way  
21 the zoning office measures the 10-foot setback, we are still  
22 needing the 10-foot relief. Because they measure it to the  
23 condition space. So we also had -- we eliminated the roof deck



1 | because there was definitely some concerns from neighbors,  
2 | particularly Mr. Core, about the privacy issues caused by a roof  
3 | deck at that top floor. So we did remove the roof deck.

4 |           We presented this to the neighbors, and we still had  
5 | opposition. In fact, probably more opposition accumulated since  
6 | then. So -- and we did hear at that meeting that the third floor  
7 | was particularly concerning for people. So my client was willing  
8 | to get rid of the third floor, despite the fact that was not  
9 | really even -- it didn't really require zoning because of the  
10 | occupancy or setback. So we kind of we eliminated the roof deck  
11 | Mr. Corder about the privacy top floor. So we did eliminate  
12 | that.

13 |           So our current proposal is existing, is continuing with  
14 | the same height of the house. We have the 10 feet beyond 234.  
15 | And then we have 19 feet beyond 230. So we're about 10 feet  
16 | beyond the rear porch there. Next slide, please.

17 |           And then you have some additional photos. Next slide.

18 |           Oh, I'm sorry. That doesn't -- can you go forward. Oh,  
19 | there. This is the one. Okay. So this is just a graphic kind of  
20 | showing kind of where we started in blue, and where we are in  
21 | yellow. Just for kind of reference on how this project has  
22 | evolved. And I feel like the homeowners have really done a good

1 job of listening to neighbor feedback and accommodating them. Next  
2 slide.

3 This is just a general block plan. You can see there's  
4 a one-story garage that we're demoing in order to get the lot  
5 occupancy down. Next slide, please.

6 And this is the site plan. So again, you can see on  
7 relative to 230 10th Street, we have a 19-foot extension. And  
8 then relative to 234, we're only going back 10 feet. The basement  
9 level, the cellar level goes back another four feet. That level  
10 is only about seven feet above grade. So it's roughly at fence  
11 height. The lower level is the 62 percent, 62.3 percent  
12 occupancy, but the upper two levels, the rear addition, they're  
13 below the 60 percent threshold. So as far as the first and second  
14 floors are concerned, those are essentially matter of right  
15 occupancy. And where the addition at 230 10th Street enclosed,  
16 this would essentially be a matter of right project. So I just  
17 wanted to point that out. Any of the neighbors that are to the  
18 south would be able to build this addition, as upper levels with  
19 no zoning relief. This is the only open porch on that stretch of  
20 houses at 230. Next slide.

21 Next. This is more of a site line study showing kind of  
22 the building sections. Next slide.

1           These are the demo plans. You can kind of just scroll  
2 through these floor plans, just for reference. Next slide.

3           So the cellar floor plan, we've got a rental apartment  
4 down there, two bedrooms. The owners would like to make that a  
5 legal rental unit. So we are going to go through the process of  
6 getting (indiscernible) for that unit. Next slide.

7           You've got kind of a standard kind of addition of a  
8 living space at the back. And you can see the landing at the back  
9 is very narrow. It's really just meant for circulation space.  
10 And that sits right above the cellar that's enclosed below.  
11 Next slide.

12           And then you have the second floor plan here. And next  
13 slide.

14           Roof plan. And moving on, we've got elevations. Next  
15 slide.

16           Okay. So the front elevation is on the left. And  
17 originally we had a third floor addition that was included in that  
18 elevation. So that has been removed. And on the rear elevation  
19 you can see where kind of we're proposing a kind of panel design  
20 with lots of glass, double hung windows and a brick base kind of  
21 sitting, you know, below the deck at the back. Next slide.

22           And then here you can see the view from the north, where  
23 you have the open porch next door, and then you can see the 10-

1 foot kind of extension. We're doing a panel wall detail. Those  
2 are not windows. They're just more like painted panels. And then  
3 the brick extension going out an additional four feet on that.  
4 Next slide.

5 And this is the view from the south. This is, again,  
6 the kind of, the one that kind of meets the 10-foot extension when  
7 you're looking at it from this prospective. Next slide.

8 So those are the plans. We did a number of sun studies.  
9 I know that one of the applicant -- the party status applicants  
10 was concerned about the fact that we presented so many sun  
11 studies. So I just wanted to point out that we have kind of been  
12 layering more information, and really ultimately have modeled the  
13 whole alley. So you'll see we've done many, many sun studies.  
14 We've provided all the information that everybody has asked for  
15 over the past few months. So this is kind of a prospective view.  
16 You can see the proposed -- the existing on the left and proposed  
17 on the right. And this is really the worst case. You've got  
18 winter solstice. You can see that primarily the impact is on 230.  
19 And then if you can kind of scroll through. Next slide.

20 This is mid morning. You can see the shadow does extend  
21 to 228, but it is below the window that's on the side of that  
22 structure. And I have a little more detailed sun study to show  
23 you regarding 228. Next slide.

1           This is winter afternoon, 1:00. Next slide.

2           And then by 3:00, you know, everything is kind of in  
3 darkness in the back of those houses. Moving on, next slide.

4           Spring and fall. This is from March 21. You've got a  
5 little shadow on 230. Next slide.

6           Eleven a.m., it's kind of really impacting the, just the  
7 beginning of the yard at 230. Next slide.           Again, more yard  
8 impact at 230. And next slide.

9           And then by 3:00 the shadow is kind of extending back,  
10 the very back of the yard. And I want to note, 230 has said they  
11 are not concerned about the shadows, and have withdrawn their  
12 opposition. So they've seen these sun studies, and they're  
13 comfortable with this impact. Next slide.

14           Summertime. We can kind of scroll through these  
15 quickly. There's really no impact. You can just kind of flip  
16 through. Next, next. There's a little impact on the yard. Next.  
17 And then it really extends into the yard at 232. Next.

18           There was a lot of questions from neighbors early on  
19 about the impact of the alley. And particularly with the third  
20 floor. But this sun study kind of shows you the view looking from  
21 the street kind of towards the alley, incident of throughout the  
22 day. So I picked a spring and a winter. In the summertime there  
23 is no impact to the alley whatsoever. And you can see that

1 | there's a circle. I circled anywhere where there has been a  
2 | change from existing on the left and proposed on the right. So  
3 | you can kind of, just kind of flip through those at a regular  
4 | pace. You can just kind of see the sun moving across. And you  
5 | can see there's no change. This is 9 a.m., 10, 11, 12, 1:00,  
6 | 2:00, 3:00, 4:00, 5, and then by, you know, 6 and then 7 there's,  
7 | it's in shadow. And then if you go to the next slide.

8 |           We have December. So 7 a.m., nice and dark. If you  
9 | scroll through, again, you'll see, you know, at 7:30, 8:00 a.m.,  
10 | 9:00 a.m. So you can see on the right this is where there is a  
11 | slight change mid morning, in December. And it's really kind of  
12 | the shadows cast through that sun porch. Again, 11 a.m. Keep  
13 | going. Twelve. And next.

14 |           And you can track that circle going back. Kind of  
15 | really hitting the fence line at the back. And then we're pretty  
16 | much back in shadow. Okay. Next slide.

17 |           So this one is looking at 228, by Ms. Billingsley's  
18 | property. What we're seeing here, this is -- we kind of done a  
19 | winter study, again, because that's the only time we saw impact on  
20 | that wall. So the top, this top picture on the slide is the  
21 | existing condition. And then the one at the very bottom is the  
22 | proposed. And what we did for the middle slide is, and this is  
23 | something we worked with the ANC on their request, was to show

1 | what would -- what would it look like if the neighbor at the end,  
2 | at 230, were to enclose their sunroom by matter of right or, you  
3 | know, hang a privacy fence, or something. So basically blocking  
4 | off that open porch. So you can see what shadows are going  
5 | through the open porch and which ones are kind of beyond that. So  
6 | if you want to scroll through, this is 9 a.m., this is 9:30. You  
7 | can see the shadow on the bottom. It's kind of still within that  
8 | porch area. Keep going. So 11:00 a.m., you can see at the  
9 | bottom, there is the shadow starts to extend out beyond the porch  
10 | next door. Keep going one more. At 11:30 it's kind of just  
11 | underneath the window at 228. Keep going. Twelve o'clock, and  
12 | then 12:30. And then by the afternoon, if you keep scrolling  
13 | through, you can see it just kind of no longer close to those  
14 | windows.

15 |           Okay. And then just to give you -- I'm not going to go  
16 | through this in great detail. Basically, we had concerns raised  
17 | by neighbors across 10th Street and neighbors on 11th Street. So  
18 | we were just showing them with the sun study that there's, the  
19 | shadows do not reach across the street or across the alley. This  
20 | is all kind of December, 7:00 a.m., 8:00 a.m. Next slide.

21 |           This is 9 on the top and then 10. Keep going, 11 and  
22 | 12. Next slide. Yeah, keep going. Thank you.

1           So, again, this is really more of a big picture for  
2 concerns that were raised during the ANC process. Okay. I think  
3 that's my final slide.

4           So just to kind of go over the points. In terms of light  
5 and air, as you can see with the sun studies, the primary impact  
6 is to 230 in really certain times of the year. There is some  
7 shadow cast on 228, but you can see, based on the window  
8 locations, and also the fact that the neighbor has an open porch  
9 that could easily be enclosed, that there is a very small change  
10 to those shadows. There is a great reduction based on the  
11 original proposal. So the original proposal to now I think we've  
12 really kind of addressed a lot of those concerns.

13           In terms of the privacy, again, I had mentioned we  
14 originally had a deck on the top that we've removed. I also  
15 wanted to note that the existing house has a rather large, like  
16 eight or nine-foot deck that currently is up at seven feet above  
17 the ground, which offers kind of unlimited views towards, you  
18 know, the north, south and all around towards the alley. That  
19 deck is getting eliminated, and the new kind of landing that we're  
20 proposing is only four feet deep. So it's really meant more for  
21 circulation, maybe one chair or two chairs. It's a very small  
22 space. So I think that, you know, the number of windows hasn't  
23 been significantly increased. So I think overall the privacy by



1 | enjoyed by the neighbors is actually going to be improved over  
2 | what they have now.

3 |           As far as the pattern and scale, it is not visible from  
4 | 10th Street. We're keeping the same height as the existing house.  
5 | The slope is going to continue down to this new addition. We're  
6 | using historically compatible materials. We've even talked with  
7 | the Fox's about color. You know, they had a concern about having  
8 | a dark color and the heat gain. So we've agreed to a light color.  
9 | So that's something we've talked about with them. There are  
10 | similar additions on the block. We have CHRS has stated that they  
11 | believe that the project is compatible with the Capitol Hill  
12 | Historic District. We also -- we were on the consent agenda for  
13 | HPRB last week. They have not published the results, but HP staff  
14 | said the scale of the addition is in line with many past Board  
15 | approvals. The block has some variety of additions, rear, L's,  
16 | dog legs, and additions at the interior. HP recommendations that  
17 | the Board find the project to be compatible with the Capitol Hill  
18 | Historic District. We also have the support of the ANC, who has  
19 | listened to all these concerns. Commissioner Holtzman has been  
20 | amazing, and he's been participating in all these meetings. We  
21 | had two additional meetings on top of the regular ANC meetings.  
22 | So, as far -- sorry. For the pattern and scale I think historic,  
23 | you know, has said that they've given it their blessing.

1           So with that, I think that's the end of my presentation.  
2 I will be open to questions.

3           VICE CHAIR JOHN: Thank you, Ms. Fowler.

4           MS. FOWLER: Thank you.

5           VICE CHAIR JOHN: Does the Board have any questions for  
6 Ms. Fowler?

7           MR. SMITH: I don't have any questions.

8           VICE CHAIR JOHN: Go ahead, Commissioner Hood.

9           MR. HOOD: Okay. Madam Chair, I raised my hand. So  
10 anyway, Ms. Fowler, thank you for your presentation. I do have  
11 one or two questions.

12           I guess from my interpretation of the shadow studies,  
13 basically what I'm seeing is very minimal impact. I'm going by  
14 your presentation. Is that a fair assessment from me; did I  
15 perceive that correctly?

16           MS. FOWLER: Yes. I believe that there is a very  
17 minimal impact. There's no undue impact. I think the 230  
18 definitely takes the most impact. And they have specifically said  
19 that they are not concerned with the shadows, and they have not  
20 pursued their opposition. But I think with regard to 228, there  
21 is, it's de minimis impact.

22           MR. HOOD: Okay. I don't want to discount any  
23 opposition. I want to hear from them. But when I look at where

1 | you originally start, and anyone knows my track record, I usually  
2 | have problems with where you were originally. But I think in this  
3 | case, and I haven't seen as much as my colleagues have, but in  
4 | this case I think the cut back, if you cut back any more you might  
5 | as well just do away with the project. So I'll just leave it at  
6 | that. I'm looking forward to hearing from 228. I think just  
7 | going through the others in opposition. But I want to, first of  
8 | all say this before I hear from them. I want to applaud you for  
9 | even getting to this point. Because a lot of people that I've  
10 | seen on the BZA don't even get to this point. And then the Board  
11 | has to kind of file through it and try to figure it out. So thank  
12 | you for the work.

13 |           And also, I know the commissioner is here, but when I  
14 | read their letter, I'm just curious, are they in support with  
15 | conditions?

16 |           MS. FOWLER: My understanding is that, I think a lot of  
17 | the withdrawal of opposition and the support was based on the fact  
18 | that we did remove the third floor. And there was concern that  
19 | because the third floor could theoretically be added matter of  
20 | right, that there would be some concern that the owner would go  
21 | back later and add that. And so we did have discussions with the  
22 | ANC and the owner stated that they wouldn't add a third floor  
23 | unless things change with the neighbors. If, you know, years go

1 by and people start, if they become more open to that idea. But  
2 there is, basically, the ANC was just making sure that you knew  
3 that that was something that was important to their support, was  
4 the removal of the third floor.

5 MR. HOOD: Okay, thank you.

6 MS. FOWLER: Thank you.

7 MR. HOOD: Thank you, Madam Chair.

8 VICE CHAIR JOHN: Thank you, Commissioner. Do we have  
9 any other questions from the Board?

10 (No response.)

11 VICE CHAIR JOHN: Okay. So I'll go to the Office of  
12 Planning.

13 MR. KIRSCHENBAUM: Good morning, Chair John, and members  
14 of the Board of Zoning Adjustment. I am Jon Kirschenbaum with the  
15 Office of Planning. And we recommend approval of the rear wall  
16 extension, and also for the lot occupancy special exception  
17 relief, which would only pertain to the cellar level. And we rest  
18 on the OP report. Please let me know if you have any questions.  
19 Thank you.

20 VICE CHAIR JOHN: Thank you, Mr. Kirschenbaum. Can you  
21 talk about the shadow studies, since that's such a big issue with  
22 the homeowner at 228 10th Street, and discuss the impact of the  
23 project on that home?

1           MR. KIRSCHENBAUM: Sure. So, you know, the sun study,  
2 the principal on that committee on exhibit 6B demonstrates there  
3 is not an impact to the properties that are south of the subject  
4 property, and that there would be minimal impact on the property  
5 at 230 10th Street, Southeast, and 228 10th Street, Southeast.  
6 Again, as the applicant has demonstrated and also pointed out,  
7 that the sun -- the increased shadow would not be unduly,  
8 especially for an area that is a built out row house area. And so  
9 we don't think that there would be an, you know, adverse impact  
10 with the addition. And, you know, that's more or less what we  
11 analyzed.

12           Also, I believe that windows that are located along the  
13 alley are also at risk windows as well.

14           VICE CHAIR JOHN: Thank you, Mr. Kirschenbaum. So does  
15 the Board have any questions?

16           (No response.)

17           VICE CHAIR JOHN: I don't see any hands raised.

18           MR. BLAKE: Ms. Vice Chair, --

19           VICE CHAIR JOHN: Go ahead.

20           MR. BLAKE: I have a quick question with regard to Mr.  
21 Kirschenbaum. With regard to the character and scale of the  
22 building relative to -- on the revised plan relative to community,

1 | would you give me a quick comment on that and how you see it  
2 | versus the way it was initially proposed?

3 |           MR. KIRSCHENBAUM: Well, we (audio interference) of our  
4 | analysis -- sorry, analysis on the revised plans. So what we  
5 | analyzed was the two-story addition. And, again, that should not  
6 | substantially -- I mean, you know, the criteria is substantial  
7 | undue impact. And this would not substantially and visually  
8 | intrude upon the character, scale and pattern of houses. The  
9 | existing building and the proposed two-story rear addition would  
10 | be 27 feet in height and two stories. And that would comply with  
11 | the zoning regulations. The zoning regulations insist that new  
12 | buildings and additions can go up to 35 feet in height and three  
13 | stories. So this is below that. Again, the proposed height scale  
14 | and design as viewed from the street are in keeping with the  
15 | intent of the zoning regulations and also the prevailing  
16 | residential character of the block. The proposed two-story rear  
17 | addition would be located in the rear of the subject property and  
18 | would generally not be visible from 10th Street, Southeast.  
19 | Further, the existing front setback is consistent with the front  
20 | setbacks of the abutting properties along the block's front. And  
21 | that would be retained. The proposed two-story addition would, of  
22 | course, be visible from the alley, but it would not substantially

1 | visually intrude upon this. And would keep with the residential  
2 | character of other houses along the alley.

3 |           Further, the applicant has also incorporated building  
4 | materials that are commonly used on other buildings along this  
5 | block front. The Historic Preservation Review Board approved this  
6 | last week on its consent agenda. It also received a letter of  
7 | support from the Capitol Hill Restoration Historical Society.  
8 | Thank you.

9 |           MR. BLAKE: Thank you.

10 |           VICE CHAIR JOHN: Thank you, Mr. Kirschenbaum. So Mr.  
11 | Holtzman, would you like to pose any questions to the Office of  
12 | Planning? Is the ANC commissioner here?

13 |           (No response.)

14 |           VICE CHAIR JOHN: Okay.

15 |           MR. HOLTZMAN: No, not at this time. Thank you.

16 |           VICE CHAIR JOHN: Oh, okay. Thank you. And I should  
17 | have asked you if you had any questions of the Applicant? Do you  
18 | have any questions at this time?

19 |           MR. HOLTZMAN: No, I do not.

20 |           VICE CHAIR JOHN: Okay. And you heard the discussion  
21 | with Commissioner -- I'm having a brain freeze again -- with the  
22 | commissioner and the applicant concerning the ANC's position on  
23 | the third floor?

1 MR. HOLTZMAN: I would like to comment on that if I  
2 could, lease.

3 VICE CHAIR JOHN: Okay. Go ahead.

4 MR. HOLTZMAN: When our decision as ANC to support this  
5 application going forward and the zoning relief request4ed, as  
6 noted in our written remarks was based upon the combined review  
7 and the combined impact of the addition that is possible, with the  
8 two exceptions that they're requesting and the removal of the  
9 third floor. And we are struck, as Jennifer mentioned, by the  
10 reality that the third floor has always been a predominantly a  
11 matter of right issue as pertained to zoning. And so we did ask  
12 the Applicant, in an open, public meeting, whether they had any  
13 intention of doing this in the future. And we asked for some kind  
14 of a signal from them that they would not do this. And we  
15 received that. And they did state that to us in a public meeting,  
16 in our planning and zoning meeting earlier this month. And so we  
17 do have a request of the Board. It's not a condition, but if  
18 possible we would like the Board to find some way to incorporate  
19 the fact that this position has been stated by the Applicant in  
20 any final order if you do choose to grant the zoning relief.  
21 report I can answer any questions about that if you need to.

22 VICE CHAIR JOHN: Thank you very much. And I see a hand  
23 up. Yes?



1 MR. ANDERSON: Madam Chair, this is Geoff Anderson, the  
2 applicant. So I just wanted to say that I think Steve pretty much  
3 fairly articulated the discussion. I just wanted to be very clear  
4 about what I had said. That we, as the applicant, we liked the  
5 third floor. We wanted to do a third floor. Obviously, we  
6 wouldn't have proposed it if we didn't want to. We were not happy  
7 that everybody also is unhappy with it. So we took it off. And I  
8 think what I said last time was that we don't have any intention  
9 of doing a third floor while there is such widespread opposition.  
10 We hope that would change in the future. And, you know, if that  
11 did, then we would reconsider. But, you know, as long as the  
12 neighbors feel the way they do, we don't have an intention of  
13 doing a third floor. Steve, do you agree that's basically what I  
14 said?

15 VICE CHAIR JOHN: Thank you. Before we go on, Mr.  
16 Anderson, could you state your name and address?

17 MR. ANDERSON: Oh, I'm sorry. Geoff Anderson.

18 VICE CHAIR JOHN: And your address for the record?

19 MR. ANDERSON: 232 10th Street. Thank you.

20 VICE CHAIR JOHN: Thank you. So let me see if the  
21 Board has any questions of you before we go on. Does the Board  
22 have any questions?

23 (No response.)

1 VICE CHAIR JOHN: Okay. Commissioner?

2 MR. HOOD: Madam Chair, yes. I want to ask Commissioner  
3 Holtzman. Help me understand. I appreciate all the work it looks  
4 like the ANC has done. As a Board member, help me understand, why  
5 would I want to limit any homeowner who is not going to do  
6 something, or something that may happen in the future? Because  
7 people change, neighborhoods change, people do things differently.  
8 So help me understand why we would want to push something like  
9 that. We can, I think and I'll leave that up to the legal folks.  
10 We can point to something to say, this is the agreement now. But  
11 why would I want to make it, and try to make it enforceable. I  
12 don't even know if it's enforceable, of something that may happen  
13 in the future. If you could help me understand that. I didn't  
14 follow that last part. Everything else was good but that.

15 MR. HOLTZMAN: Thank you, Commissioner Chair Hood. I  
16 think I can respond to that. Is that in reviewing this  
17 application and the request for zoning relief, we were trying to  
18 be as inclusive as possible of our understanding of the situation.  
19 And if the zoning relief were not supported, the third floor may  
20 have been done as a matter of right by the Applicant in any case,  
21 in isolation from anything else. That would create a certain type  
22 of massing, a certain type of view by neighbors of adverse impact.  
23 If -- that would be in the condition that the zoning relief that's

1 being asked for now were not supported. The reality is that no  
2 expansion horizontally can happen on this property without an  
3 exception. They have one foot of room to move back. And so  
4 there's no cost-effective strategy that I assume could be  
5 undertaken.

6 So by supporting the relief, we are supporting the  
7 expansion of the property backwards. And it's a combination of  
8 that and the third floor that, for us, would be problematic and  
9 for the neighbors. And in our written statement we noted, I think  
10 what is an extraordinary kind of phenomenon, that the opposition,  
11 when this was, when this third floor was a part of it, and the  
12 current zoning relief was being requested, which was the  
13 Applicant's second revision, there were at least 50 neighbors  
14 within a block who wrote to the ANC specifically opposing this.  
15 It was unanimous for as long as that was the case. Every neighbor  
16 either did not make a comment or opposed it. There were no  
17 neighbors in favor of it. And in light of that kind of  
18 cohesiveness neighborhood response, we have to take this quite  
19 seriously. You don't get that very often. Normally it's kind of  
20 a split. And in that context, if the Applicant were able to  
21 achieve the relief that they want now, and expand massing of the  
22 structure under that relief, and then as a matter of right, in a  
23 year or two, just extend the third floor. If we knew that in

1 advance we wouldn't have approved a relief. And we recognize that  
2 we're caught here, and that this is a future action.

3 And so we did discuss, I discussed with the zoning  
4 office the issue of covenants prior to this meeting. And for  
5 various reasons regarding the mechanics of our meeting, the ANC,  
6 we weren't able to formalize this. But we wanted to leave it to  
7 the Board to find any mechanism that you are comfortable with to  
8 at least provide this marker for the future. I do agree that  
9 Geoff's reiteration of what he had said is accurate. And we're  
10 just trying to find an answer to this that will reflect the  
11 concerns of all the parties.

12 MR. HOOD: Okay, thank you. Thank you, Commissioner  
13 Holtzman, and thank you for your work. Thank you, Madam Chair.

14 VICE CHAIR JOHN: Mr. Anderson, would you like to  
15 comment? And before you start, let me say for the parties in  
16 opposition and support. I will get back to you. I missed you in  
17 part of the sequence in terms of whether or not you had any  
18 questions. So I'll get back to you.

19 Go ahead, Mr. Anderson.

20 MR. ANDERSON: Thank you, Madam Chair. I just want to  
21 note, I mean, we would strongly object to an attempt to limit what  
22 is by right for, you know, in some permanent way for the future.  
23 You know, for us, if we were going to do a third floor, the time

1 to do that is now, as part of this project. And we're not going  
2 to do it as part of this project. And it would be very, you know,  
3 prohibitively expensive to then come along and do some second  
4 project. And it would be in bad faith. And we have no interest  
5 in that. But similarly, we have no interest in precluding actions  
6 10, 15, 20 years down the road by our heirs, by our successors, by  
7 other future property owners. And I don't think that's consistent  
8 with what other people have had to do for this kind of addition.  
9 So, you know, I'd have a real issue with that.

10 VICE CHAIR JOHN: Okay. Thank you very much. Does  
11 any Board member have a question?

12 (No response.)

13 VICE CHAIR JOHN: Okay. So I'd like to go back to Mr.  
14 Billingsley and Mr. Ball. Are you on the line?

15 MS. BILLINGSLEY: I am. This is Tara Billingsley, 238  
16 10th Street.

17 VICE CHAIR JOHN: Good morning, Ms. Billingsley. Can  
18 you -- well, first of all, did you have any questions for the  
19 Applicant or the Office of Planning?

20 MS. BILLINGSLEY: Well, I sort of have a question  
21 that's combined with maybe explaining a little bit some of my  
22 concerns. So I don't know what the best way to progress is, for

1 me to just sort of ask a question or for me to give you all a  
2 sense of why we remain in opposition to the project.

3 VICE CHAIR JOHN: Okay. I think since we're completely  
4 out of order, just go ahead and give your statement.

5 MS. BILLINGSLEY: Okay. Well, thank you for that. And  
6 I appreciate it. And I appreciate everyone giving me an  
7 opportunity to explain why we remain opposed to this version of  
8 the project.

9 I guess maybe just a couple baseline expectation,  
10 setting kinds of points. The main one is that I want to be sure  
11 that the Board understands that 232, 234 and 230 are not owner-  
12 occupied houses. Whereas, the opposition that you have gotten  
13 originally and are getting even now on the block is coming from  
14 residents. So there is a split between resident and nonresident  
15 owners on this project. And we are the nearest and the most  
16 directly impaired, impacted residents of the project.

17 So the other thing that I want to point out is that  
18 these sun studies I think do accurate, well, I hope accurately  
19 show that the impact of the shadowing on our house of this third  
20 version of the proposal would be significantly lessened. And this  
21 is where the question is embedded. We still don't know where the  
22 mechanicals are going to be. There are a couple of basic  
23 questions that neighbors have had. This was not my question, but

1 a question that was posed by others is: If the basement is going  
2 to be dug out, by how many feet? You know, how big a project are  
3 we talking about there? And then I have the question about where  
4 will mechanicals be placed? Because there's shading directly into  
5 my windows in each of the previous two proposals. We were talking  
6 about shading in the middle of the day, on a winter day. A window  
7 that faces due south, and is completely unobstructed would now be  
8 shadowed in the middle of the day during winter. Now that  
9 shadowing is sort of like almost by magic goes right under our  
10 window instead of covering our window, yet I can envision a  
11 scenario where we have probably like two units, since it's going  
12 to have a separate basement and upstairs unit, which I understand  
13 and no objection to it at all. I have that in my own home. But  
14 that's a fair amount of mechanicals that are placed on a roof.  
15 And sometimes regulations require that those be fenced. And I  
16 don't know where they're going to go. And I can easily envision a  
17 scenario where much of the benefit that my property accrued in  
18 this third revision of the proposal is sort of wiped out by some  
19 information that we don't have right now. So I just kind of  
20 wanted to raise that. And if there is an answer to that, I'd  
21 certainly love to know it right now.

22           And then the last issue I guess maybe that I really  
23 wanted to emphasize here, and then I'll hold my peace and see what

1 the session might ensue, is that there has been some discussion  
2 that 230, which is the property that sits between the Applicant's  
3 property and my property does have this unenclosed sleeping porch,  
4 which is unusual. I agree with that. It is a factually accurate  
5 statement to say there are not many of those. But I want to  
6 emphasize two points. One, is that I get a benefit at my property  
7 out of that unenclosed sleeping porch. A significant amount of  
8 the light that comes into my property as well as the view from my  
9 11 south facing windows is accrued because of this unenclosed  
10 sleeping porch. So I take issue with the idea that we should just  
11 not consider that benefit when we think about whether to extend  
12 232. To me, it sounds like folks are just counting the existing  
13 benefit of that sleeping porch. And in my mind, that's exactly  
14 why the zoning rules start from the back wall of the house, from  
15 the condition space, rather than the porch space. It's because  
16 other nearby neighbors are still getting a benefit from that  
17 porch. One thing that I have been very pleased by through this  
18 process is that the landlord owner of 230 10th Street has stated  
19 that he has no intention of enclosing or altering that sleeping  
20 porch in any way.

21 I think those were really my main points. I'm still  
22 concerned that as this project could progress, the sun studies  
23 show this much reduced impact to my property might turn out to



1 have been inaccurate. So that is one concern. Another concern is  
2 that we're sort of giving rights as investors, perhaps more weight  
3 than the residents of the block would prefer. And then finally, I  
4 would just ask that folks think about the benefits of my property  
5 that I understand 230 has the right to take away but has stated  
6 that he has no intention of taking away.

7 So thank you for that. And I'll hold my peace and see  
8 where we go from here.

9 VICE CHAIR JOHN: Okay. We have two things. We have a  
10 question and then we have your statement. So as to the question  
11 on mechanicals, I'll ask Ms. Fowler to address that. And I'll  
12 construe it as a question for Ms. Fowler.

13 MS. FOWLER: Okay. Thank you. The basement, you know,  
14 will most likely have a mini split system, which will have a small  
15 compressor on the ground. And then for the upper unit most likely  
16 a split system which will have a small compressor on the roof, an  
17 interior floor unit. But, you know, those are only -- those can  
18 sit on top of the roof. They don't need to be on beams.  
19 Particularly because we're framing, you know, we're doing new roof  
20 framing. So, you know, we're only talking about maybe a three-  
21 foot height, three-by-three-by-three structure. And we can  
22 certainly place that in a manner that does not increase any  
23 shadows to 228.

1 VICE CHAIR JOHN: Okay. Thank you. So does the Board  
2 have any questions for Ms. Billingsley?

3 (No response.)

4 VICE CHAIR JOHN: I don't see any hands.

5 Does the Applicant have any questions for Ms.  
6 Billingsley?

7 MS. FOWLER: No, thank you.

8 VICE CHAIR JOHN: And does the ANC have any questions  
9 for Ms. Billingsley?

10 MR. HOLTZMAN: No, thank you.

11 VICE CHAIR JOHN: And, Mr. Sherry, do you have any  
12 questions for Ms. Billingsley?

13 MR. SHERRY: No, I don't. Thank you.

14 VICE CHAIR JOHN: All right.

15 MR. SHERRY: Just -- I want to offer one clarification  
16 though.

17 VICE CHAIR JOHN: Okay.

18 MR. SHERRY: That she noted that 234 is not owner-  
19 occupied. And I would say that mostly through COVID that has been  
20 the case. That prior it was, and in the last few weeks it has  
21 been again. So it is shared. It is now a shared occupancy. But  
22 it was owner-occupied.

23 VICE CHAIR JOHN: Okay. Oh, I'm sorry, go ahead.

1 MR. SHERRY: No, that's it. That's all I have to say.

2 VICE CHAIR JOHN: Okay. Thank you very much.

3 And so Mr. Sherry, as the party in opposition, do you -- I  
4 think I asked you if you had any questions for anyone. And you  
5 said just this one.

6 So now, do you want to make a statement in support?

7 MR. SHERRY: I will. It's -- you know, it's -- we wrote  
8 several months ago voicing what was very strong opposition to the  
9 proposal at the time. And largely based on the size of the  
10 structure, and that it's not fitting into the space in a kind of a  
11 harmonious way.

12 We were pleased that this approach was more  
13 collaborative. It would have been better if we'd started that  
14 way, but we got there. And so at this stage that's why we  
15 withdrew our opposition. We do -- I would not say this is a  
16 conditional withdrawal, but I would just say we did so with some  
17 understandings that came out of the discussions. And the first  
18 understanding, which I think has been discussed in depth by Steve  
19 and others, is around that there would not be a later -- they  
20 would not seek a full renovation of the third floor. Also, that  
21 there would be some construction agreement prior to the beginning  
22 of the demolition. There have been a number of renovations on  
23 the alley, as there are everywhere in DC, and of course that

1 creates disharmony throughout. And so we do understand that there  
2 is, that 232 will develop a construction agreement, just for good  
3 harmonious life during the construction period.

4 One small detail, nevertheless, it's important for us,  
5 is, and we, again, anticipate that we will sort that out. But if  
6 there was BZA guidance on this from other cases that would be  
7 helpful. And that is, is that on Capitol Hill these little dog  
8 legs that exist between the houses, where there were porches but  
9 now these porches are being extended out into the actual part of  
10 the structure, it makes the serviceability to the adjoining  
11 properties more difficult. And so we -- I suppose that is a  
12 question, but not one that I'm holding up for an answer for but  
13 one I expect there will be answer for in due course. But I do  
14 want to flag that. And perhaps the BZA has had some positive  
15 experience with this in the past. And if there is, it would be  
16 shared.

17 Finally, I just -- it's a comment, not in this case but  
18 in general. I suppose these things are always difficult or often  
19 difficult. And I wonder if they really have to be always  
20 difficult. And I do think that there's some point of reflection  
21 on process, whether the -- what are the incentives that the BZA  
22 and the other bodies that are involved in the zoning process  
23 create for neighbors to create more harmony in advance of these

1 things. This has not been a harmonious process. And I think it  
2 will take some time for the relationships to be reestablished  
3 afterwards. And I think the BZA and other processes have to think  
4 about that. We tend to focus on what we can measure rather than  
5 what's important. I'm really sympathetic because like here, we've  
6 done a lot of talk about shadows because that's measurable. But  
7 we haven't talked about, you know, view, we haven't talked about  
8 ambient light, we haven't talked about air distribution because  
9 they're difficult to measure. And we know that, you know, what's,  
10 you know, what's measurable gets the conversation. That's not  
11 necessarily what's important, you know. Respect is important.  
12 And that's very hard to measure.

13           So that's, I guess my last, my plea beyond this  
14 particular case. But just to summarize, we think the original  
15 proposal was not appropriate, that the owners listened, and that  
16 this one has been more collaborative. And that as the most  
17 effective adjoining neighbor, we support the current proposal.

18           VICE CHAIR JOHN: Okay. Thank you very much for your  
19 statement.

20           So does the Board have any questions? I know  
21 Commissioner Hood. So I will just add one thing before you start,  
22 Commissioner Hood. Just to clarify for Mr. Sherry that the Board  
23 is quite clear that views are not protected, and ambient light is

1 | so hard to measure. So we look at shadow studies because we can  
2 | usually see if there's a difference. And I think this is one case  
3 | that accurately showed where the shadow studies help to show for  
4 | 228 how the light shifted once the third floor was removed.

5 |           Just a few quick comments, because I've heard it before.  
6 | The regulations do not prohibit investors or non-property owners  
7 | from commenting. They're equally affected as anybody else. So  
8 | that's a recurring theme in this case. And I appreciate what  
9 | you've said in terms of the disharmony, but I think that's because  
10 | there's some confusion about what's protected under zone and  
11 | what's not. And so I'd just like to throw that out. For example,  
12 | we cannot prohibit a homeowner from adding a third floor later on  
13 | if it's a matter of right. And so the Board would never  
14 | incorporate a condition like that in an order, even if the  
15 | homeowner agreed. So there's just a lot of misconceptions in this  
16 | case that I hope will be clarified after this.

17 |           Now, Commissioner Hood, I will defer to you.

18 |           MR. HOOD: Yes, Madam Chair, I really appreciate your  
19 | comments. So that helped me lessen my comments. Because that's  
20 | kind of where I was going. But I wanted to go to Mr. Sherry about  
21 | his comments. Any help you can give us to your last part about  
22 | harmony and being able to work together would be very helpful.  
23 | You can always contact the office. I'm soliciting your help,

1 since you volunteered for us to do it. It's always helpful. But  
2 I can tell you, every situation is different in the City. We  
3 would love for it to be like this. Even though I heard Ms.  
4 Billingsley and others, you still, your approach is still not in a  
5 very angry attitude towards us. Because as the chair, Madam Chair  
6 has mentioned, we do have regulations. But I will tell you, Mr.  
7 Sherry, if you could talk to the Office of Planning and give us  
8 some of your ideas, I will ensure you that we will incorporate  
9 some of that, if you could help us as well. We're always open for  
10 suggestions. I'll leave it at that. Thank you. Thank you, Madam  
11 Chair.

12 VICE CHAIR JOHN: Thank you.

13 MR. SHERRY: I appreciate that. We'll take you up on  
14 that very kind offer.

15 VICE CHAIR JOHN: Okay. So now I have to try to figure  
16 out where we are. I think we are -- all the parties have -- oh,  
17 does the Applicant have any questions for Mr. Sherry?

18 MS. FOWLER: No, thank you.

19 VICE CHAIR JOHN: Okay. And did the ANC have any  
20 questions for Mr. Sherry?

21 MR. HOLTZMAN: Just -- thank you. I do have a question,  
22 but it's linked to Mr. Sherry's comments, but it's more back to  
23 the Board's and referring to Geoff Anderson's comments previously.

1 | If we, in regard to -- and I hear Ms. Chair, I hear your comment  
2 | explicitly regarding the inability and unwillingness of the Board  
3 | to prohibit a homeowner from doing something later which is a  
4 | matter of right. And I respect that and understand where it's  
5 | coming from. Which is why in the ANC's formulation of this we  
6 | just -- all we -- we understand that any reference to this is not  
7 | fully determinative in the future. We just want to memorialize  
8 | the fact that this assertion has been made, that there's no  
9 | intention. That does not block the homeowner in the future from  
10 | changing their mind if the circumstances change. But it does  
11 | provide a marker for discussion if that situation does take place.  
12 | And that's what we're asking you to consider. Thank you.

13 |           VICE CHAIR JOHN: Thank you very much. So thank you.  
14 | Thank you.

15 |           Mr. Young, do we have any witnesses signed up to  
16 | testify?

17 |           MR. YOUNG: Yeah. I wasn't sure if Mr. Role or Ms.  
18 | Opper-Weiner were going to testify. I know they were either  
19 | denied or through their party status. But I wasn't sure if they  
20 | wanted to testify.

21 |           VICE CHAIR JOHN: So they're allowed to testify. So  
22 | before we let them in, can we take a quick, five-minute break? So



1 | it's 11:11. Let's reconvene -- it's more like nine minutes.

2 | Let's reconvene at 11:20.

3 | (Whereupon, the above-entitled matter went off the  
4 | record and then resumed at 11:21 a.m.)

5 | VICE CHAIR JOHN: The Board is back in session after a  
6 | short break. And before we broke I was asking Mr. Young to bring  
7 | in the witnesses.

8 | MR. YOUNG: Yes, they're in.

9 | VICE CHAIR JOHN: Okay. I see Ms. Opper-Weiner, Mr.  
10 | Role, and I believe that's it. Ms. Opper-Weiner, can you hear me?

11 | (No response.)

12 | VICE CHAIR JOHN: Ms. Opper-Weiner, can you hear me?

13 | (No response.)

14 | VICE CHAIR JOHN: Hello? Mr. Role?

15 | MS. OPPER-WEINER: He's out of the country, Mr. Rode.

16 | VICE CHAIR JOHN: Okay. So are you choosing not to use  
17 | your video, Ms. Opper-Weiner?

18 | MS. OPPER-WEINER: No, I'd like to. I just don't know  
19 | how to do it. I'm afraid to touch anything because I kept getting  
20 | pushed out. And I'm on a phone call. I called in to the Webex  
21 | number.

22 | VICE CHAIR JOHN: Okay, fine. So --

1 MS. OPPER-WEINER: I'm happy to use the video. I don't  
2 know how to do it.

3 VICE CHAIR JOHN: Well, we can hear you, so it's fine.  
4 Please state your name and address for the record, please?

5 MS. OPPER-WEINER: Yes. My name is Ellen Opper-Weiner,  
6 and I live at 223 10th Street, Southeast. And I have a question.  
7 When you asked the question about your address, do you want to  
8 know where I live or do you want to know which property I own? My  
9 case is both. I live here, and I own the property.

10 VICE CHAIR JOHN: Where you live. The regulations say  
11 name and home address.

12 MS. OPPER-WEINER: Home address. Okay. But Mr.  
13 Anderson does not live at 232 10th Street, Southeast. We ought to  
14 correct the record on that. I would like to have the video on.  
15 Do you know how to turn that on?

16 VICE CHAIR JOHN: Well, there is a button that should  
17 say start video.

18 MS. OPPER-WEINER: I don't have -- I can't -- I'm on a  
19 phone call, remember. So I don't know if that makes a difference.  
20 I think I see a head. You think if I press that it will make --

21 VICE CHAIR JOHN: Mr. Young, can you help?

22 MR. YOUNG: I'm not sure, if she's on the phone, how  
23 it works.

1 VICE CHAIR JOHN: Okay.

2 MR. YOUNG: But I would caution against pushing any  
3 buttons.

4 MS. OPPER-WEINER: I agree. I just did it and now I'm  
5 -- okay. Can you hear me still?

6 VICE CHAIR JOHN: Yes. Please go ahead --

7 MS. OPPER-WEINER: Okay. Well, --

8 VICE CHAIR JOHN: Please go ahead.

9 MS. OPPER-WEINER: -- I'm happy --

10 VICE CHAIR JOHN: You have three minutes for your  
11 statement.

12 MS. OPPER-WEINER: Yes. I understand I really regret  
13 that because I've been trying to -- in any case. Yes. I've been  
14 living at my property since 1980. That's 40 years ago. And I'm  
15 watching the neighborhood change. And ironically, while I was  
16 sitting here, in the hearing before, I get a phone call from a man  
17 asking me if I want to sell my house. And that is a concern that  
18 we're having here in terms of the approval of this application.

19 The Applicants are planning to put a 19-foot building  
20 wall on the north end of 232. That's huge. There is no such  
21 thing that exists in this neighborhood at all. I went out and  
22 measured. We have a couple of two-story additions on that  
23 southern block, and none of them are that big. And one of them

1 DCRA could not find a permit. So it's our belief that that was  
2 done without a permit.

3           The other issues are, so the pattern and scale, it's not  
4 true. This area, and I walked around it many times, has  
5 consistent architecture from the front and from the back, as a  
6 matter of fact. And this one is bigger. You have a 19-foot  
7 building wall, that's one of the things they're asking for a  
8 special exception, not only will it impact the light at 228, but  
9 it will also make it possible that people will say, well, we have  
10 a precedent now, and the 19-foot wall can be built.

11           There's been a number of misrepresentations that I have  
12 heard in terms of this project. Yes, they did make changes, which  
13 was wonderful. The objections were so loud. There's been a lot  
14 of talking that was done in secrecy where, for example, Mr. Sherry  
15 left me four message on my email that he would call me that  
16 evening. And for some reason I didn't hear from him. I tried to  
17 get him, and I was unsuccessful.

18           So and then the ANC 6B really was a big disappointment.  
19 That, although Mr. Holtzman spent a lot of time on it, all the  
20 negotiations were done in secret with the applicant. And when I  
21 asked him for Mr. Cassel's phone number, he said I just can't give  
22 that to you. Now, he is the absent, not only the absent owner, he  
23 hasn't participated except behind the scenes in conversation. I

1 | did reach him. We had a wonderful talk. And then he asked me to  
2 | submit his letters from -- his brother is the owner of the house,  
3 | officially. And so he's asked him to help her write the letters.  
4 | And so I filed them. The next day he said -- and they were  
5 | against the project. And that's an abutting neighbor, as you all  
6 | know, at 230. And they have no intention of selling that house.  
7 | It's been a family house for many years. But he had several very  
8 | specific objections. And then, as I said, imagine my surprise  
9 | that he changed his mind. And he's entitled, of course, to do  
10 | that.

11 |           So the zoning relief, the 19-foot -- oh, and we  
12 | discussed the 19-foot building wall. He happens to be a  
13 | contractor. He does houses, Mr. Cassel does. And so one of his  
14 | misrepresentations is, first of all, I don't understand why this  
15 | is a cellar and not a basement. We have not received any  
16 | explanation as to why the Applicants have chosen to do a cellar.  
17 | I'm assuming, and I don't like to do this very often, is that  
18 | it's because of the height of the ceiling, that you can have a  
19 | lower ceiling with a cellar rather than a basement. But I even  
20 | read the regulations, which didn't say anything. I called Mr.  
21 | Reed, and he said he couldn't get the information as to what it  
22 | really meant.

1           We're also very concerned about the mechanicals and what  
2 impact not only would they have on the height and the view, but  
3 solar panels that people who -- and many neighbors here on these  
4 blocks have solar panels. But if something small is put on the  
5 roofs, it interferes with the ability of the solar panels to work.

6  
7           So we would very much, we've been asking questions to  
8 find out why the, it's a cellar rather than a basement. And why  
9 do they need the bigger, the four-foot extension? You know,  
10 what's the reason for that. We haven't been given that. What is  
11 the reason for the 19-foot wall? We have not been given an  
12 explanation for that. The size of it will set a precedent for  
13 this block. We have people walking up and down the street,  
14 knocking on doors, and asking if you want to sell your house.  
15 That's a very serious problem here. This neighborhood has gotten  
16 along with this project. I don't quite agree with Mr. Sherry that  
17 it's the process that made the lack of harmony. I think it was  
18 the secrecy and that small groups took off on their own and then  
19 forgot about the neighborhood as a whole.

20           Within 200 feet of the house everybody received, or was  
21 at least sent a letter informing. The narrow view of the abutting  
22 houses, and actually adjacent does not mean next door. Adjacent  
23 means close by. And that's in the statute. And the interest that

1 we have here, these are primarily two-story, owner-occupied  
2 houses. It's ironic to me that 230, 232 and 234 are not resided  
3 in by the owners. Mr. Sherry and his wife live in Jamestown, New  
4 York. I believe Mr. Anderson and Ms. Tregoning bought a house not  
5 too long ago.

6 VICE CHAIR JOHN: Hello.

7 MS. OPPER-WEINER: I don't remember the name of the  
8 neighborhood. North somewhere. And so, which is their primary  
9 residence home. Pardon me?

10 VICE CHAIR JOHN: I think you're almost out of time.  
11 And you've gotten some additional time. So are you ready to wrap  
12 up? Because really we're interested in hearing what the adverse  
13 impact is on your property.

14 MS. OPPER-WEINER: Would you say that again, please.  
15 I'm having trouble hearing you.

16 VICE CHAIR JOHN: We were interested in hearing the  
17 adverse impact on your property.

18 MS. OPPER-WEINER: Okay. The adverse impact is that the  
19 neighborhood is going to change with developers coming in and  
20 making two-story additions. Changing the whole nature of this  
21 being family oriented, by in large. If you look through the list  
22 of the 200 addresses, very few people had-out-of town addresses.  
23 So the adverse impact is the precedent that it will set. And I

1 know full well, having appeared before you not only personally but  
2 as a professional, representing someone else, that once something  
3 is given permission, it then is used by a subsequent person.

4           So even though it was a blessing that they took the  
5 third floor off, there is positive action. But still, it's too  
6 large. And I think what happens here is quite simple. The ANC  
7 gave us 15 seconds it felt like, at 10:30 in the evening, at the  
8 meeting. First of all, two of us couldn't get in. We're not  
9 invited in for some reason. I was on there for three-and-a-half  
10 hours. And then nobody asked any questions. It was strictly, it  
11 seems to me, that this letter which, by the way, was not filed  
12 within the rules, which is seven calendar days. And I was filed  
13 on July 23. And so I have an objection to that. And so the way  
14 this process works is I believe heavily weighted on the  
15 Applicants. That we, most of us are not professionals doing this.  
16 I happen to be, but I'm the only one that's active in it.

17           And this issue of the shadow studies. How are we to  
18 know that that's accurate? How are we to under -- I mean, three  
19 times she went back to do the shadow studies. And it shows  
20 shadows on that, the house, the 228 is 12-and-a-half feet wide.  
21 It's the smallest house on the block. The other houses on that,  
22 on the northern end of the block are 16 feet wide. On the  
23 southern end of the block are 18 feet wide. So her -- that



1 particular -- we haven't been given a full picture. We haven't  
2 given one that we trust, that we trust in terms of that light  
3 aspect. But my biggest concern precedent, as I said in my  
4 application for the party, is for the precedent that will be set  
5 and will forever change this neighborhood. If everybody feels  
6 they can add a second, a top back, or call it what you will, and  
7 then have rentals. And renters tend to have a very small  
8 commitment to their community. And this neighborhood has really  
9 been engaged. It's -- I've stayed here for so long because it's  
10 been so wonderful. I've raised three children here.

11 VICE CHAIR JOHN: Ms. Oppenheimer --

12 MS. OPPENHEIMER: So that's my answer to you, Chair,  
13 Miss Madam Chair.

14 VICE CHAIR JOHN: Thank you so much. I'm really sorry  
15 that I have to interrupt you, but you've gotten a lot of time, and  
16 we try to stay with our time commitments. So I thank you --

17 MS. OPPENHEIMER: Well, I'm happy to add, answer any  
18 questions that anyone has. Thank you so much.

19 VICE CHAIR JOHN: Thank you so much. Does the Board  
20 have any questions?

21 (No response.)

22 VICE CHAIR JOHN: Does the applicant have any questions?

23 (No response.)

1 VICE CHAIR JOHN: And does the ANC have any questions?

2 MR. HOLTZMAN: Madam Chairwoman, I have a, not a  
3 question, but I do feel the need to respond to something that Ms.  
4 Oppen-Weiner said. First, that I or other members of the ANC have  
5 not been a party to any secret negotiations during this process.  
6 I have never been associated with any secret negotiation on any  
7 project. And I would like to say for the record that I have not  
8 initiated or participated in any secret negotiations with anyone.  
9 My practice has been to respect resident privacy at all times. So  
10 I do not intentionally share phone numbers or emails of residents  
11 with others, even if they're other residents. What I do do is  
12 forward a request for contact from one person to another. And if  
13 they wish, they can reach out.

14 I would point out that Ms. Oppen-Weiner, when I wish to  
15 share opponents' letters with the Applicant I asked their  
16 permission. And I received an Ms. Oppen-Weiner telling me not to  
17 share, and that I did not have the right to. And I did honor  
18 that. I'm not sure that I should have, but I did.

19 And with regard to ANC process. The applicant's final  
20 revision, which had one change in it, which was to respond to  
21 neighbor's request to remove the third floor and, therefore, top  
22 remove it. There were no other changes in that revision. I  
23 shared it with 60 residents within one hour after receiving it.

1 Our meeting was, at that point, our planning meeting was six days  
2 away at that point. We made a point during the planning meeting  
3 of maintaining open discussion and not taking a position in the  
4 planning meeting and held it over to our ANC meeting one week  
5 later. So -- and there was a detailed discussion in that meeting  
6 So we think that we have met our burden there.

7 In terms of delayed submission, I agree. It was late.  
8 That is my fault. And I do ask the Board's acceptance of that  
9 letter regardless of the date that it arrived. Thank you.

10 VICE CHAIR JOHN: Thank you very much. So I want to  
11 return to Ms. Billingsley, which is in opposition. Can you hear  
12 me, Ms. Billingsley?

13 MS. BILLINGSLEY: I can hear you. Thank you. Would  
14 you like to go ahead.

15 VICE CHAIR JOHN: Okay. Would you like to go ahead and  
16 state your name and address for the record?

17 MS. BILLINGSLEY: Tara Billingsley of 238 10th Street,  
18 Southeast.

19 VICE CHAIR JOHN: Thank you. Please go ahead and give  
20 your statement.

21 MS. BILLINGSLEY: So I think my previous statement,  
22 hopefully, is sufficient. I don't really have -- perhaps, since I  
23 have the mic again, I'll just say maybe one additional point. I

1 had previously made the point about residents and nearby investors  
2 seeming to have different visions of this project, and what's  
3 appropriate for our neighborhood. So I maintain that point. And  
4 my concerns about the open porch at 230, and the benefit that my  
5 property accrues from that open porch not being taken seriously.  
6 I had a question about the mechanicals. I guess the last point  
7 that I would make is that we have heard a lot about how the first  
8 proposal -- actually, we talked about the first proposal at this  
9 point. It was gargantuan. It had just an incredible amount of  
10 unified neighborhood opposition to it. The second proposal had a  
11 little bit less opposition to it, but still quite substantial.  
12 And then we've given the owners a lot of credit for reducing the  
13 size of the proposal for the third iteration. But I want to make  
14 sure that we're clear that the second version did not actually --  
15 there was already a letter stating that Capitol Hill Historic  
16 District was not going to approve that version of the project. So  
17 I take a little bit of issue with the idea that the owner has been  
18 so cooperative. I've experienced none of that cooperativeness  
19 myself, personally. And I do not believe that any of the previous  
20 iterations of the project would have gone forward. So I'm  
21 thinking of this project as a stand-alone project by itself, and  
22 that's where my focus is. And now I will really keep my peace. I  
23 think perhaps it was an accident that I got the mic turned back to

1 me anyhow. So now I will be quiet, but of course happy to answer  
2 any questions anyone might have.

3 VICE CHAIR JOHN: Does anyone have any questions?

4 (No response.)

5 VICE CHAIR JOHN: So I believe Mr. Role is the last  
6 person on the list. Can you hear me, Mr. Role?

7 MR. ROLE: Madam Chairperson, I really wasn't intending  
8 to speak at all here. We were really withdrawing our opposition.  
9 I do want to -- I don't want to correct all of Ms. Opper-Weiner's  
10 misrepresentations.

11 We as neighbors, and I'm just speaking for ourselves and  
12 David Fox, are not especially happy about this project. But we  
13 recognize that it is what the owners of the property would have  
14 the right to do but for that non-enclosed balcony porch at 230.  
15 There is -- people have built, our neighbors in both houses to the  
16 south of ours have built 10-foot extensions, which they were  
17 entitled to do as a matter of right. This project is no larger  
18 than that. Say for that four foot extension on the cellar. You  
19 know, it's change, and people don't like change. And, you know,  
20 and, again, we're not necessarily fond of this either. But this  
21 is what the District now allows. And it's consistent, in large  
22 part, with, you know, what the zoning regulations permit. So to

1 that extent, you know, aesthetically we prefer not to have it but,  
2 you know, we do believe the owners have the right to do that.

3 VICE CHAIR JOHN: Okay. Thank you. Does the Board  
4 have any questions?

5 (No response.)

6 VICE CHAIR JOHN: Does the Applicant have any questions?

7 (No response.)

8 VICE CHAIR JOHN: Does the ANC have any questions?

9 (No response.)

10 VICE CHAIR JOHN: Ms. Fowler, do you have any rebuttal  
11 to any testimony you've heard so far?

12 MS. FOWLER: I just want to reiterate that ANC has been  
13 extremely transparent and has, you know, Mr. Holtzman held  
14 numerous meetings in his free time on top of the ANC meetings. So  
15 I did, I also wanted to kind of back him up on that. That I think  
16 that the process went very well and it was very inclusive. I  
17 don't feel the kind of -- I wanted to state that Ms. Opper-Weiner  
18 is not legally representing these neighbors. There's nothing in  
19 the record that she's the agent to speak for these neighbors. And  
20 I also will rebut the fact that she's claiming that there's  
21 misrepresentations or that the sun studies are incorrect. And I  
22 find that there's a little bit of slander of character. That's  
23 all I have to say. Thank you.

1                   VICE CHAIR JOHN:    And you get the last word.  Do you  
2 have a closing statement?

3                   MS. FOWLER:     No.  I just, I think that, you know,  
4 overall, again, we've taken a lot of considerations into account.  
5 And I feel like the project now is, while it's a little larger  
6 than some of the houses in the area, it's right sized for what  
7 the, kind of finding a balance between what the owner is looking  
8 for and what the neighbors are comfortable with.  And I think that  
9 I would just respectfully request that the Board approve our  
10 proposal.  Thank you.

11                  VICE CHAIR JOHN:    Okay.  Thank you, Ms. Fowler.

12                  So, Mr. Young, can you excuse the witnesses, please.  
13 And the parties.

14                  So is the Board ready to deliberate on this?

15                  MR. ANDERSON:  I'm sorry.  Madam Chair, am I supposed to  
16 -- this is Geoff Anderson.  Am I supposed to still be on here?

17                  VICE CHAIR JOHN:    No, you're not supposed to be on  
18 there.  I didn't see you.

19                  MR. ANDERSON:  Okay.  I will -- should I just hang up or  
20 should I somehow wait in some waiting room?

21                  VICE CHAIR JOHN:    Mr. Moy can -- I'm sorry, Mr. Young  
22 can excuse you.  But you can hang up.

1           VICE CHAIR JOHN:    Okay.    So I've been talking a lot,  
2 as the chair likes to say.    So would someone else like to start?  
3 Can I start with you, Mr. Hood?

4           MR. HOOD:    I always like to acquiesce and yield to the  
5 Board.    But I will respond.

6           VICE CHAIR JOHN:    Thank so much.

7           MR. HOOD:    Okay.    I think this is a self-certified  
8 application, as is mentioned.    I believe that the special  
9 exception lot occupancy, going from 60 percent required to  
10 proposed 62.3 percent as proposed is very minimal.    I think that  
11 the rear addition goes back 10 feet max.    But I think the  
12 reflection of 19 feet is proposed.    Everyone knows that I'm not  
13 necessarily a fan of going beyond the 10 feet number.    But I think  
14 in this case I think the record reflects it.    When I look at the  
15 regulations in E5201.4, we look at 4A, we look at the light and  
16 air.    The Applicant has showed us the project will not unduly  
17 affect light and air.    I think the merits of that are clearly in  
18 the record.

19           And then I asked about the shadow studies.    I think the  
20 shadow studies are de minimis.    Yes, there are impacts.    I want  
21 to acknowledge that.    But I think that the acknowledgment to  
22 develop in this city, sometimes we go through minimal shadowing.



1 I think it's different from what exists now. I think the records  
2 and the merits in the record show that.

3 I did hear one of the opposition mention how do we know  
4 it's correct. People take an oath in what they provide to the  
5 record. I think it's under oath. And that's what they are  
6 basically swearing that these are correct and accurate.

7 The other issue is under the general special exception  
8 standard, in 901.2, in harmony of project in similar scale to the  
9 rear addition and the surrounding neighborhood as a use of the  
10 property will not be changing. It has the Office of Planning's  
11 support. It also has the District Department of Transportation  
12 support. It also has fundamentally the support of the ANC who has  
13 worked hard. This other issue -- I want to hear from my -- I  
14 don't know where other are on the other issue, but as far as what  
15 can be done in the future, I'm not there yet.

16 And as far as the opposition, I understand their  
17 concerns. I don't -- I do understand Ms. Billingsley when she  
18 mentioned that all the credit does not go to the Applicant. And  
19 it doesn't. And I agree with her. I think the credit goes to  
20 everyone involved, especially Ms. Billingsley and those in  
21 opposition. I think due to their concerns and their concerns in  
22 their community, I think that got us to where we are here today.  
23 So I believe, either whether you're a proponent or opponent, I

1 think all of the input at hand has worked out to the resolution  
2 today. And I will be voting in favor of this case. I think this  
3 merits our approval, and it meets the test of the standards.  
4 That's all I have, Madam Chair.

5 VICE CHAIR JOHN: Thank you, Commissioner Hood. May I  
6 go to you next, Mr. Smith?

7 MR. SMITH: I almost don't need to go. Mr. Hood just,  
8 you know, explained that very thoroughly. I am also in support of  
9 the special exception. I do believe that the proposed addition to  
10 the rear of the property is fairly reasonable in nature and will  
11 not have a major adverse impact on the surrounding neighborhood.  
12 I do recognize the concerns of Ms. Billingsley, especially as it  
13 relates to concerns about how the sun, how shadowing would impact  
14 her property. But I would say and reiterate what Mr. Hood said,  
15 that this is a self-certified application, and the testimony has  
16 been made under oath. I do trust these particular sun studies.  
17 And they're very thorough sun studies. I don't think I've seen as  
18 thorough sun studies since I've been on the Board, especially with  
19 the different scenarios that were presented by the Applicant,  
20 including if the open rear deck were to be enclosed as a matter of  
21 right enclosure. That would have a much stronger impact on Ms.  
22 Billingsley's property than the proposed application in question.  
23 And that doesn't necessarily mean that the particular property

1 owner at 230 have to do a full enclosure. They could do some kind  
2 of a screened enclosure that could impact light and air going  
3 forward. So based on those sun studies, some type of enclosure at  
4 that property would have a much higher impact.

5           Based on testimony from adjacent property owners, there  
6 have been other additions of this particular size that would be,  
7 essentially by right, if it wasn't for this rear deck, that have  
8 occurred within the neighborhood. So I think speaking to that,  
9 this particular addition would be in character with what has  
10 occurred within the neighborhood.

11           Just as Chairman Hood has stated, I do believe that  
12 based on the presentation the Applicant has sufficiently  
13 demonstrated that they meet the standards for us to be able to  
14 grant the special exception based on criteria under E5201.4, and  
15 the general special exception standards of X901.2. So I am in  
16 support.

17           One of the questions that Chairman Hood raised was about  
18 this question that came up from the ANC about putting something in  
19 the order that speaks to memorializing that the Applicant would  
20 not do a third floor addition. I would not be in favor of that.  
21 Any third floor addition would be something that would be done by  
22 right. And I wouldn't want to preclude any future owner from  
23 being able to do so because it is by right. I do relay that it's

1 out of character with what the Board generally grants in these  
2 orders. So I would not be in favor of memorializing it. But the  
3 ANC's position would be memorialized in the record, for the  
4 minutes for this particular case. So that would be noted going  
5 forward. So I would not be in favor of that condition. But  
6 otherwise, I am in favor of granting the special exception.

7 VICE CHAIR JOHN: Mr. Blake?

8 MR. BLAKE: Yes. I would echo the comments made by  
9 Chairman Hood and Board member Smith. I do believe that the  
10 conditions of E5201.4 have clearly been met by the record. Light  
11 and air, certainly the very thorough shadow study presented by  
12 Ms. Fowler. You know, and he pointed out, was a very detailed  
13 shadow study, answered a lot of questions as to that. And there  
14 will be some impact on light and air, but it would not rise to the  
15 level of undue.

16 The privacy issue, there does not appear to be an issue  
17 with regard to compromising privacy by this.

18 And the issue of substantial visual intrusion. This  
19 process is kind of fixed itself in the sense that it would be --  
20 ANC has been involved in it, the owner of the property has been  
21 involved in it, and HPO and HPRB have all weighed in to kind of  
22 push this project to a point where it doesn't create the visual  
23 intrusion on the neighborhood in a way that is consistent with the

1 expectation of the zoning regulations an the historical objectives  
2 of the neighborhood. So I think that the process has actually  
3 worked well to pull it all together. And I do believe that the  
4 project is, meets the general standards as well.

5 As far as Mr. Smith pointed out, in terms of  
6 memorializing the ANC's comments, that was something that was a  
7 concern to me, because it would impact the way that future Board,  
8 and it would also take away the rights of future owners, which I  
9 don't think we certainly would have the ability to do that. It  
10 just doesn't seem as something we should or could be in position  
11 to do. It's not a -- it doesn't carry with the property as the  
12 special exception. So I would be not in favor of adding something  
13 to memorialize that. It is, as he said, in the minutes and there  
14 is a document available substantiating that. And I would  
15 definitely be in position to support this. Sorry for being so  
16 long winded.

17 VICE CHAIR JOHN: Thank you very much, Mr. Blake. So  
18 there really is very little for me to add because I agree with  
19 everything that's been said so far. I want to also commend the  
20 ANC, and the applicant, and the neighbors for working together to  
21 come up with a project that a fair amount of the neighbors can  
22 support. I don't believe there would ever be 100 percent  
23 agreement because it's, you know, changes.

1 I'd also add that the regulations allow the project.  
2 And so once the Applicant meets the criteria for a special  
3 exception, the Board ordinarily must grant the request. And in  
4 this case the Applicant has met the criteria, particularly with  
5 removing the third floor. And I appreciate the Applicant's  
6 extensive shadow study. Because one of my concerns was the impact  
7 on 228 10th Street. And with the shadow study it was clear that  
8 the impact was not significant.

9 I appreciate also and give great weight to the Office of  
10 Planning testimony concerning the impact of the project on the  
11 character, scale and pattern of the houses on the street and in  
12 the alley. And one thing I would do is to, I would recommend is  
13 that the parties continue to work together on a construction  
14 agreement, which will help to mitigate any potential impact from  
15 the construction project, as Mr. Sherry recommended.

16 And I agree also and would emphasize that the idea of  
17 limiting the homeowner's ability to add a third floor or any  
18 future homeowners to add a third floor is not something that I  
19 would recommend or encourage.

20 So I would like to go ahead and support this  
21 application. And so does anyone have anything else to add?

22 (No response.)

1           VICE CHAIR JOHN:    No?  So I will close the record.  And  
2 I believe I didn't do that before.  So now the record is  
3 officially closed.  And so I would like to make a motion to  
4 approve case number 2467 as read and captioned by the secretary,  
5 and ask for a second?

6           MR. SMITH:    Second.

7           VICE CHAIR JOHN:  The motion has been made and seconded.  
8 Mr. Moy, will you please take the roll call?

9           MR. MOY:    Yes.  Thank you.  When I call each of your  
10 names if you would please respond with a yes, no, or abstain to  
11 the motion made by Vice Chair John to approve or grant the  
12 application for the relief requested.  The motion was seconded by  
13 Mr. Smith.

14           Zoning Commission Chair Anthony Hood?

15           MR. HOOD:    Yes to the motion.

16           MR. MOY:    Mr. Blake?

17           MR. BLAKE:    Yes.

18           MR. MOY:    Mr. Smith?

19           MR. SMITH:    Yes.

20           MR. MOY:    Vice Chair John?

21           VICE CHAIR JOHN:  Yes.

22           MR. MOY:    We have a Board member, it is actually the  
23 Chair of the BZA, no present today.  Staff would record the vote

1 as 4 to 0 to 1. And this is on the motion made by Vice Chair John  
2 to grant the zoning relief requested. The motion was seconded by  
3 Mr. Smith to also approve the motion, support the motion. Also in  
4 support of the motion is Mr. Blake, Zoning Commission Chair  
5 Anthony Hood, and of course Vice Chair John. The motion carries  
6 on a vote of 4 to 0 to 1.

7 VICE CHAIR JOHN: Thank you, Mr. Moy.

8 So instead of calling the first case, I'm sorry, the  
9 next case, we're going to call the appeal. And I should -- we'll  
10 take a break after we complete the appeal case. And I don't  
11 expect this will be very long. And so then we will take a break or  
12 perhaps lunch. And I'd like to hear from the Board members. The  
13 parties in the appeal case have a motion that they would like to  
14 present to the Board. So we need to take a break to hear that  
15 motion and decide whether to grant it or not. That should take no  
16 more than 15 to 20 minutes if we use as much time. And then I  
17 would suggest, since it's 12:00, that we would break for lunch  
18 after that case. And does anybody have any comments?

19 (No response.)

20 VICE CHAIR JOHN: Mr. Hood?

21 MR. HOOD: No, Madam Chair. I'm fine. Did you call my  
22 name?



1                   VICE CHAIR JOHN:     Something has come up on the appeal  
2 that we need to take up.

3                   MR. HOOD:     Okay.    But, I mean, did I hear you call my  
4 name?

5                   VICE CHAIR JOHN:     I called your name, Mr. Hood and you  
6 answered.    So thank you very much.

7                   Mr. Moy, could you call the next case.    Could you call  
8 the appeal case?

9                   MR. MOY:     Yes, with pleasure.    So I'm going to call  
10 both applications for the record.    So the first appeal, which is  
11 appeal number 20452 of Michael Hays.    This is captioned and  
12 advertised as an appeal from the decision made on November 19,  
13 2020, by the zoning administrator, Department of Consumer and  
14 Regulatory Affairs, to approve the subdivision of Square 192, Lot  
15 108 into to separate lots denoted as Lots 110 and 111 in the RA-8  
16 and RA-9 zones.    This is to property located at 1733 16th Street,  
17 Northwest, Square 192, Lots 108, 110, and 111.

18                   The second appeal is appeal number 20453 of Dupont East  
19 Civic Association, or rather Dupont East Civic Action Association,  
20 captioned and advertised as an appeal from the decisions made on  
21 November 19, 2020, by the zoning administrator, Department of  
22 Consumer and Regulatory Affairs, to approve a subdivision of  
23 Square 192, Lot 108 into two separate lots divided as Lots 110 and

1 111 in the RA-8 and RA-9 zones. The property again, located at  
2 1733 16 Street, Northwest, Square 119, Lots 108 and 110 and 111.  
3 And as you may have indicated, Madam Vice Chair, the reason for  
4 calling these two appeals is because there is a consent motion for  
5 a continuance which is being held. And I would ask the Board to  
6 allow that in the record if you deem it appropriate.

7 VICE CHAIR JOHN: Thank you, Mr. Moy. Yes, please allow  
8 the motion in the record.

9 Mr. Young, can you let the parties in, please. Ms.  
10 Roddy, can everyone hear me?

11 MS. RODDY: Yes.

12 VICE CHAIR JOHN: Okay. So we can get started. Mr.  
13 Green, I understand you have a motion that you would like to bring  
14 before the Board?

15 MR. GREEN: Yes, Vice Chair. Good morning, Vice Chair,  
16 members of the Board and parties. The DCRA is asking, has filed a  
17 consent motion to continue the hearing. The zoning administrator,  
18 Mr. Matthew LeGrant is ill. He called me this morning.  
19 Thankfully not serious, but he is unable to attend the hearing.  
20 When I was notified this morning that Mr. LeGrant was unable to  
21 attend today's hearing I immediately reached out to the  
22 Appellants. And then Mr. Hayes as well as Mr. Hanlon (audio  
23 interference) homeowner's association, as well as Ms. Roddy who

1 represents the property lessees. They have graciously consented  
2 to the continuance. And so we'd ask, the DCRA asks that the  
3 matter be continued to allow Mr. LeGrant the opportunity to  
4 attend.

5 VICE CHAIR JOHN: Okay. Ms. Roddy, can you introduce  
6 yourself for the record, and followed by Mr. Hays and Mr. Hanlon.

7  
8 MS. RODDY: Christine Roddy with (audio interference).  
9 We represent Perseus, as Mr. Green said.

10 VICE CHAIR JOHN: Thank you. Mr. Hays?

11 MR. HAYS: Yes. I'm Michael Hays, and I represent  
12 myself.

13 VICE CHAIR JOHN: Mr. Hanlon?

14 MR. HANLON: Good afternoon. I'm Edward Hanlon, and I  
15 represent the Dupont East Civic Action Association.

16 VICE CHAIR JOHN: I believe I have all of the parties.  
17 And you heard Mr. Green's representation. And I take it that you  
18 consented?

19 MR. HAYS: Yes.

20 MS. RODDY: Yes.

21 MR. HANLON: Yes. Yes. DECCA also consents.

22 VICE CHAIR JOHN: Okay. Thank you. So the only thing  
23 -- oh, so unless I hear something else from the Board, I am

1 prepared to go ahead and grant the motion for postponement. And  
2 we need to set a date that would work for all of the parties. And  
3 Mr. Moy, I don't know if there's any -- is there another date?

4 MR. MOY: Thank you, Madam Vice Chair. I do have some  
5 suggestions. The dates that I would like the Board to consider --  
6 and note particularly, the earliest date could be August the 4th.  
7 As you know, that's a special public meeting and special public  
8 hearing for August 4th. There would be room on there, depending  
9 on the Board's wishes. Other than that, given the size of the  
10 docket from September through November, the best available date to  
11 address these two appeals would be November the 10th. We could do  
12 the other dates, but it would mean either an additional hearing on  
13 these two appeals or hearing that with the other case applications  
14 that have already been scheduled on those dockets. That's where  
15 we're at.

16 VICE CHAIR JOHN: Just a minute. Mr. Moy, how many  
17 cases do we have on the 4th?

18 MR. MOY: on August the 4th we have six cases for  
19 decision making, and one case which is the continued hearing, and  
20 one case which is a new hearing.

21 VICE CHAIR JOHN: And this appeal, potentially?

22 MR. MOY: And potentially these two appeals.

1                   VICE CHAIR JOHN:     These two appeals.  Thank you.  So  
2 let me go to the Appellant.  Mr. Hayes, how much time do you think  
3 you would need to present your case?

4                   MR. HAYS:  I think, Madam Vice Chair, that it would take  
5 approximately an hour-and-a-half for the testimony.  And I'm  
6 going to be out of the country on the 4th.  And Professor  
7 McCreary, who is my witness, is only available -- he has teaching  
8 assignments, and he is only available in -- he's available after --  
9 -- in September or October, et cetera, but only on Tuesdays and  
10 Thursdays because he has teaching assignments during those  
11 periods.  So we would ask, respectfully ask for a Tuesday or a  
12 Thursday.

13                   VICE CHAIR JOHN:  So you are aware that the Board meets  
14 only on Wednesdays.

15                   MR. HAYS:  I was not aware of that.  I thought there  
16 were more -- I thought there were other days.  I'll have to go  
17 back to my professor and see what I can, see if -- what I can, if  
18 I can move him around.  I don't know -- I don't know.  If we  
19 could, if we could perhaps establish -- get back with Mr. Moy with  
20 a possible dates and work it out that way, that might be better.  
21 I'll just have to see what I can do in terms of maybe he can find  
22 a substitute.  Or I'll just have to ask him how I can do this.

1           VICE CHAIR JOHN:   Mr. Moy, does that work for you? We  
2 typically set the date at the time we continue the hearing. But I  
3 will defer to your recommendation.

4           MR. MOY:       Well, I was going to say, I was going to  
5 defer it to the Board's decision as well. We have on occasion,  
6 Madam Chair, we have on occasion where the staff would reach out  
7 to the parties and we would come to the agreement on the date, and  
8 then upload and share that date through a OZ memo in the case  
9 record. And that way, you know, that would be then shared with  
10 the public. So that could -- that's another avenue.

11          VICE CHAIR JOHN:   I think in this case, given the  
12 number of parties, I mean, we're in November already. Because,  
13 clearly, August 4th doesn't work. So there's enough time to come  
14 up with a date and provide notice. So I will defer to you, Mr.  
15 Moy. And we will -- so let me hear from the Board members, the  
16 other Board members first before we close this out. Does anyone  
17 have a comment?

18                           (No response.)

19          VICE CHAIR JOHN:   Mr. Blake, Mr. Hood, Mr. Smith?

20                           (No response.)

21          VICE CHAIR JOHN:   Okay. So --

22          MR. HOOD:       So since you want a comment, Madam Chair,  
23 I'll defer. Since we're doing a lot of deferring, I defer to you.

1           VICE CHAIR JOHN:    Okay.    So Mr. Moy, we'll continue  
2 this case to a date to be determined by the parties.    Okay?

3           MR. MOY:    Yes.    Yes.    And while the parties are here, I  
4 would like to stress that, as I said, the docket is full through  
5 November.    We could do November 10th or November 17th, either of  
6 those two would work.    Anything earlier than that would require  
7 more movement on other scheduled cases.

8           VICE CHAIR JOHN:    Okay.    And since I read all of the  
9 documents in this case, I just want to put in a plea for the  
10 parties to narrow the issues to those that are truly relevant to  
11 this case so that we can get through this expeditiously when we do  
12 have the hearing.    Okay?

13          MR. HAYS:    Yes.

14          VICE CHAIR JOHN:    Thank you so much.    And hopefully we  
15 will see you in November.    Thank you.

16          MR. HAYS:    Thank you, Madam Vice Chair.    Thank you very  
17 much.

18          VICE CHAIR JOHN:    Thank you.

19          Mr. Young, can you please excuse the Appellant and the  
20 witnesses.    I'm sorry, the parties and the witnesses.

21          So I want to defer to my Board members on when we will  
22 reconvene after lunch.    And I should say to the other applicants  
23 who are listening that we will resume the agenda as previously

1 | scheduled after lunch. I'm proposing that we return at 1:00. Is  
2 | that too much time, too little time? It's 12:12 now. Or do you  
3 | want --

4 |           MR. SMITH: I think 1:00 is fine.

5 |           VICE CHAIR JOHN: One o'clock is fine? That's okay  
6 | with you, Mr. Blake? Okay. So the Board will reconvene at 1:00  
7 | p.m. Thank you. See you in a bit.

8 |                       (Whereupon, the Board recessed for lunch at 12:12  
9 | p.m., and reconvened at 1:06 p.m.)

10 |           MR. MOY: The Board is back in session in its public  
11 | hearing session, after a lunch recess. And the time is at or  
12 | about 1:06 p.m.

13 |           And I believe, Madam Vice Chair, the next case  
14 | application before the Board is application number 20449 of PD 236  
15 | Properties, LLC. This application is captioned and advertised for  
16 | special exception from the rear yard requirements of Subtitle E,  
17 | Section 306.1, lot occupancy requirement of Subtitle E, Section  
18 | 304.1. And, let's see, and I believe a variance from the lot  
19 | occupancy, but I'd like to run that by the Applicant, which I see  
20 | on the screen. So this would partially raze the existing,  
21 | attached, principal dwelling unit and to construct a third-story  
22 | addition with both roof deck and rear deck additions, as well as a  
23 | cellar, and a carport below the rear deck addition, in the RF-1



1 Zone. And the property is located at 1173 3rd Street, Northeast,  
2 Square 773, Lot 274.

3 And just to recap a bit, I believe there is also an area  
4 variance from the lot occupancy requirements under Subtitle,  
5 Section 304.1. But, again, I would like to confirm that with the  
6 Applicant.

7 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy. Will the  
8 parties identify themselves for the record, please.

9 MR. DEBEAR: My name is Eric DeBear, land use counsel  
10 from Cozen O'Connor on behalf of the Applicant.

11 VICE CHAIR JOHN: Thank you.

12 MR. ECKENWILER: Good afternoon. Good afternoon, Madam  
13 Chair, members of the Board. Mark Eckenwiler, Vice Chair ANC6C.

14 VICE CHAIR JOHN: Okay. Thank you very much. And I  
15 believe there's some preliminary matters. There's a motion to  
16 file affidavit of posting, Mr. DeBear?

17 MR. DEBEAR: Yes, Chair John. It's just a motion to  
18 late file the affidavit of posting. There was a delay in getting,  
19 not the posting itself, just simply getting the affidavit itself  
20 notarized. That is supposed to be filed five days before the  
21 hearing and it was filed Monday. There was just simply a delay in  
22 the Applicant getting to file that. But the posting was made back  
23 in April, and was maintained through the hearing date.

1                   VICE CHAIR JOHN:     Thank you.     So I'll go ahead and  
2 allow the late filing.

3                   MR. DEBEAR:     Thank you.

4                   VICE CHAIR JOHN:     And I believe that's it.     I see your  
5 affidavit of maintenance is in.

6                   MR. ECKENWILER:     Madam Chair, there is one other  
7 preliminary matter.

8                   VICE CHAIR JOHN:     Okay.     Sure.     Go ahead.

9                   MR. ECKENWILER:     Yes.     I'm sorry to have to have to  
10 raise this.     But the Applicant's PowerPoint slides introduce new  
11 materials that were first put into the record Monday night.  
12 That's specifically slide 17 and 18, the sun studies.

13                   VICE CHAIR JOHN:     Mr. DeBear, do you have a request to  
14 file those documents late, and do you have a reason?

15                   MR. DEBEAR:     You know, we were -- the sun studies were  
16 first filed with the PowerPoint presentation.     It is two pages of  
17 sun studies that I think would provide Mr. Eckenwiler ample time  
18 to review since Monday.     You know, he filed his PowerPoint on  
19 Monday as well.     Frankly, the Office of Planning had not requested  
20 the sun studies.     We wanted to provide them to the Board out of  
21 an abundance of caution.     And since this case has been delayed, it  
22 was originally supposed to go in April and it was administratively  
23 rescheduled for four months or three months.     So we wanted to make

1 | sure it was included in case the Board had questions. I think  
2 | you'll see that it shows no adverse impact, but we feel as though  
3 | it's good cause to permit it to be at least reviewed today and  
4 | move forward with presenting the application.

5 |           VICE CHAIR JOHN: Thank you. I'm inclined to allow the  
6 | slides as presented. Usually the Board wants to see sun studies.  
7 | So I believe they can only help us in our understanding of any  
8 | potential adverse impact. But I'd like to hear from the other  
9 | members of the Board. Does anyone have a comment?

10 |           MR. SMITH: No. I agree with your assessment, Vice  
11 | Chair John.

12 |           VICE CHAIR JOHN: Okay. Thank you. So, Mr. Young, --

13 |           MR. HOOD: Madam Chair, I would agree as well. But  
14 | sometime I would just caution, be cautious of what we say. Some  
15 | of us get paid for what we do and some of us are volunteers, like  
16 | ANC commissions. We don't know what they had to do since Monday.  
17 | So I just wanted to put that out there. That's my feeling. Thank  
18 | you, Madam Chair.

19 |           VICE CHAIR JOHN: Thank you, Commissioner Hood. And we  
20 | will be mindful of that. Some of us are technically volunteers,  
21 | and some of us are full volunteers. So I just throw that in.

1           So, Mr. DeBear, let's go through those sun studies  
2 slowly so to the extent that some of us have not had a chance to  
3 look at them carefully, at least we understand what's going on.

4           MR. DEBEAR: Understood.

5           VICE CHAIR JOHN: Okay. Thank you. So, Mr. Young, if  
6 they're not in the record can you please upload them. Do you have  
7 a question Mr. Eckenwiler? I see your hand -- is your hand up?

8           MR. ECKENWILER: No, Madam Chair. You've already made  
9 your decision.

10          VICE CHAIR JOHN: Okay. Thank you. Mr. Young, please  
11 go ahead and pull up the slide presentation. At least I should  
12 ask you, Mr. DeBear, if you'd like us to pull up your slide  
13 presentation?

14          MR. DEBEAR: Yes, please.

15          VICE CHAIR JOHN: Okay. Thank you. So you have 15  
16 minutes to begin, Mr. DeBear.

17          MR. DEBEAR: Thank you, Vice Chair John. As we've  
18 discussed, this case is for a property at 117 3rd Street,  
19 Northeast. It is located in the RF, Zone. If Mr. Young could go  
20 to the next slide, please.

21                 We have already gone through the motion, delay filed the  
22 affidavit. Next slide, please.

1           So as I was saying, it's in the RF-1 Zone. As you can  
2 see, it is located on 3rd Street. I would note, right across the  
3 street is a PDR-1 Zone. And as we'll talk a little bit more about  
4 during this presentation, there is substantial development  
5 directly across the street. Next slide, please.

6           This is a image of the existing home. It's a two-story,  
7 attached row home, and it has a small rear yard. Next slide,  
8 please.

9           So the proposal from the Applicant is to raze the  
10 existing home and construct a new single-family home plus the rear  
11 deck that Mr. Moy mentioned. The proposal will be three stories  
12 plus the cellar, no greater than 35 feet in height, in compliance  
13 with the RF-1 standards. And I'd also just note that, as we'll  
14 get into with the variance, if you -- the lot is very small for a  
15 row home lot. It's only 809 square feet. Next slide, please.

16           In terms of community outreach, the Office of Planning  
17 is in support of both the special exceptions for the lot occupancy  
18 as well as the variance relief for the deck, which also  
19 contributes to the lot occupancy. There are five letters of  
20 support in the record from neighbors, one letter of opposition  
21 from the Capitol Restoration Society. Although, I would note that  
22 that letter is one page and simply piggy backs on the ANC. Not  
23 that that it is invalid, but that simply there's no new

1 information that would need to be addressed beyond what would be  
2 addressed with the ANC.

3           And then finally, the ANC did oppose this, as I'm sure  
4 Mr. Eckenwiler will discuss. There are three primary points that  
5 they've opposed, are the fact that this proposal might impact the  
6 character, scale and pattern on the block, that it would impact  
7 light and air for neighboring properties, and then they've  
8 questioned the variance relief in all. I'll be sure to touch on  
9 all three of these in particular as I go through this  
10 presentation. Next slide, please.

11           Just to provide a little bit of neighborhood context.  
12 As I pointed out with the zoning map slide, you can see the  
13 property noted with the red arrow on 3 Street. But directly  
14 across the street is the Uline Arena in the Noma neighborhood.  
15 The property is just to the south of the Union Market neighborhood  
16 as well. And there's significant massing and density throughout  
17 the neighborhood, despite this being a part of certainly a block  
18 of row homes. You can see the density as we go through these  
19 slides. If you could go to the next one, Mr. Young.

20           So you can see the property is delineated with the red  
21 arrow. And directly across the street is the Uline Arena, which  
22 is home to several commercial uses, and I believe was redeveloped  
23 within the last ten years or so. But it is a three to four-story

1 building that scales virtually about half the block between L and  
2 M Street, Northeast, along 3rd, across from the property. Next  
3 slide, please.

4           And here you can see the actual 1173 3rd Street, the  
5 subject of the application. The two-story row home. And I would  
6 just note the two upper story additions, you know, on the  
7 neighboring lot, as well as the three lots down on the right hand  
8 side of your screen. Next slide, please.

9           Here are images of the property along the alley to the  
10 rear. A few points that I wanted to note here. One is, you can  
11 see on the slide on the right, this proposal for the rear addition  
12 of the main portion of the home would eventually align with the  
13 two houses, the yellow and the brick house on the right. And then  
14 in the background, the, I guess that's yellow or white house with  
15 siding as well. And the house to the, on the left-hand side, 1171  
16 you can see does see does have a small rear yard, although it is a  
17 parking pad use of the rear yard and does not appear to use it for  
18 socialization or other kind of, you know, habitable uses, other  
19 than parking a car. Again, these are all small lots and are,  
20 therefore, have small rear yards. Next slide, please.

21           And one additional alley context. Directly across the  
22 alley from this property are two larger, third-story plus rear  
23 addition homes. And that's directly across the alley. So when

1 | you're talking about alley context, as we'll go through in a  
2 | little bit, those contribute to the alley context here. Next  
3 | slide, please.

4 |           So if you walk through the proposed site plan. Again,  
5 | the Applicant is proposing to raze the existing structure and  
6 | reconstruct a single-family, attached home. They are seeking, as  
7 | a walk-through lot occupancy relief as a special exception as well  
8 | as relief from the rear yard. They are also proposing a rear deck  
9 | that would require the variance relief. And we will go through  
10 | that standard in a few slides. Next slide, please.

11 |           This is both the axonometric view of the frontage of the  
12 | proposal, as well as an elevation of the rear. As you can see,  
13 | it's going to be three stories, as permitted. It does extend past  
14 | the southern property, the abutting southern neighbor. But it is  
15 | within the permitted (audio interference). And, again, it's also  
16 | going to align with the rear of the home to the north. Next  
17 | slide, please.

18 |           Here is a building section. You can see the -- in  
19 | particular, I wanted to highlight rear with the deck underneath.  
20 | It's going to be an area for the car, for a car to park. So it's  
21 | going to kind of function both as a deck that's open beneath it,  
22 | but also a place to park a car. Next slide, please.



1           And so this gets to the zoning relief that's being  
2 requested. This is lot occupancy and rear yard special exception  
3 relief. The proposal is to 69.9 percent, and that's for the main  
4 home. The rear yard for the main home would be reduced to 15-and-  
5 a-half-feet, where 20 feet is required. With the deck, it would  
6 be reduced further to 6.25 feet. And we are viewing this as sort  
7 of a bifurcated request for relief between the rear home and the  
8 deck. Because, again, the deck is not interior, habitable space  
9 but rather just a one-story, open-to-the-air deck. And so with  
10 the additional proposed deck, which requires variance relief, the  
11 property would go up to a 82.6 percent lot occupancy. Next slide,  
12 please.

13           In terms of no adverse affect. Again, as I had  
14 mentioned, the rear addition would align with three of the four  
15 neighboring properties, including 1175 3rd Street, which is  
16 directly to the north of this property. The rear yards on this  
17 block are very small and many are used solely for parking,  
18 including, based on the images for 1171 3rd Street, which is the  
19 property directly to the south. And then, again, I'll walk  
20 through it, Chair John's request, the shadow studies which are  
21 included here. But one thing as we look through them and I remind  
22 you is, the shorter property to the south benefits here because,  
23 again, it's to the south. And as we know, the southern exposure,

1 the sun travels to the south of our property, thereby limiting the  
2 impact to that property that is to the south of us. Next slide,  
3 please.

4           And so here are the shadow studies. This is the front  
5 of the property. And what you see hatched in red is what a by  
6 right project would provide in terms of shadowing. Keep in mind  
7 that by right allows up to 60 percent lot occupancy, 20-foot rear  
8 yard, and the same height that we are proposing, which is why I  
9 think you'll see from these shadow studies that the impact in  
10 comparison to the proposal is rather limited. You can see in  
11 terms of the front axonometric view at 3:00 p.m., there is a  
12 little greater shadow due to the additional lot occupancy.  
13 However, that shadow would be, as you'll see from the rear image,  
14 would be on the alley to the rear of the property, and would not  
15 be new shadow on the property to the north. And I can go back to  
16 this slide, but I just wanted to show the rear view as well. And  
17 this is the -- if Mr. Young can go to the next slide.

18           So here you'll see the rear view. Again, the -- you'll  
19 see at 9:00 a.m., 3:00 p.m., and 6:00 p.m., in terms of the  
20 shadowing on that neighbor to the north of the property, the  
21 shadowing is the same, as well as the neighbor to the south.  
22 Again, because of the southern exposure and the positioning of  
23 this, of where this is relative to the less deep home to the

1 south. At 12:00 p.m., you see a little bit of additional shadow.  
2 Although, I would note that, again, they're aligned and that's  
3 only on the additional shadow on the northern property. Although  
4 they are, the rears are aligned, but just how the, I suppose the  
5 architect drafted it, how the sun might be positioned at that time  
6 and might create a little additional shadow over a by right  
7 structure.

8           Again, in the interest of allowing the Board to digest  
9 this, I'm happy to go back to the previous slide and take a look  
10 at it. The architects drafted this in autumn because it would be  
11 the greatest potential impact due to the, you know, low lying sun  
12 area. And you have the various times as well. So I'd be happy  
13 to, again, look this over. But I think we feel as though the  
14 impact in terms of additional shadow is minimal. So we can flip  
15 back to that if the Board has questions at the end of the  
16 presentation. Next slide, please.

17           And in terms of being harmonious with the purpose and  
18 intent, the lot occupancy, and the rear yard relief, again, this  
19 continues the single-family home use. In the RF-1 Zone, as we all  
20 know, you can have a flat. But this would be a single-family  
21 home. The Applicant is proposing a by right height. And as OP  
22 found, the structure that's proposed is consistent with the

1 residential form of neighboring properties on the eastern side of  
2 3rd Street. Next slide, please.

3           These are the special conditions for the lot occupancy  
4 and rear yard relief. I'm not going to go through three of the  
5 four because we've already discussed light and air and privacy to  
6 some extent. I'm happy to answer any questions about that, but I  
7 did want to key in on "C," which is something that the ANC in  
8 particular objected to. And that is, in terms of the proposal  
9 being consistent with the street, alley, or other public way and  
10 not substantially visually intruding on the character, scale and  
11 pattern. If you could go to the next slide, Mr. Young.

12           So something we saw in the images of the surrounding  
13 neighborhood, both along the eastern side of 3rd Street but also  
14 in the alley as well as across the street, where Uline is, you  
15 have a variety of massings on this street. Again, the neighbor  
16 directly to the south has a third-story addition that was  
17 permitted by right. The rear addition would align with the depth  
18 of the homes on four of the five nearby lots. And then the two  
19 properties directly across the alley have buildings that are very  
20 similar to what is proposed here.

21           I'd also note, and something that the ANC brought up,  
22 the Board approved a case four lots down that allowed a third-  
23 story addition. So again, that keeps with what is here permitted

1 by right but is part of the standard. And then certainly we  
2 believe that the, this special condition requires consideration  
3 not just of the eastern side of 3rd Street, but indeed the entire  
4 street, which would include the Uline Arena directly across the  
5 street. There's also a six-story apartment building at the very  
6 end of this block, just to the north of L Street. And then as  
7 you go right across M Street, three lots above this property, you  
8 start to get into the Union Market neighborhood where there's  
9 significant density. So what you see in terms of character, scale  
10 and pattern is, there's really a variety of character, scale and  
11 pattern in the neighborhood despite some row homes being similar  
12 in architecture of style and size, yet you see quite a variation.  
13 And the only other thing I'll mention in terms of this condition  
14 is, we are not in a historic district here. Next slide, please.

15           Finally, I'll just go through the area variance which,  
16 again, we are requesting in order to construct the rear deck.  
17 We've talked a little about how small this lot is. And we believe  
18 this to be a unique condition here. The other lots on this side  
19 of 3rd Street are similar in size. However, these lots are all  
20 uniquely small, even for row home lots in the District. They're  
21 809 square feet. And that's less than 50 percent of what would be  
22 required for a new row home lot, which is 1800 square feet. And  
23 that results in a direct practical difficulty of providing really

1 a modest rear deck that would further the residential use of this  
2 property, and is really consistent with, you know, how  
3 residential homes are used in the District in terms of providing  
4 more habitable space and usable space I should say that would  
5 otherwise just be a parking pad. And here, you know, without this  
6 relief the Applicant could not provide that, and it would only be  
7 parking. But with the proposal you get both the deck which is,  
8 again, additional usable space on an otherwise small lot, that  
9 limits the amount of interior space you can use, while also  
10 allowing for parking underneath. And because it's an open deck,  
11 we believe the impact to light and air would be significantly  
12 limited compared to a, an actual habitable, internal space. And,  
13 again, this furthers the single-family residential use.

14 And so we request that in addition to the special relief  
15 for the lot occupancy of the main home and the rear yard, we'd  
16 also seek variance relief for the rear deck as well.

17 And I believe at this point that concludes my  
18 presentation, hopefully within the 15 minutes allotted. And I'm  
19 open for any questions the Board might have.

20 VICE CHAIR JOHN: Thank you. You're fine. You're just  
21 two minutes off.

22 MR. DEBEAR: Not bad.

1           VICE CHAIR JOHN: Not bad. So are there any questions  
2 from the Board?

3           MR. SMITH: I have one.

4           VICE CHAIR JOHN: Mr. Smith?

5           MR. SMITH: So, Mr. DeBear, your shadow study is fairly  
6 hard to read on that PowerPoint. It's difficult to see the  
7 shadows across those properties. So my question is: Do you have  
8 a shadow study that's not cut and pasted into the PowerPoint that  
9 we could look at a little bit more closely, maybe a little bit  
10 more refined?

11           MR. DEBEAR: Yeah, absolutely. So part of the reason  
12 the shadow study was filed with the PowerPoint is we received it  
13 late from the architect. I did copy and paste basically  
14 everything that was provided. It might be a little easier to see,  
15 if the Board needs it, I can supplement the record with perhaps  
16 an expanded view, if that's something that the Board needs.

17           MR. SMITH: Okay. I would welcome that supplement in  
18 the record. But, you know, I would just wait to hear what my  
19 fellow Board members have to say about that. But that's the only  
20 question I have for now.

21           VICE CHAIR JOHN: I would just add that I had  
22 difficulty reading it too, especially, you know, late at night.  
23 So it's not very helpful if the presentation is not clear. And

1 I'd like to see existing right next to proposed for the same time  
2 so it's easy for me to switch back. And if you want to see a  
3 great presentation, I think the case we had this morning did a  
4 nice job. I believe that was 20467. So that's going to be my  
5 poster child for sun studies from now on. But thank you, Mr.  
6 DeBear.

7 MR. SMITH: Can I also piggyback off of what you were  
8 saying, Ms. John. So, yeah, I agree. I believe that that would  
9 be the poster child. In light of, you know, some of the  
10 questions that will be raised from the neighborhood I'm sure. It  
11 would be great to see a shadow study that's more in plan view,  
12 similar to what we saw earlier, that encapsulates shadows not just  
13 along the properties to the north and south of this, but also  
14 along the alley and further along the block. So if you have that,  
15 great; if not, then maybe something that I may request additional  
16 information on.

17 VICE CHAIR JOHN: Mr. Hood, I saw your hand up.

18 MR. HOOD: Yes. Thank you, Madam Chair. Mr. DeBear,  
19 you mentioned I think two or three doors down, I'm looking at it  
20 here in your presentation -- no, this is ANC6C. What's going on  
21 two or three doors -- you mentioned two or three doors down in  
22 your presentation. What did you say was going on two or three  
23 doors down?



1 MR. DEBEAR: The Board approved a third story and rear  
2 addition in case 20333. That was approved recently. I believe,  
3 if I'm not mistaken, I have some of the papers here. Pardon me.  
4 I believe that was approved in May or early June. That is three  
5 doors down. That applicant requested virtually the same relief for  
6 special exception as we are. And so they sought up to 70 percent  
7 lot occupancy and a 15-and-a-half rear yard, which is virtually  
8 identical to what we're requesting for the main home, outside of  
9 the variance of the rear deck.

10 MR. HOOD: Okay. And my rationale, this case is not  
11 contingent on that one. Also, you said it was 20333. And if you  
12 have it handy, did I participate on that case?

13 MR. DEBEAR: Um, --

14 MR. HOOD: If you have it handy.

15 MR. DEBEAR: I bet Mr. Eckenwiler could probably --

16 MR. HOOD: He's still --

17 MR. DEBEAR: I think it's in his presentation.

18 MR. HOOD: Okay. Okay. All right.

19 MR. DEBEAR: I don't --

20 MR. HOOD: I'm being told yes. I just don't remember  
21 that. So anyway, okay. All right. Well, thank you, Mr. DeBear.  
22 That's all I have for now, Madam Chair. Thank you.

1 VICE CHAIR JOHN: Mr. Blake, do you have any questions?

2

3 (No response.)

4 VICE CHAIR JOHN: You're on mute. Mr. Blake? No?

5 Okay. All right. So Mr. Eckenwiler, do you have any questions?

6 MR. ECKENWILER: No questions, Madam Chair.

7 VICE CHAIR JOHN: Okay. So we'll go ahead and hear

8 from the Office of Planning.

9 MR. JESICK: Thank you, Madam Chair and members of the

10 Board. My name is Matt Jesick. And I'll be presenting OP's

11 testimony in this case. Can everyone hear me okay?

12 VICE CHAIR JOHN: Yes.

13 MR. JESICK: Great. Thank you. OP issued two reports

14 in this case. One in exhibit 30 which examined the initial

15 special exception request, and one at exhibit 61 that addressed

16 the variance, which was added later. And I will try to summarize

17 our analysis and why we are recommending approval.

18 First for the special exception. We thought that the

19 application meets the criteria of 5201. And while granting the

20 requested relief could result in some additional shadow, we did

21 not feel that the increase in shadow over what matter of right

22 building could provide would result in an undue impact. The mass

23 of the building, as has been noted, would align with the rear wall

1 of the neighboring property to the north, which would naturally be  
2 the one to be most impacted by any new shadow, as well as the rear  
3 walls of several other buildings in the row.

4           Similarly for privacy. We felt that any new rear deck,  
5 whether it was a matter of right or requiring relief, would have  
6 some manner of impact on the privacy of adjacent properties.  
7 However, we didn't feel that by granting the relief the change in  
8 impact would result in an undue change beyond what that matter of  
9 right condition would be.

10           Now, in terms of character. The new principal building,  
11 obviously, is, would certainly be more modern in appearance than  
12 the other buildings on that side of 3rd Street, but it would not  
13 be inconsistent with the general row house residential form. And  
14 as the property is not within a historic district, it's  
15 appropriate that it should or could have a more contemporary  
16 style.

17           So OP found -- OP found that, to paraphrase 5201.4, that  
18 the character of this project would not have a substantially  
19 adverse impact on the use or enjoyment of an abutting property.  
20 So OP, therefore, is recommending approval of the special  
21 exceptions.

22           Now for the variance portions of the variance test are  
23 similar to the special exception criteria. So I may be a little

1 bit repetitive here. But the first part of the variance test, of  
2 course, is how is the property exceptional, and would that  
3 exceptional condition lead to a practical difficulty? And OP  
4 found that the small size of the lot, just over 800 square feet,  
5 is an exceptional condition, as is the short depth of the lot,  
6 less than 55 feet in depth. This results in a practical  
7 difficulty. A strict application of the lot occupancy regulation  
8 would limit the usability of the property for a single-family  
9 house.

10 Without the rear deck the house would have no usable  
11 outdoor space at the main floor. And almost the entire area  
12 behind the house would be occupied by required parking space. And  
13 the Applicant, therefore, proposes a modestly sized deck above a  
14 portion of the parking space to give any future residents an area  
15 for outdoor activities at the main floor.

16 The second part of the variance test is where it does  
17 become more similar to the special exception in terms of impacts.  
18 And again, OP found that granting relief for the rear deck would  
19 not result in substantial detriment to the light, air, or privacy  
20 available to neighboring properties.

21 And on the third prong of the test, would the granting  
22 of relief impair the intent of the zoning regulations? The  
23 regulations do, obviously, place limits on parameters such as lot

1 occupancy to generally ensure consistency of building form and  
2 footprint in any given zone and to ensure an appropriate amount of  
3 usable open space on the lot. In this case the building itself is  
4 within the special exception limits for lot occupancy. It is only  
5 the deck that is causing the variance. So the form of the  
6 building would be in keeping with other nearby properties, and the  
7 proposed deck would allow some outdoor space on the main floor,  
8 which would facilitate the use of the property for residential  
9 purposes as intended under the RF-1 Zone.

10           Finally, for the record, I just want to note one typo  
11 in the OP report. In the table on page two, the table noted the  
12 wrong dimension for the questioned rear yard. The correct  
13 dimension as noted on page one of the report is 6 feet one-quarter  
14 inch. However, that impact did not impact our analysis in any  
15 way. But I'd be happy to take any questions. And, again, Office  
16 of Planning is recommending approval of the areas of requested  
17 relief. Thank you.

18           VICE CHAIR JOHN:     Thank you, Mr. DeBear. Does the  
19 Board have any questions?

20           (No response.)

21           VICE CHAIR JOHN:     I'm sorry. Mr. Jesick. Does the  
22 Board have any questions? Mr. Blake then Mr. Smith.

1           MR. BLAKE:     Sure. My first question is with regard to  
2 Mr. Jesick's assessment of the impact of light on the property.  
3 How did you make that assessment without the benefit of the shadow  
4 study which we just saw today?

5           MR. JESICK:    Well, we noted that the back wall of the  
6 building would align with the rear wall of the property to the  
7 north, which would be the most impacted property. So it's not  
8 extending farther to the rear. And, therefore, any new shadow  
9 would be limited to certain hours of the day. Furthermore, the  
10 height of the building is within matter of right limits. So  
11 you're not talking about an excessively tall building. And then  
12 when you look at the deck, the deck would be at a level similar to  
13 the fence, for example. So any new shadow would, from a deck  
14 would, "A," either fall on the stairway that is on this proposed  
15 for this subject property, on the north side of the deck, or a  
16 small amount could fall on the adjacent property to the north.  
17 But we felt that any additional shadow of those kinds would not  
18 rise to a level of an undue impact. So that's how we were able to  
19 recommend approval of that area of relief.

20           MR. BLAKE:     Did the shadow studies that you saw today  
21 change that opinion, alter that opinion at all?

22           MR. JESICK:    No. It did not change the opinion. We  
23 have not had the opportunity to go into those shadow studies in

1 | great depth, but they seem to confirm what our analysis arrived  
2 | at, which is that the impacts would not be significantly more than  
3 | what a matter of right project would result in.

4 |           MR. BLAKE:     Okay.     The second question I had was with  
5 | regard to the visual intrusion element, I guess 5201.4.  The --  
6 | you know, obviously there's a lot of concern about how it impacts  
7 | the, how it fits in relative to the other properties on that side  
8 | of the block.  And I'm just curious, you said it continued to have  
9 | a form that would fit in because it's a single-family dwelling, et  
10 | cetera.  I was curious to know that if we look at that relative,  
11 | and certainly looking at it relative to the street, where you  
12 | have the PDR zone on one side and this RF Zone with the small M-4  
13 | Zone toward the end of the corner.  I'm just curious to know how  
14 | you exactly viewed that.  Because if I look at the RF-1 Zone  
15 | itself and everything beyond that going east the RF-1, the  
16 | character does seem to be a little bit off.

17 |           And the other question I had is given the amount of  
18 | detail we have on the renditions of the project, how can we really  
19 | make a good assessment of how it actually fits in?  Some modern  
20 | projects can fit in very well, some may not.  Can you just give a  
21 | sense of how you looked at that?

22 |           MR. JESICK:    Sure.  You know, I think to some extent we  
23 | did look at the broader context, you know, many modern buildings

1 | being constructed recently or presently in the neighborhood. But  
2 | even along this block while, again, the proposed building is very  
3 | modern in appearance, it does read as residential. The overall  
4 | mass of the building is, at the front is compliant with the RF-1  
5 | Zone. The Applicant is maintaining the berming that exists along  
6 | 3rd Street. So overall we felt that it fit in with the  
7 | residential nature of the block, despite its, you know,  
8 | architectural character being much more modern.

9 |           MR. BLAKE:     The last question I have. I apologize for  
10 | taking so much time. If we look at the, looking at the variance  
11 | test on the rear deck, you indicated that the size of the lot was  
12 | small and difficult for a residential dwelling. I assume that all  
13 | of those houses are residential dwellings and they've existed for  
14 | a long time. So they are suitable for that I think. If you could  
15 | elaborate on why you think that is exceptional or extraordinary,  
16 | this particular lot.

17 |           MR. JESICK:    Sure. If you go to the overall size of  
18 | the lot, just over 800 square feet. We do feel that that is  
19 | exceptionally small for a residential dwelling, especially given  
20 | modern living standards. Also, the depth of the lot is just  
21 | around 55 feet in depth. So, again, this is a very shallow lot  
22 | when it comes to a residential dwelling. So, you know, we felt  
23 | that met the first part of the variance test. That certainly it's



1 not unique in terms of size. It is identical to its neighbors,  
2 but it's certainly exceptionally small. And we felt that it  
3 passed that part of the variance test.

4 MR. BLAKE: Thank you for that.

5 VICE CHAIR JOHN: Thank you. Mr. Smith? Mr. Smith then  
6 Mr. Hood. I'm sorry. Do you have a question, Mr. Smith?

7 MR. SMITH: Yes. Mr. Blake answered several of my -- I  
8 mean, asked several of my questions. But to piggyback on one of  
9 his questions. And I think what has been brought up multiple  
10 times I think through this presentation is the question about the  
11 size of the special exception that we approved 20333. So my  
12 question to you is about this question of visual intrusion, and  
13 the impact within the neighborhood. Did OP, in their analysis,  
14 study the some of the existing properties along the block? I  
15 recognize that the height is by right. But again, this is a  
16 special exception. So there is additional level that I do believe  
17 that needs to be done by us and OP when it comes down to an  
18 analysis on the scale and size of the structure relative to  
19 height. Was there an analysis done by OP of the sizes, the  
20 dimensions of the existing properties within the Square, including  
21 20333 and the properties along Abbey that are three stories tall,  
22 was there any analysis done to back up your analysis to support  
23 the special exception?

1           MR. JESICK:     Well, we did not do a house-by-house  
2 calculation of heights.  Certainly, almost every house along 3rd  
3 Street is a uniform height.  You have maybe slight variations due  
4 to architectural embellishments.  We do have a few third-story  
5 additions, either approved or constructed, including the house  
6 directly to the south and this property.  And then you mentioned  
7 the house a few doors down subject of BZA case 20333.  And I  
8 believe there are a couple of other third-story additions in the  
9 row.  On Abbey Place we do have a number of properties redeveloped  
10 with third-floor and/or rear additions, including directly behind  
11 this property.  So I would say most of the houses are two stories  
12 in height.  This house would be three stories with a cellar.  So  
13 it's floor plates do not align exactly with the other houses, but  
14 it would, as you know, be a height that is a matter of right in  
15 this zone.

16           MR. SMITH:    Okay.  Thank you.  That's all the questions  
17 I have for now.

18           VICE CHAIR JOHN:  Mr. Hood?

19           MR. HOOD:     Yes, Madam Chair.  I believe Mr. Blake and  
20 Mr. Smith asked that question so very eloquently.  But I'm going  
21 to ask it the way I can understand it.  I'm probably asking a very  
22 similar question that Mr. Smith just asked, but I'm going to ask  
23 it my way.  Mr. Jesick, when the Office of Planning does their

1 analysis do you use just calculations or does design also come  
2 into play in your findings?

3 MR. JESICK: Did you say calculations, Mr. Hood?

4 MR. HOOD: Yeah, calculations. You know, like, setback.  
5 Do you give your analysis -- and this actually is going to help me  
6 in other cases as well. Do you give your analysis on calculations  
7 or do you also look at the structure, you know, the mass. I heard  
8 you say masses. I know you look at masses. Do you also look at  
9 design is what I want to say?

10 MR. JESICK: Well, certainly there's no denying that  
11 this design is more modern than its neighbors. As has been noted  
12 in the record, the row along 3rd Street is, you know, very  
13 uniform. So we note the change in design, and we noted that in  
14 our written report. We're certainly not, you know, historic  
15 preservation experts. We're not judging a project by its  
16 appearance, necessarily. We felt that the character, the overall  
17 character of the project was a residential character, not out of  
18 line with what is permitted in the RF-1 Zone. So I think -- I  
19 don't know if that answers your question. I would certainly note  
20 the design, but we didn't -- we're not evaluating the design.

21 MR. HOOD: Okay. And that's where I sometime -- and I'm  
22 sure my other colleagues on the Zoning Commission as well, as you

1 know, we look at that. So anyway, thank you for now. That  
2 question may come up again. But thank you for now.

3 MR. SMITH: Can I piggyback off of Chairman Hood? So  
4 just to speak for myself when it comes down to the question. And  
5 I think Chairman Hood, we're asking the same question. So my  
6 question -- I mean, my concern within that question is not so much  
7 about the design. I recognize it's a modern building. Mine is  
8 about does OP do an analysis on the scale of the building, of the  
9 residential building? And, you know, my question is, is there --  
10 when we -- we talk about calculations. One of the calculations  
11 that I've seen done by OP is a calculation of the size of the lots  
12 within a square. And I have never heard of that when it comes  
13 down to the dimensions of some of these additions that we have  
14 just seen. So that's my question to you. What is the -- what is  
15 the analysis that OP conducts other than a visual analysis that  
16 you all provided to me now?

17 MR. JESICK: I'm not sure I fully understand your  
18 question, Board Member Smith. OP, you know, reviews any  
19 application. That's the standards of the zoning regulations. We  
20 found that this application met the criteria, and we are  
21 recommending approval. We felt that there were no undue impacts  
22 in terms of impacts to light or air. We visited the site. We  
23 reviewed the materials in the record. We are now reviewing the

1 shadow studies that have been provided by the Applicant. So, you  
2 know, that was the scope of our analysis. If the Board would want  
3 something further, we would be happy to do that.

4 MR. SMITH: Okay. I think I would welcome something  
5 further. But that's just my comment. But that's all I have for  
6 now. Thank you.

7 MR. HOOD: Let me just piggyback on Board Member Smith  
8 again. I think we're trying to go the same place, we just have  
9 different ways of asking it. One is probably more trained than the  
10 other one, and that's Board Member Smith as opposed to myself.  
11 But I want to make sure I understand. So I'm also in tune with  
12 Board Member Smith to continue to have this dialogue in this case.  
13 Because I want to see where I'm -- I'm trying to figure out. I  
14 think we're trying to get to the same place. I'm going to stick  
15 with that. So thank you, Madam Chair.

16 VICE CHAIR JOHN: So Mr. DeBear, do you have any  
17 questions for the Office of Planning?

18 MR. DEBEAR: I do not. I would just ask at some point,  
19 whether it's now or after the ANC speaks, that I just have just an  
20 opportunity to address some of these as well. It can come later  
21 if that's best.

22 VICE CHAIR JOHN: Sure. We have one Board member who  
23 has another question. Mr. Blake?

1 MR. BLAKE: Well, I'm not sure if this is to Mr.  
2 Jesick or Mr. DeBear said something. I just had a comment maybe.  
3 What would be the best way to do that?

4 VICE CHAIR JOHN: I'm sorry, I --

5 MR. BLAKE: I'll just ask the question. It would be  
6 beneficial in looking at this building right now, for me, to have  
7 -- we have two exhibits that were presented in here that talked  
8 about the, that showed how the modern fits in with the existing.  
9 But those renderings don't give us a very good -- at least didn't  
10 give me a very good idea of what I was looking at. Because,  
11 you're right, you can compare things, you can do setbacks and  
12 different things, roof, the treatment, stuff to make it look more  
13 and fit in better. But in this case I don't have any clear sense  
14 of that. I don't think the renderings gave me a very good sense  
15 of what that might look like. And just to put on the table, it  
16 might be helpful to see some additional renderings beyond these  
17 to get a better sense of what, how it does fit in in the context  
18 of the neighborhood.

19 VICE CHAIR JOHN: Okay. Thank you, Mr. Blake. So  
20 Commissioner Eckenwiler, do you have a comment for the Office of -  
21 - questions for the Office of Planning?

22 MR. ECKENWILER: No questions, Madam Chair.

1 VICE CHAIR JOHN: Okay. Thank you. So let's see  
2 where I am. Mr. Eckenwiler, do you want to provide your statement  
3 now?

4 MR. ECKENWILER: Yes, please. Thank you, Madam Chair.  
5 If Mr. Young can put up the ANC's slides.

6 VICE CHAIR JOHN: And you have the same 17 minutes that  
7 Mr. DeBear had.

8 MR. ECKENWILER: I will endeavor to stay within that,  
9 Madam Chair. So thank you. Next slide, please.

10 So the Applicant and OP have already summarized kind of  
11 the chief areas of relief. In my presentation I'm really going to  
12 focus on two of them, the special exception for lot occupancy and  
13 the lot occupancy variance. As we've indicated in the ANC report,  
14 that's at exhibit 33, the application fails to satisfy the  
15 relevant criteria, and the Board should deny it. Next slide,  
16 please.

17 And we can skip this slide. This is just a summary of  
18 E-5201. The Board members are well familiar with it.

19 So going to this particular project. The ways in which  
20 this proposal fails to satisfy E-5201 is, one, the undue adverse  
21 impact on the light available, specifically to the property to the  
22 north. And as questions from several of the Board members have  
23 suggested, there is a substantial visual intrusion on the

1 character, scale and pattern of this street project. And I do  
2 want to come back to why it's this street front and not some other  
3 street front. But we'll get to that. Next slide, please.

4 So here is -- this is taken -- I'm sorry, was there a  
5 question?

6 VICE CHAIR JOHN: No.

7 MR. ECKENWILER: Okay. So this is taken directly from  
8 the Applicant's drawings. I think he included the right-hand  
9 side. You can see that there is a significant change in the bulk,  
10 in the massing here. And it is inevitable. Just think, if the  
11 sun is in this position, the prospective that we have looking at  
12 this, that is going to cast substantial, additional shade on the  
13 property to the north, 1175. Next slide, please.

14 So as I say, we're looking to the northeast, house  
15 position southwest. That means that in the hours after noon  
16 there is going to be additional shade. Keep in mind, this new  
17 building is taller by a full story plus a parapet wall. And I  
18 want to emphasize here, because Mr. DeBear's presentation says 35  
19 feet. That's true as a technical zoning matter. That's not how  
20 tall the building really is above grade. Because parapets up to  
21 four feet are not included. Their drawings clearly depict a  
22 three-and-a-half-foot tall parapet. So it's really 38-and-a-half  
23 feet tall. But you don't have support from either of the abutting



1 neighbors. And even, you know, the Board has obviously allowed  
2 the drawings in the PowerPoint presentation. Those are still  
3 inadequate. Those really don't show, and I think, you know,  
4 several questions from members of the Board indicate, those do not  
5 adequately depict what the actual impacts of this change in  
6 condition are. Next slide, please.

7 And so going to the other prong under E-5201. I just  
8 emphasize. So this is a remarkable street front. The east side  
9 was all built in one go, by one developer, almost a century ago.

10 And it was one of those houses had been lost. That was the one  
11 at the far north end on M Street. Thirty-four of them still exist  
12 in substantially the same condition as when they were originally  
13 constructed. Next slide.

14 And we'll just go through. Mr. Young, if you can just  
15 give us a couple seconds. So here's an overview of the block.  
16 Next slide.

17 And you can see that most of these houses have the so  
18 called cant roofs. You might also call it a mansard roof. It has  
19 that parapet wall on either side. Some of them are higher, some  
20 of them are lower. And there is a certain repeating pattern to  
21 those. Next slide.

22 Other houses periodically in the sequence have these  
23 upper-story pediments. And also the windows on some of these, as

1 | you can see here in this illustration, those windows are  
2 | invariably grouped on the second stories as opposed to being  
3 | separate window openings. Next slide.

4 |           And then we have other little details. You know, we've  
5 | got these great arches. You know, this is common brick. This is  
6 | not, you know, fancy, pressed brick, like what we see on Capitol  
7 | Hill. But there was still significant care taken to create this  
8 | harmonious -- these buildings have everything in common even  
9 | though each of them is distinct in its own way. understand they  
10 | create, therefore, this truly unique street front. Next slide.

11 |           So what the Applicant proposes to insert into that  
12 | harmonious row is this 38-and-a-half-foot tall, completely modern  
13 | design. There is no -- it's not a -- it's not an angled pediment,  
14 | it's not a sloped or a double sloped cant roof. It just goes  
15 | straight up all the way to the very tip top of that parapet wall.  
16 | As OP has conceded, this is a highly modern design. You look head  
17 | on at the amount of glass here. It looks really, really  
18 | different. And I think Board Member Blake made a good point that,  
19 | you know, there's not a lot of detailing here that shows us how  
20 | this compares to the other houses around. But, you know, just  
21 | here alone, we look at the demonstration with the glazing. This  
22 | is profoundly dissimilar to what exists in this row. It really  
23 | bears no relation at all to what exists elsewhere. And that's

1 really the essence of character, scale and pattern. Character,  
2 scale and pattern is now about, as Mr. Jesick said, does have the  
3 row house form? The bar is a lot higher than that. Character,  
4 scale and pattern actually means something other than it's a fully  
5 attached building on a, you know, 16 to 18-foot wide lot. It means  
6 it has some association, some connection, and some similarity to  
7 its immediate context. Next slide.

8           So we've heard a number of, you know, counter-  
9 arguments, you know, justifications here. And we heard a couple  
10 of times project isn't in a historic district. Absolutely true.  
11 ANC 6C is not claiming that. We're not claiming that the only  
12 building that could ever be here is a carbon copy of one of the  
13 buildings that exist now. But we're looking at the test under  
14 E5201. And, again, character, scale and pattern is about  
15 precisely that, about the relationship and rhythm in both. To a  
16 certain extent in design detailing. And that's not satisfied  
17 here.

18           We've also heard -- there's been various references made  
19 to both 1171, immediately to the south, that has a roof addition  
20 which is, I would note, unlike this project set back several feet  
21 from the facade. A reference was also made to 1165 3rd Street.  
22 That's the building that is four houses to the south. understand  
23 a month ago this Board, in case 20333, approved some changes to

1 that with the support of the ANC, that actually scaled back --  
2 there is substantial compromise. A lot of kind of unpermitted  
3 changes were made to that building. And as part of the compromise  
4 that was reached on this building, both with the ANC and the OP,  
5 the third story is to be moved back substantially. It's going to  
6 go back like 10 feet. Next slide, please.

7           So Mr. DeBear and I think OP, you know, averted to the  
8 fact that there had been, you know, upper story additions in this  
9 row. And that's been undeniable. But if we look at these  
10 sections, we look at what those actually look like. On the left,  
11 this is 1171, so that's the property immediately to the south.  
12 And you can see that that rear roof addition sits well back from  
13 the facade, from the cant roof. So it respects that scale. You  
14 still have that continuous line of the two-story facade with, you  
15 know, that roof detailing. And on the right-hand side you can see  
16 this is from case 20333, which the Board heard, you know, barely a  
17 month ago, that third story, again, being set back by 10 feet.  
18 Again, to respect that scale. And if we can go to the next slide.

19           I'm not going to read through all of the comments here.  
20 But these are statements from the members of the Board about that  
21 design decision that was ultimately arrived at in 20333. And  
22 everyone was in agreement. All five members of the Board, OP, the  
23 ANC that setting that back was in keeping with the character of

1 the row homes along that block, in the words of Mr. Smith. And  
2 that it, you know, it harmonized that building in a way that it  
3 had been disharmonized by some of those illegal modifications. So  
4 we've already got a history here. We've got the Board has already  
5 acknowledged, there is a character, there is a specific character  
6 to this row. And part of that character is respected when that  
7 third story, if there is to be a third story, is set back. That's  
8 why the rooftop addition at 1171 is not a precedent that supports  
9 the application here. The application here has no setback. It  
10 just goes straight up 38-and-a-half feet. Next slide.

11           So just to wrap up on, you know, the lot occupancy  
12 special exception. As I've already said, you know, it has  
13 detrimental impact to the light on 1175 and on character, scale  
14 and pattern. The Applicant has not carried its burden. We do now  
15 have these extreme limited sun shadow studies that really I think  
16 don't show us anything. And I do want to speak -- I mentioned  
17 this, you know, at the beginning of the presentation. There has  
18 been a lot of talk about, you know, what's behind you as you look  
19 at this block. The Uline Arena. Or what's around the corner.  
20 And the truth is, that is not what the character, scale and  
21 pattern test has ever been about. That test has been in there,  
22 I'm pretty sure that dates ZR58. Maybe not the original 1958  
23 regs, but it has been in the regs for a very long time. And I

1 cannot recall and, frankly, I would invite the members of the  
2 Board to search their recollection for any case in which the Board  
3 has ever, in analyzing character, scale and pattern, said oh,  
4 sure. You can turn around 180 degrees and look at what's across  
5 the street. The reason you're not going to remember such a case  
6 is because that's not what that test is about. That test is about  
7 somebody who wants to build this thing. Okay. Maybe it's an  
8 addition, maybe it's a new building. So you have your proposal.  
9 What is that going to look like in its immediate context? Because  
10 that's what character, scale and pattern along that street front  
11 is viewed from the street. Not what you see when you look way  
12 down the block, or when you look across the street and imagine how  
13 this building might compare to things across the street. So I  
14 think that's really a side show, and I think the Board should  
15 disregard, you know, this reference to what exists in the nearby  
16 PDR's. This is the RF-1 Zone. You should be looking at this  
17 street front and these houses. Next slide, please.

18           And so just to, you know, quickly conclude here on the  
19 variance relief. The Applicant wants to go up to almost 83  
20 percent by constructing an elevated deck. To do that they need to  
21 establish that there are peculiar and exceptional practical  
22 difficulties. Next slide.

1           The Applicant's own filing concedes the property needs  
2 to be unique. And I'm not overseeing that. That's a direct quote  
3 from their amended statement, exhibit 57. It's not unique. All  
4 54 houses in this row sit on lots that are identical. Not just  
5 similar. I think Mr. Jesick may have said similar size. But  
6 they're not similar. They're all exactly the same lot size,  
7 because they were all plotted out by the same developer, at the  
8 same time.

9           And there is no practical difficulty here. Mr. Jesick,  
10 you know, at various points talked about, well, you know, you need  
11 to have outdoor space. The proposal here has a full roof deck  
12 with a swimming pool on top of this building. So it's a little  
13 hard to press the claim that there's inadequate outdoor  
14 recreational space. They don't also get the benefit of the  
15 variance for that elevated deck at the rear. Next slide, please.

16           The variance would also be a detriment to the public  
17 good. The Applicant's statement says the deck is only one story,  
18 next to garages of similar size. And that is false. If you look  
19 immediately adjacent, so the property to the south, 1171 3rd  
20 Street, there is no garage there. There is just a patio. And  
21 this deck, which would run directly up, it would abut that lot  
22 line, would clearly overlook that patio. And beyond that, it

1 would afford direct views into that property's rear windows. Next  
2 slide, please.

3           So this is a photo taken from the Applicant's package.  
4 It's at exhibit 11. And I've just annotated it so you can see on  
5 the left is 1171 3rd Street. To the right is the subject  
6 property. And where it's labeled proposed site of deck, that is  
7 about the level at which this elevated deck would be constructed.

8       So overlooking that rear space, 1171. And, you know, if you're  
9 standing on top of that six-and-a-half foot tall structure, you  
10 can see that there is a rear window right there at 1171. That  
11 deck would afford views into.

12           I do also want to just respond briefly. Mr. DeBear said  
13 this area at 1171 is used for parking. Well, this photo certainly  
14 doesn't show that. I don't know that we have any photos showing  
15 that. But that's not a permanent condition. For all we all we  
16 know, the owner of 1171 really does use this as social space.  
17 And even if they don't, they can turn around and sell it next year  
18 to somebody who wants to. So it is I think a little misleading to  
19 talk about how this is just a parking pad. This is a multi-  
20 purpose space, and its privacy would be substantially impaired by  
21 allowing construction of this elevated deck. Next slide.

22           So that concludes my presentation. As I said, the  
23 Applicant has failed to carry its burden on multiple prongs, both



1 for the special exception, for lot occupancy and also in terms of  
2 the burden of showing uniqueness and no detriment to the public  
3 good. The variance, again, I would remind the Board, there is no  
4 support from either abutting neighbor. And, therefore, the ANC  
5 urges the Board to deny the application. That concludes my  
6 presentation. I would be more than happy to answer any questions.

7 VICE CHAIR JOHN: Mr. DeBear, do you have any questions  
8 for Mr. Eckenwiler?

9 MR. DEBEAR: I do, Chair John. With the Board's  
10 indulgence.

11 Chair Eckenwiler, you mentioned that there are no  
12 letters of support from the adjoining neighbors. Are you aware of  
13 any letters of opposition from the adjoining neighbors in the  
14 record?

15 MR. ECKENWILER: There's nothing in the record at all so  
16 far as I'm aware.

17 MR. DEBEAR: You insinuated or said directly that the  
18 proposal would cast shadow on the lot to the north; what are you  
19 basing that on?

20 MR. ECKENWILER: Simply on the axonometric view. If we  
21 assume that's where the sun is, there are areas at the rear of  
22 that property that receive sun in the before condition. And in

1 | your own axonometric drawings there is now a building envelope  
2 | that would obstruct that sunlight.

3 |           MR. DEBEAR:     Did you do your own shadow study?

4 |           MR. ECKENWILER:  No.

5 |           MR. DEBEAR:     Did you base that assertion on a  
6 | comparison of what a matter of right structure would be to the  
7 | proposal?

8 |           MR. ECKENWILER:  No.  But the burden is not mine.  The  
9 | burden is on the Applicant.

10 |           MR. DEBEAR:     Well, you also don't have the ability to  
11 | just say things without support for that.

12 |                     In case 20333, which is the one we spoke about  
13 | throughout the hearing, did the ANC ultimately support that case?

14 |           MR. ECKENWILER:  Yes.

15 |           MR. DEBEAR:     And did the ANC find or do you recall if  
16 | the ANC found that that proposal did not adversely impact light  
17 | and air of neighboring properties?

18 |           MR. ECKENWILER:  I honestly don't recall whether we  
19 | spoke to that particular issue for that project.

20 |           MR. DEBEAR:     Okay.

21 |           MR. ECKENWILER:  But keep in mind that that -- there's an  
22 | existing condition there.  There is already a rear structure that  
23 | goes up a third story, if I'm recalling correctly.

1           MR. DEBEAR:     Okay.     You would agree that it was a  
2 relatively similar rear addition proposal to this one?

3           MR. ECKENWILER:   No, I would not.

4           MR. DEBEAR:     You would not?   Do you recall what the lot  
5 occupancy for that proposal was?

6           MR. ECKENWILER:   Yeah, going up to 70 percent.   That was  
7 an addition.   This is a brand new building, for one.   And, two,  
8 that one is set back.   You're proposing to go all the way up to  
9 the front facade, right up to the lot line, to the very top of the  
10 parapet.

11          MR. DEBEAR:     Okay.     But the lot occupancy for that  
12 proposal was the same as what this building is being proposed?

13          MR. ECKENWILER:   Essentially, yeah, 70 percent or right  
14 around.

15          MR. DEBEAR:     Right.   Okay.   But the ANC and, you know,  
16 I'll read from a filing from the ANC just to refresh your  
17 recollection.   "The most significant changes include" -- and this  
18 was after the Applicant made changes -- "providing detailed sun  
19 shade studies showing the potential impact on the property to the  
20 north, which we do not consider undue."   Does that ring a bell?   I  
21 could read --

22          MR. ECKENWILER:   I have no reason -- I mean, what's in  
23 the record is in the record.

1 MR. DEBEAR: Okay. You're not disputing it?

2 MR. ECKENWILER: No. That doesn't sound at all out of  
3 character with what we did in that case.

4 MR. DEBEAR: Okay. Just moving on. Just a couple of  
5 brief questions just on the character, scale and pattern standard.  
6 Is there anything in the standard that you see that requires the  
7 Board to only consider properties in the RF-1 Zone?

8 MR. ECKENWILER: No. The standard under the reg is, you  
9 know, character, scale and pattern of buildings as viewed from the  
10 street. So it's not where things that are way behind, like maybe  
11 across the alley, that you can't see from the street. It's  
12 certainly not things that are behind you as a viewer in looking at  
13 the subject property.

14 MR. DEBEAR: Okay. Would you agree that if the  
15 Applicant -- and this is hypothetical -- but if the Applicant were  
16 to construct a 35-foot home here, with the exact same design but  
17 without seeking special exception relief, they could propose the  
18 exact same design features on the front facade? In other words,  
19 is the Applicant seeking any relief related to the actual facade  
20 itself?

21 MR. ECKENWILER: You absolutely are. Because once you  
22 sought special exception relief, you became subject to the  
23 requirements of E5201. And that triggers an analysis of

1 character, scale and pattern.

2 MR. DEBEAR: But in terms of the design and  
3 architecture itself, the Applicant could have built this facade in  
4 the exact same way it's proposing to the Board today, but as a  
5 matter of right?

6 MR. ECKENWILER: Well, what you can build as a matter of  
7 right is just, it's self evident. You can build it as a matter of  
8 right. And matter of right outside the historic district is not  
9 going to require , except in some really unusual cases, any kind  
10 of design review. But that's not what's before the Board in this  
11 case.

12 MR. DEBEAR: Thank you. No further questions.

13 VICE CHAIR JOHN: So I have a question that's -- so  
14 where is this Uline Area; is it on 3rd Street directly --

15 MR. ECKENWILER: It is on -- I'm sorry, Madam Chair. I  
16 -- go ahead and finish your question. I'm sorry.

17 VICE CHAIR JOHN: Either of you. Because I thought it  
18 was directly across from these, this row of houses, not behind  
19 them.

20 MR. ECKENWILER: So it's -- there is a complex of  
21 buildings on the west side of 3rd Street, south of them. The  
22 Uline Arena, per se, so the old Washington Coliseum, fronts on M  
23 Street, not on 3rd.

1 VICE CHAIR JOHN: Okay.

2 MR. ECKENWILER: However, there is also an attached  
3 building. It used to be the Ice House. And that fronts on 3rd  
4 Street. And it is now part of that same development. There was a  
5 whole development project around that entire site. So the Uline  
6 complex certainly sits on the west side of 3rd Street.

7 VICE CHAIR JOHN: Okay. That's helpful. So if I walk  
8 up or down 3rd Street I would see some portion of that commercial  
9 complex on the other side of the street? It's my understanding,  
10 from looking at Google Maps, that this row of houses is on one  
11 side of 3rd Street. And directly across the street there is like  
12 a, a dividing, a divider with trees and so on. Then across the  
13 street there is some commercial buildings; is that correct?

14 MR. ECKENWILER: Yes. What's immediately across the  
15 street from the area is commercial. It's the PDR Zone.

16 VICE CHAIR JOHN: Okay.

17 MR. DEBEAR: Can I just -- Chair John, maybe that  
18 answered your question. But I did have a slide showing the actual  
19 view from 3rd Street. That shows the Uline Arena on the right  
20 side, which is the western side and the row, the row homes on the  
21 left side. I could pull that up if you'd like to just quickly  
22 see, if it would be helpful.

23 VICE CHAIR JOHN: Sure.

1 MR. DEBEAR: If Mr. Young can just pull up the  
2 PowerPoint. I think it's probably slide five or six maybe of the  
3 Applicant's PowerPoint. And I won't belabor this, but I did just  
4 want to bring it up since you asked the question.

5 VICE CHAIR JOHN: Yeah. No, it's helpful. Because my  
6 sense is that there is this row of almost identical houses on 3rd  
7 Street, and across the street is a different type of development.

8 MR. DEBEAR: Yes. Mr. Young, I think it's maybe six or  
9 seven, page six or seven. Keep going. Keep going. Yes. So if  
10 you could just blow that up. So the Uline Arena is on the western  
11 side of 3rd Street, and the red arrow signifies the subject  
12 property on the eastern side of 3rd Street. So directly across.

13 VICE CHAIR JOHN: All right.

14 MR. DEBEAR: And this is a southern facing view from M  
15 Street, Northeast.

16 VICE CHAIR JOHN: Okay. Thank you.

17 So I don't have any more questions at this time. Do any  
18 of the other Board members have questions?

19 (No response.)

20 VICE CHAIR JOHN: Is your hand up, Mr. Hood?

21 MR. HOOD: Yes, my hand is up. I just have a question  
22 for Mr. Eckenwiler, or maybe a couple. The first question is  
23 really not necessarily germane. Let me -- no, I'll just make a

1 comment. I always thought the interest in the Uline Arena was on  
2 3rd Street, but I see now that it's not. Over the years, back  
3 with roller derby and not going back to the trash transfer station  
4 that was in there and all that. So I'm dating myself.

5 Mr. Eckenwiler, let me ask you. And that's why I asked when  
6 I saw in your presentation that was on that case. And I usually  
7 have some heartburn most of the time. So and that's why I have it  
8 here. That's why I was like, was I really on this case? But if  
9 some of what was done -- I'm trying to extrapolate to your  
10 testimony, which I think was very well done. I think both  
11 arguments were. But let me ask you, if something was done in the  
12 other case -- and we don't -- I know the Board or Commission, we  
13 don't depend on other cases. They are done on merits. But if  
14 some of that was instituted here do you think the ANC would have a  
15 different position? I mean, that's what I gathered out of your  
16 presentation.

17 MR. ECKENWILER: You mean in terms of the setback?

18 MR. HOOD: Setbacks and right.

19 MR. ECKENWILER: I think it would certainly mitigate to a  
20 certain extent, you know, some of the incompatibility with this  
21 row. I would go back to Board member Blake's comment about the  
22 lack of overall detail. And it is a little hard to assess exactly  
23 how harmonious or inharmonious this is. I think what we have



1 clearly indicates is inharmonious. But, yes, certainly the  
2 setback was a, that was a significant demand that the ANC wanted  
3 in 20333. Because we felt that there was alterations which were  
4 unpermitted, really did detract from the row. And we wanted to  
5 see at least some, you know, some significant gesture to, you  
6 know, restoring that scale and pattern.

7 MR. HOOD: All right. Thank you, Mr. Eckenwiler. Thank  
8 you, Madam Chair.

9 VICE CHAIR JOHN: So back to Mr. DeBear. Did your  
10 client consider some of those changes in coming up with this  
11 project that perhaps the design sort of more consistent with that  
12 row of houses might work without sacrificing, you know, the right  
13 to do an addition?

14 MR. DEBEAR: Yeah. So I think we -- the -- my client  
15 looked at the standard and felt as though, for the reasons we have  
16 stated today, that it is not out of line with the character, scale  
17 and pattern of the neighborhood which by its definition, for many  
18 other reasons we've talked about, is I think a wide variation,  
19 contrary to what the ANC has said. Now, if the Board requires it,  
20 I would speak with my client. But, again, we would certainly  
21 maintain that we have met the actual standard. And as with any  
22 special exception, once you've met the standard, the Board is, you  
23 know, its duty is to approve it. And so the standard is the

1 street. It is not the RF-1 Zone. It is not one side of the  
2 street. It is the street. And so -- and just one other thing I  
3 have to say about that. You know, the ANC would kind of like to  
4 have its cake and eat it too in the way that they say, well, you  
5 know, the Board approved the character and scale of 2033, but that  
6 doesn't mean that they should approve, you know, -- but they also,  
7 you know, found that no undue impact in terms of light and air.  
8 But here, you know, we're not allowed to use that as precedent.  
9 And we're not asking for it to be used as precedent, just for the  
10 Board to understand that there is a variation here in terms of  
11 the buildings on the Street.

12 VICE CHAIR JOHN: So -- and I'll move on. But I agree  
13 with you and I don't. And we're not deliberating. I'm just  
14 making an observation that there's something to be said about a  
15 row of houses that, you know, have certain patterns to them that  
16 repeat. And even though it's not a historical district, there's  
17 some value in that. And so I don't really remember that other  
18 case. And I agree with Commissioner Hood that we're not bound by  
19 the previous cases because each case is different. So I'll just  
20 leave that there. And then we'll move on to see if there are any  
21 witnesses waiting to testify?

22 Mr. Young, do we have any witnesses signed up to  
23 testify?

1 MR. YOUNG: We do not.

2 VICE CHAIR JOHN: Okay. And so you get rebuttal, Mr.  
3 DeBear.

4 MR. DEBEAR: I think I just said most of my rebuttal.  
5 But one thing I'd like to add in terms of light and air is the  
6 standard, again, is a matter of right compared to the proposed.  
7 Again, if the Board needs a wider angle view of the shadow  
8 studies, that is something I can speak to the Applicant about.  
9 But it is not as the -- I'm sorry. As the ANC said, it is not a  
10 kind of anecdotal, well, this is obvious to create new shadow. It  
11 is, you know, the Board has long adopted the standard of just  
12 looking at a by right proposal, which here would be 60 percent lot  
13 occupancy, with a 20-foot rear yard, compared to what the  
14 Applicant is requesting in terms of relief. And what the shadow  
15 studies do show is, there is minimal change to the shadowing on  
16 the neighboring property, particularly the one to the north.  
17 Which, again, these are extraordinarily short lots, as the Office  
18 of Planning spoke about. So a by right structure is going to  
19 create shadow on that lot. But it's not a question of will any  
20 shadow be created, but what new shadow would be created under the  
21 proposed building?

22 And then, again, I spoke -- I think I've already my  
23 points about the character, scale and pattern. We believe that

1 the standard allows for a variation because it's based on the  
2 street, not one part of the street, not one zone on the street.  
3 This is a high density area. And so the Applicant's proposal,  
4 which has a by right height, to be consistent with that character,  
5 scale and pattern. And with that I will thank the Board for its  
6 patience and time today. And I'm happy to answer any further  
7 questions.

8 VICE CHAIR JOHN: Okay. Thank you. So let me turn to  
9 my Board members. Mr. Eckenwiler, just to be sure. That was  
10 rebuttal. Did you want to pursue cross-rebuttal?

11 MR. ECKENWILER: Madam Chair, I think we've, you know,  
12 sufficiently covered the issues. And I know you have other cases  
13 to get to. So I see no reason to --

14 VICE CHAIR JOHN: Thank you.

15 MR. ECKENWILER: -- go over ground we've already  
16 covered.

17 VICE CHAIR JOHN: Thank you. And so Mr. DeBear, was  
18 that your closing?

19 MR. DEBEAR: That was my closing, Chair John.

20 VICE CHAIR JOHN: Okay, great. Thank you. So before I  
21 close the record I want to poll my Board members to find out if  
22 you're ready to decide today or you'd like to see these additional  
23 shadow studies. I myself would like to see a clearer shadow

1 study, Mr. DeBear. One that I can understand. If you get by me,  
2 it's pretty good. And that means looking at what's proposed,  
3 what's by right at the same time so I can just look across. And  
4 then with a red pen if you can identify the additional shadow. So  
5 when I'm preparing for cases it's really easy to see what the  
6 change is. Okay?

7 MR. DEBEAR: I can do that. And I would just add,  
8 since there's at least one document the Board needs. You know,  
9 we'd be happy to go back to the ANC after this is filed and  
10 hopefully come to a resolution on the, you know, two or three  
11 objections it has. I think if the Board were to schedule  
12 something for late September that would give us an opportunity,  
13 you know, again, the ANC's agenda willing, to at least have an  
14 opportunity to maybe discuss and find something that everyone is  
15 comfortable with.

16 VICE CHAIR JOHN: I think that good neighbor policy, as  
17 Commissioner Hood likes to say, is a good one. And while you're  
18 at it, Mr. DeBear, I can tell you -- we're not in deliberations.  
19 I'm just giving you my thoughts. You don't have my vote on the  
20 variance. So I don't know about anybody else. I'm just saying.  
21 And I notice that you have a bifurcated sort of application. So  
22 even if you get by the special exception, I think the variance is  
23 a heavy lift. So I don't know if there's something you could add

1 to show that it's, it is unique. That's a heavy lift for me.  
2 Just looking at what's in the record, everything, all the lots are  
3 the same size, same length. So it would really be very difficult  
4 for me to get there. Particularly because there's a deck as well.  
5 And so there is outdoor space. So for all of those reasons it  
6 would be helpful to go and look at that as well. And then maybe  
7 let us know when you come back if you want to keep the application  
8 the way it is or if you want to apply for a special exception.  
9 Okay.

10 So do my Board members have anything to add? Mr.  
11 Blake?

12 MR. BLAKE: It would be possible to also share with us  
13 some additional renderings of the facade and the design to give a  
14 better sense of what that actually, a better look of what it looks  
15 like. Maybe some coloring, something to give us a better sense of  
16 how it fits in the context.

17 VICE CHAIR JOHN: Anybody else? Mr. Smith?

18 MR. SMITH: So I agree with Mr. Blake. I think it  
19 would be great to have those additional renderings and also to do  
20 a more thorough shadow study analysis along the lines with what  
21 the chair has stated. I mean, we're not in deliberation. You  
22 don't have two votes for that variance request. I don't believe  
23 it meets the standards for a variance, especially for a deck for

1 potentially an accessory structure, when you're already here for a  
2 special exception to expand to the maximum footprint of the lot  
3 occupancy with a special exception. And, you know, under the good  
4 neighbor policy, if we are continuing this until September, I  
5 would also, if you're going back and talk to the Civic Association  
6 I would, you know, also entertain you look at your different --  
7 see if you have some different designs also, after you look at  
8 those shadow studies, because I'm not -- as presented today, I'm  
9 not completely sold that you meet the standards of 51201.4C in my  
10 view point. So just -- I would just take that into consideration.  
11 My opinion may change with the additional shadow studies and maybe  
12 some addition renderings that Mr. Blake alluded to. I would just  
13 take that into consideration.

14 VICE CHAIR JOHN: Okay. Chairman Hood?

15 MR. HOOD: Yeah. Thank you, Madam Chair. I would agree  
16 with what I've heard with all my colleagues. If we were to  
17 deliberate today I would not be -- I would go along with what the  
18 chair has mentioned. But what I would suggest is you continue --  
19 I even have a problem with the special exception. But we'll wait  
20 until September to come back. I'm glad to know that you'll go  
21 back and work with the ANC. And what troubled me the most in  
22 this case, even though Mr. Eckenwiler, the ANC Commissioner  
23 representing the community, I'm troubled with the neighbors. He

1 represented that both neighbors are in opposition. I know it's  
2 not in the record, but the ANC is in constant touch with the  
3 community. So, you know, that really troubles me. Not to mention  
4 I think he made a good case. And fundamentally, I'm learning to  
5 deal with these anyway. So what we did a couple doors down is not  
6 necessarily particularly germane to what we're doing today, but I  
7 think that type of collaboration, which all of my colleagues have  
8 mentioned, is what we'd be looking for in September. So thank  
9 you, Madam Chair.

10 MR. DEBEAR: Can I just mention one thing, Chair Hood.  
11 I just -- Commissioner Eckenwiler can correct me. He said there  
12 was not letters of support. Not be overly lawyerly, but that  
13 doesn't mean that there's opposition from the abutting neighbors.  
14 And so I don't think he said --

15 MR. HOOD: Okay. Well, let me let him correct that.  
16 Because I thought I heard him say two neighbors on both side were  
17 in opposition. Maybe I got that wrong. I do know there's a  
18 record from someone who lives behind. I got that. So maybe he  
19 can correct that.

20 MR. ECKENWILER: Chairman Hood, it pains me greatly to  
21 completely agree with Mr. DeBear on that. There is no support  
22 from either abutting neighbor and certainly that was what I



1 intended the tender of my remarks to be. Not that I know that  
2 there is, you know, specific opposition.

3 MR. HOOD: Okay. So I took -- see, I read into that a  
4 little bit. When you say no support. Okay. Okay. But anyway,  
5 one thing I did accomplish. I got you two to agree on one thing.  
6 So I'll leave it at that. Thank you, Madam Chair.

7 VICE CHAIR JOHN: Thank you, commissioner Hood. So I  
8 think we'll go ahead and continue this case until September. And  
9 it will be a continued hearing, since the record is open for these  
10 additional submissions, and things may change for the better.

11 So Mr. Moy, do we have a proposed date for a continued  
12 hearing?

13 MR. MOY: Yes, I do, Madam Vice Chair. I'd like to run  
14 it by you and the Board to consider. My suggestion would be since  
15 you just answered one of my questions, that this will be a  
16 continued hearing, I would suggest that we schedule the continued  
17 hearing for that first hearing in October, which is October 6. I  
18 know that would be -- that would accommodate the members of  
19 today's Board. And then if that's the date, working backwards,  
20 then I would like to allow the applicant time to make his filings  
21 by September 22. Then perhaps a response, if any, from the ANC by  
22 September 29th.

23 VICE CHAIR JOHN: Okay.

1 MR. MOY: ANC, is that good with you all?

2 MR. DEBEAR: Yes. I just want to make sure, for  
3 Commissioner Eckenwiler, what is -- when does the ANC meet in  
4 September? I just want to make sure we fit in this schedule.

5 MR. ECKENWILER: Well, I was just going to come to that.  
6 Because the Zoning Committee meets on September 1st. And the full  
7 ANC, let me -- I want to make sure I've got this right. Bear with  
8 me. I think we may not meet until September 9th. I believe  
9 there's a religious holiday in the middle of the second week of  
10 September. So the full ANC meets on the 9th. But a filing on,  
11 you know, after September 9th means that you're just going to get  
12 the views of the designated representative. The ANC is not going  
13 to have an opportunity to deliberate on any, you know, additional  
14 filing.

15 MR. DEBEAR: If we file it before the required date  
16 from the Board, would that allow the ANC to make an official  
17 determination?

18 MR. ECKENWILER: Yeah. I mean, if you -- certainly if  
19 you get it to us in August, I can tell you the Zoning Committee is  
20 just going to be up to its eyeballs in September. But yes. If  
21 you get it to us sometime in August so the Committee can review  
22 this. The ANC really likes to have things come through the Zoning  
23 Committee first.

1 MR. DEBEAR: We will do our best.

2 VICE CHAIR JOHN: Okay. All right. So we'll continue  
3 this -- we will continue this until October 6th for a continued  
4 hearing. Okay.

5 MR. DEBEAR: Thank you. And thank you for the Board's  
6 patience. I know you're only through three cases today. So thank  
7 you very much.

8 VICE CHAIR JOHN: Thank you all. Have a good evening.

9 So my Board members, we have I think three more cases or  
10 two more cases. Do you want to take a tight, five minute break.

11 (No response.)

12 VICE CHAIR JOHN: Yes or no? Yes? Okay. Five minutes.

13 (Whereupon, the above-entitled matter went off the  
14 record 2:39 p.m., and resumed at 2:46 p.m.)

15 VICE CHAIR JOHN: Mr. Moy, I believe we're all back.  
16 Do you call us in or do I do that?

17 MR. MOY: I can do that for you. So the Board is back  
18 in its public hearing session after a quick break. The time is at  
19 or about 2:46 p.m.

20 The next case application before the Board is case  
21 number 20 -- or rather 17702A of District-properties.com, LLC.  
22 This is a request for zoning relief from the area variance from  
23 the minimum parking requirement of Subtitle C, Section -- Subtitle

1 C, Section 701.10. This is a modification of significance from  
2 BZA Order number 17702, which is a request for variance relief.  
3 And the minimum 16 vehicle parking spaces required for a new 16-  
4 unit apartment building in the RA-1 Zone. The property is located  
5 at 2836 Robinson Place, Southeast, Square 5875, Lot 43. And for  
6 your convenience I've just checked the record, the case record.  
7 And there is still not a, not an ANC 8E reported.

8 VICE CHAIR JOHN: Okay. Thank you very much. Mr.  
9 Young, can you let the parties in, please. Mr. Seck, can you hear  
10 me?

11 MR. SECK: Yes. Good afternoon, Chairperson John. Can  
12 you hear me?

13 VICE CHAIR JOHN: Yes, I can hear you. Are you choosing  
14 not to use your video?

15 MR. SECK: No. It's actually not having the knowledge  
16 to navigate through this new laptop I got. It's a Mac. And I was  
17 using earlier the desktop because I couldn't get the video here.  
18 But now I've got the video. I thought you could see me. But no.

19  
20 VICE CHAIR JOHN: So at the bottom of the screen you  
21 should see two buttons, one for mute, one for video. When you  
22 joined it should say join. And then you would see start video.

1           MR. SECK: Let me check that. The option I have is  
2 audio connection, speaker, and microphone. Switch to desktop ap.  
3 I don't know.

4           VICE CHAIR JOHN: Switch to the ap. So just to audio  
5 connection.

6           MR. SECK: Yeah. Which is what I've got now. But it's  
7 only audio. I don't see any option where it says video. And  
8 there's a mute button, as you said, yes. And another option to  
9 leave the meeting. But I don't see nowhere it says video.

10          VICE CHAIR JOHN: Okay. Maybe you saw that when you  
11 just started. I'm using a Mac, but I'm not sure what's going on.

12          MR. SECK: Okay.

13          VICE CHAIR JOHN: We'll go without the video. Although  
14 it's difficult because then I can't --

15          MR. SECK: Yes.

16          VICE CHAIR JOHN: -- see you and take cues. So maybe  
17 we should give you a second to see what you can figure out.

18          MR. SECK: Since you're using a Mac, maybe you can guide  
19 me. I have to download the Webex ap. And it has some additional  
20 application which everything is done. Now, I can see you clear  
21 and hear you clear. At the bottom, not all the way to the bottom,  
22 I see the mute button, a sign of a person that gives you option

1 feedback, audio connection, microphone and speaker, and then  
2 switch to desktop. That's all I see here.

3 VICE CHAIR JOHN: Yeah. I'm not sure. So we'll just  
4 go ahead and try to work without the --

5 MR. SECK: Let me see. Let me see. One second. One  
6 second. Let me see here. You see, I see the video option on  
7 every participant, but it's not showing it here on my, right next  
8 to my name.

9 VICE CHAIR JOHN: I --

10 MR. SECK: The only thing it's showing me is mute.

11 VICE CHAIR JOHN: So when you started up, that's where  
12 you first logged in, that's where you would have all the options.  
13 But I, I don't know what's happening. So you do have a  
14 presentation to share or you're just going to give an oral  
15 presentation?

16 MR. SECK: No. The presentation will be basically  
17 speaking of the case. And there's exhibit there that I probably  
18 will ask Mr. Young to show, if possible.

19 VICE CHAIR JOHN: All right. Let's go ahead then and  
20 introduce yourself for the record, and we'll get started.

21 MR. SECK: Okay. First I sincerely apologize. I've  
22 spent a lot of hours on this trying to get in and work the video.  
23 So my apologies for that.

1           My name is Saidina Oumar Seck, representing District-  
2 properties for the case 17702A, 2836 Robinson Place, Southeast,  
3 Washington, DC., for variance relief of minimum parking  
4 requirement.

5           VICE CHAIR JOHN:   Okay. Can you tell us a little bit  
6 about the modification and why you're seeking relief?

7           MR. SECK:   Yes. Chairperson John, I would like to also  
8 just say good afternoon to all the Board members, including  
9 Commissioner Chair Hood, Anthony Hood. I haven't seen him in a  
10 while. I would like to say that this is a 16 apartment building  
11 that had gone before the Board back in 2008 for special exception.  
12 And it was granted a special exception then to provide 16  
13 apartments in this one building with 16 parking spaces. We did  
14 not go to construction until 2018 because our building permit was  
15 issued in 2016. We had -- when the BZA approved the case for  
16 special exception we had to submit other drawings, prepare  
17 mechanical, plumbing, electrical and other accessory drawings to  
18 submit.

19           Once the building permit was issued there was no  
20 provision with ADA ramp on the plans, which we have to go back and  
21 amend. And the parking spaces became a problem due to a couple of  
22 reasons. The steep drop -- and I would like to ask if Mr. Young

1 can show exhibit number 15. Actually, to start with exhibit 39 if  
2 possible.

3 MR. YOUNG: Yeah. I'll just need a minute to pull that  
4 up.

5 MR. SECK: Okay. I'll keep on going then to save time.  
6 So the topography of this lot, as it will be shown soon, we have  
7 basically -- that's a different -- that's the exhibit 44. So  
8 it's 39. Where did my screen go. Okay. Yeah. So there is a 40-  
9 feet drop from Robinson Place to the rear street, Jasper Street.  
10 This building is on a narrow lot, going from Robinson to Jasper  
11 Street. And it's in between other apartment buildings that belong  
12 to Parkway Overlook. That also was recently developed while we  
13 were building this apartment complex, apartment building. We had  
14 about 30-foot-eight inches of setbacks on the side yard setback  
15 which had to accommodate different things such as a retaining wall  
16 on the right side with the neighbor, the ramp that we have to add  
17 to provide access to two apartment that's on the first level.  
18 This is a building that has a cellar unit plus three stories, a  
19 total of 16 apartments. So it's four apartment per level. And  
20 the ADA's are located on the first floor. The ramp then projects  
21 from the apartment building side, and had reduced the driveway  
22 entrance to 12 feet, which the DDOT requirement is 14 feet for  
23 two-way driveway, to access parking. And in the rear of the



1 building, right outside the rear facade, there is a more than 20,  
2 about 26 feet of drop, land drop going toward Jasper Street, which  
3 made it very difficult to provide parking on that side.

4           And we wanted to ask the Board to grant us a variance to  
5 go from 16 parking spaces to no parking space. And I would like  
6 to bring that, this BZA case initially, case number 17702 in 2008  
7 was under the 1958 regulations which required one parking per unit  
8 at the time. And now with zoning it has changed. After basically  
9 the first four units you are required to provide one for every  
10 three units thereafter, which would make it four total for this  
11 building. But looking at the support we received from Office of  
12 Planning and DDOT, their calculation is that this building would  
13 have required two parking spaces.

14           In addition, we have gone to ANC earlier. I heard  
15 Secretary Moy say that ANC has not included any record. That is  
16 correct. We had a meeting back in early June in which the  
17 commissioner, Ms. McBroom, along with Chairperson Cummings,  
18 Brittany Cummings, did support this case and voted in favor  
19 unanimously. And there will provide us a support letter which,  
20 unfortunately, did come through.

21           I had Commissioner Seegars, former Commissioner Seegars,  
22 Sandra Seegars, who was present. And I believe she was trying to  
23 join in today, because I tried to reach out to Chairperson

1 Cummings, knowing that the SMD commissioner, Ms. McBroom, recently  
2 had death in her family. She just lost her daughter. So I was  
3 hoping to connect with other commissioners, a chairperson. But,  
4 unfortunately, I have not gotten any response via email or text  
5 message. So Commissioner Seegars, who was present then, would  
6 like to probably join here. -- Hopefully she is in -- to certify  
7 that they did approve the case at the time. I would rest the case  
8 here for further questions.

9           But just briefly brush up on the exhibit 39 that is  
10 shown. We can see the contour right behind the building, the  
11 reading contour 166 feet. And at the very bottom it's 140, on the  
12 Jasper Street side. So that's a significant drop that would not  
13 allow us to provide parking with access to Jasper Street. And in  
14 the front, from Robinson, as I described with the reduction of the  
15 driveway, that was initially supposed to be 14. Could not meet  
16 the DDOT requirement. I would wait for further questions.  
17 Elaborating on the fact that the building is really not impacting  
18 negatively the area. It's in between mixed use apartments and  
19 residence in that area, on both sides of Robinson and Jasper  
20 Street. It's nearby schools, high schools as well as middle  
21 school and elementary school. It is also accessible to Metro.  
22 It's about a half a mile from, I believe it's -- it's actually a  
23 quarter mile from Union Station, Congress Heights DC Circular

1 Route. And also about a half a mile from Congress Heights Metro  
2 Station.

3 The apartment is already constructed and fully occupied.  
4 And I would rest the case there for questions, Chairman John,  
5 Chairperson John. Thank you.

6 VICE CHAIR JOHN: Thank you. Does the Board have any  
7 questions? Commissioner Hood?

8 MR. HOOD: I would yield to Board member Blake, Madam  
9 Chair.

10 VICE CHAIR JOHN: Mr. Blake?

11 MR. BLAKE: Well, thank you. Thank you. I have a  
12 couple of questions, actually. So just starting just to  
13 understand kind of the context of this. You said -- could you  
14 just go back. You said you got the approval in 2008, and you  
15 actually did not issue permits or start construction until 2018.  
16 That's a pretty -- I guess that's a long time. Can you explain  
17 how -- I just want to get into how we got where we are. And then,  
18 after that, I noticed by looking at the plan that you sent out  
19 initially, or at least in the report back then, they're very  
20 different than the actual -- even the site plan, they're very  
21 different from what I see executed. So if you could look and tell  
22 us kind of what we had anticipated happening and kind of how we  
23 got to where we are right now, I would appreciate that.

1           MR. SECK:    Yes, Board member Blake.  Thank you.  The  
2 first question.  We had the approval back in 2008 and had to  
3 prepare and submit plans for mechanical, electrical and plumbing  
4 to DCRA.  That went on till 2016, when the permit was issued.  
5 But, yes, we did not probably push the matter like right now when  
6 you can get permit expediters and so forth.  And also, during that  
7 time we were working on getting finances together to work on the  
8 building.  And the area also was coming up with developments, with  
9 the Parkway Overlook.  Which, if you're familiar with the area,  
10 went into construction recently, also at the time that we almost  
11 started, back in 2017.  No, no, no.  No, not '17.  I'm sorry.  
12 Between late '18 or '19 that they started.  They have completed  
13 and now I believe the whole block is fully occupied.  We are the  
14 only two buildings in between there on that block.

15           The second question is as far as the -- I think you  
16 mentioned about the site plan.

17           MR. BLAKE:  Yeah.  My questions were about the design,  
18 which is significantly different than the site, which is  
19 significantly different as well.

20           MR. SECK:  Yes.  The design, what I could see there is  
21 that I would have to go back to the (audio interference) and pull  
22 it up here.  But, yes, it's on the exterior finish.  As far as

1 the front porch that had columns and some of the decoration. I  
2 can check. Just pardon me one second.

3 MR. BLAKE: Just to keep things going. While you --  
4 in addition to that, if you look at the site plan, there are quite  
5 a few other things that are different. For example, there are  
6 air conditioning compressors that are in the space between the ADA  
7 compliant walkway and the driveway.

8 MR. SECK: Yes.

9 MR. BLAKE: There's also a transformer in the back,  
10 which would have been part of the parking area. Just tell me how  
11 we transitioned to that from what we planned. Because it seems  
12 like without those compressors, which I -- I don't know where the  
13 original design had them on the roof or someplace else. You might  
14 have had enough room to have the 14-foot driveway. So I'm just  
15 trying to understand how we got to this.

16 MR. SECK: Yes. Okay. The design -- if you go back  
17 to the design as far as the elevation. Yes, it has changed  
18 significantly with the front elevation compared to what we have.  
19 I don't know if there's any reason other than we felt that the  
20 brick and siding combination, which we have now, would have been  
21 fitted with the neighboring properties, but didn't know whether  
22 that would have had to trigger a revision of the BZA case having  
23 changed this, the elevation.

1           Now, it was, yes, for special exception at the time.  
2 Not sure whether this change would have impacted the decision.  
3 But I will leave it to the Board. It is a fact that they changed.  
4 It's not the same. And I do agree with you on that.

5           As far as the --

6           MR. BLAKE:     Yeah. Just focus on the driveway though.  
7 If we could look at the compressors and focus on the driveway.  
8 How did that evolve?

9           MR. SECK:     Okay. For the driveway, we have  
10 compressors. When we started the building and did the concrete  
11 and started the rough in, the ADA did not actually come into play.  
12 Because the permit and the approved plan. If we go back to the  
13 approved plan, it did not have any ADA. We had to revise that.  
14 And at the time we had done all the rough ins. And also, this  
15 building has on the roof, which could have been an option for the  
16 compressors. It has four roof solar panels on top of the roof.  
17 Yes, if the AD -- if the compressors were not located there, it  
18 would have been possibly close enough to bring this. But now,  
19 however, the porch is only five feet in depth. And the ramp on  
20 exhibit 15, when we scroll down to maybe the page number, I think  
21 it's page number six of exhibit 15. Mr. Young, if you don't mind,  
22 if you can bring that up.

1 MR. BLAKE: And also, if you could comment on the  
2 placement of the transformer as well. Was that in the initial  
3 plan or is that, again, another adjustment? MR. SECK:

4 Yeah, that transformer pad that's in the rear was not in the plan.  
5 There was no dry utility plans on this when we applied for the  
6 building permit. Later on PEPCO decided to have a transformer on  
7 the site, and it had to be within the property boundaries. So  
8 exhibit -- yes. This page here you see the compressors. We had  
9 left some room setback for servicing. Because the window wells on  
10 the other side has got at least three window wells I believe, or  
11 four on that side. And the one adjacent to the ramp railing is  
12 for the servicing. And the projection of the ramp from the porch  
13 would give turning radius, and respecting also the slope for the  
14 ramp to access the porch landing. That's the reason why it's  
15 protected from the initial five feet of the porch.

16 MR. BLAKE: Okay. Did you put the solar panels in first  
17 or the air conditioning compressor?

18 MR. SECK: No. The solar panels came in after the air  
19 condition routing was done. Basically, when you do your rough-in  
20 you run all your copper lines, et cetera. We had four on this  
21 side here, and then the other ones in the back. Because 16-unit,  
22 two in the front of the --

1 MR. BLAKE: Okay. And did you do the compressors  
2 before the ADA ramp or did you do the ADA ramp before the  
3 compressors?

4 MR. SECK: No. We did the ADA after the compressors.

5 MR. BLAKE: Okay. So the compressors were first, then  
6 the ADA ramp, then the solar panels?

7 MR. SECK: Yes.

8 MR. BLAKE: Okay. Thank you. I don't have any other  
9 questions. Thank you.

10 MR. HOOD: Madam Chair, I do have question. I think  
11 you're on mute.

12 VICE CHAIR JOHN: It's late. Do you have a question?

13 MR. HOOD: Yeah, I do have a question. Yes, ma'am.  
14 Good to see you as well, Mr. Seck.

15 MR. SECK: Thank you.

16 MR. HOOD: Well, good to hear you. I can't see you.

17 MR. SECK: Yes.

18 MR. HOOD: So let me ask you, how is it that -- well, in  
19 looking at the pictures. First, let me state that I was concerned  
20 that the ANC hadn't responded. But when you explained to me about  
21 the other two commissioners and you explained, I see Ms. Sandra  
22 Seegars on. So that took that question right off the table.  
23 Because I know if you weren't right with all that, you would



1 definitely have some issues and some problems. But I do see Ms.  
2 Seegars. So when you mentioned her name that took that question  
3 out of my mind. I moved onto something else.

4 But as far as -- and I understand how we got here. And  
5 I noticed your pictures. The day that you took these pictures  
6 were the streets -- okay. We know the building has already been  
7 finished. Were the streets being fixed? Was something being done  
8 on the streets why there's no cars parked there, or it's just the  
9 time of day you took the pictures? My question behind that is, is  
10 there a problem now? Because you already, obviously, the building  
11 is fully occupied as you stated. So can you kind of explain that  
12 to me, why I don't see a -- I see some cars, but I don't see a  
13 whole lot, or is that not an issue?

14 MR. SECK: Yes. So the, the street was already paved  
15 and most if not all the apartment on the side from Parkway  
16 Overlook were occupied. Ours at the time, when we took it, were  
17 not occupied yet. We were just wrapping up some cleaning and  
18 stuff. And so far, as it is now, we do not have really any  
19 problems. We haven't heard anything as far as from our tenants  
20 with the parking issues. Not sure whether all of them have  
21 vehicles or not, and also how busy the street is.

1           MR. HOOD: Okay. Now, let me -- help me understand why  
2 you can't build up the grade. What are the drawbacks of being  
3 able to make this compliant?

4           MR. SECK: I'm sorry, could you repeat that,  
5 Chairperson Hood?

6           MR. HOOD: What are the drawbacks of you supplying the  
7 parking spaces that are required? I know you mentioned the grade.  
8 But how come you can't build the grade up some? Just run me  
9 through what maybe some of the drawbacks of not making this  
10 compliant?

11           MR. SECK: Yeah, the previous exhibit 39 that show the  
12 topography, shows a huge 26 feet drop there. And behind there, on  
13 this same exhibit 15, we can see on page -- yes, page three that  
14 shows the rear view, taken from Jasper Street. We have a small,  
15 little, wooden -- yes. Exactly. That's the page. Those wooden  
16 retaining wall there, we had to accommodate for access to what's  
17 called a barracuda. It's a big manhole that carries the storm  
18 sewer from the building into the manhole that's on the first,  
19 small, wooden retaining wall that you see there. And that had --  
20 that was in the plan to have this manhole there connecting to  
21 Jasper Street. Because for this building our -- we could not have  
22 gravity on the Robinson side. So all the water, the sanitary

1 sewer, as well as the storm sewer had to connect to Jasper to the  
2 rear. That created that barracuda there to be installed. And --

3 MR. HOOD: Okay. I think you've satisfied my question.  
4 Thank you very much. Thank you, Madam Chair.

5 VICE CHAIR JOHN: Thank you.

6 MR. SMITH: I have a follow-up question.

7 VICE CHAIR JOHN: Okay. Mr. Smith?

8 MR. SMITH: Under -- that barracuda that you speak of,  
9 was -- you said that was proposed in the original plans. Where  
10 was that located on the original plans; was it underground?

11 MR. SECK: Yes, commissioner -- Board member Smith. It  
12 was on the plan with the DOE stormwater management approval to run  
13 the storm sewer into -- this barracuda basically serves as a  
14 filtration system before it runs down to the storm sewer main.

15 MR. SMITH: Okay.

16 VICE CHAIR JOHN: Is that it?

17 MR. SMITH: I think that's it. And the trash dumpster  
18 as proposed on the site plan, in the new site plan is where,  
19 that's where you've located it now? It's already been  
20 constructed?

21 MR. SECK: Yes. The trash dumpster -- and basically  
22 the reason of that driveway now is to serve to the trash dumpster

1 as well as the transformer, extra transformer pad that's beside  
2 it. For access to it.

3 MR. SMITH: Okay.

4 VICE CHAIR JOHN: Okay. Thank you.

5 MR. SMITH: All right. Thank you.

6 VICE CHAIR JOHN: Let's move to the Office of Planning.

7 MS. MYERS: Good afternoon. Crystal Meyers with the  
8 Office of Planning. The Office of Planning is recommending  
9 approval of this case, of the variance relief. Mainly because the  
10 required relief in order to accommodate the ADA access. That was  
11 not -- they were not aware of before the 2008 special exception  
12 approval. So this came up after the fact. And they did not have  
13 sufficient width along the street in order to accommodate the ADA  
14 requirement. So we were in support, noting that that was a  
15 circumstance that was beyond a unique situation or for the  
16 variance relief.

17 And then also, today, if the project were approved, it  
18 would be only required to do up to four or five spaces. So the 16  
19 spaces we, today, would consider very excessive. And it is in the  
20 vicinity of a Metro Station, the Congress Heights Metro Station as  
21 well as a couple of bus stops as well. So with that, Office of  
22 Planning recommendations approval for the variance relief.

23 VICE CHAIR JOHN: Thank you, Ms. Myers. Does the Board

1 have questions?

2 (No response.)

3 VICE CHAIR JOHN: Does the applicant have any questions  
4 for Ms. Myers?

5 MR. SECK: No, thank you.

6 VICE CHAIR JOHN: So I see that Ms. Seegars is here for  
7 us.

8 MS. SEEGARS: Yes. Hi.

9 VICE CHAIR JOHN: Hi, Ms. Seegars. We can't see you.  
10 Are you choosing not to use your --

11 MS. SEEGARS: I was not planning to be on here today, so  
12 I'm choosing not to be seen.

13 (Laughter.)

14 MS. SEEGARS: So thank you people for getting me on.  
15 And I just heard maybe in your last presentation someone called  
16 and said that the commissioners did not do the letter. And I  
17 tried to get on, and I'm no. Hi, Mr. Hood.

18 MR. HOOD: Hi. How are you? I was just talking about  
19 you last week.

20 MS. SEEGARS: Well, nothing bad I hope.

21 MR. HOOD: No. It's always good. It's all good,  
22 always good.

1 MS. SEEGARS: All right. Thank you. I was at the  
2 meeting. As a matter of fact, I met the District-properties on  
3 the commission, and he had quite a few projects in 8E driveway.  
4 And I don't know what other issue, except for it wants to try to  
5 move a telephone pole to put a driveway. Other than that,  
6 everything was on the ones.

7 At the June -- let me see, May meeting, May 3rd meeting  
8 for ANC 8E Omar did the presentation. And most of the  
9 commissioners are new, one seat is vacant. The two that was on  
10 maybe one term, they are not too familiar with the zoning issues.  
11 And Mr. Hood knows, it's a lot to learn when it comes to zoning.  
12 And I was telling him the same thing that planning said, that the  
13 parking requirements changed. And I do know they are exactly one  
14 mile from the Metro Station. And I know that's part of the law  
15 now. And they voted in June, in the June meeting, to approve the  
16 project, unanimously. And the commissioners who is over that  
17 area, Commissioner McBroom, her daughter died the latter part of  
18 June, but no letter was done. And normally and the chairperson  
19 writes the letter and the, someone on the District Commission  
20 signs off on it. So neither one of them did it. But I was there  
21 when they voted unanimously in June to approve the parking issue.

22 VICE CHAIR JOHN: Okay. Thank you, Ms. Seegars.

23 MS. SEEGARS: You're welcome.

1 VICE CHAIR JOHN: And you did not sign up to testify,  
2 right?

3 MS. SEEGARS: I talked to Rob. Let me see. I talked to  
4 somebody there, and he signed me up and got me, helped me get on.  
5 I don't have his name in front of me now. I think it was Rob  
6 Reed.

7 VICE CHAIR JOHN: That's fine. Thank you. I was  
8 wondering if you had been administered the oath. But that's fine.

9 MS. SEEGARS: Yeah. He signed me up right before I got  
10 on. Thank you.

11 VICE CHAIR JOHN: Thank you. Does anyone have any  
12 questions for the commissioner?

13 MR. HOOD: I just wanted to say to Ms. Seegars, I  
14 appreciate you coming on last minute. Because one of the  
15 questions I did have is about the ANC. And (audio interference).  
16 But thank you, Ms. Seegars, for coming on at the last minute.

17 MS. SEEGARS: You're welcome. It's always a pleasure.  
18 You too.

19 VICE CHAIR JOHN: And does the Applicant have any  
20 questions for Ms. Seegars? Mr. Seck?

21 MR. SECK: No, I don't. I just want to thank her for  
22 coming in. And I appreciate her very well. Thank you.

23 VICE CHAIR JOHN: Okay. Thank you, Ms. Seegars.

1 MS. SEEGARS: You're welcome.

2 VICE CHAIR JOHN: Thank you, Ms. Seegars. I have no  
3 questions. So I hope you enjoy the rest of your afternoon.

4 MS. SEEGARS: You too. Everybody, bye-bye.

5 VICE CHAIR JOHN: Goodbye.

6 Mr. Young, do we have anyone signed up to testify?

7 MR. YOUNG: We do not.

8 VICE CHAIR JOHN: Thank you. And Mr. Seck, do you have  
9 any closing statements?

10 MR. SECK: Just one or two. Thank the Board for the  
11 time. I know it's been a long day. And also to Board member  
12 Blake's remark regarding the facade. You know, I said that, you  
13 know, it's something that we missed if we had to the commission or  
14 to the Board to amend that. But I believe the look of the  
15 building blends in perfectly with what's there now, better for us  
16 than what it used to look like. And would like to basically say  
17 that it was an omittance on our part if we had to come to the  
18 Board. And I thank everyone and would like to get your support  
19 for this. Thank you.

20 VICE CHAIR JOHN: Thank you, Mr. Seck.

21 Mr. Young, can you excuse Mr. Seck and Ms. Seegars,  
22 please. And Ms. Myers.



1           So is the Board -- oh, let me close the record. Is the  
2 Board ready to deliberate?

3           (Nods head affirmatively.)

4           VICE CHAIR JOHN: Yes?

5           (Nods head affirmatively.)

6           VICE CHAIR JOHN: Okay. Does someone want to start?  
7 Commissioner Hood? How about Mr. Smith. Board member Smith,  
8 would you like to start us off?

9           MR. SMITH: So based on the testimony provided by the  
10 Applicant, and based on Mr. Blake's questions, honestly, to the  
11 Applicant, it seems that the Applicant does have a true hardship  
12 there. The rough-ins were completed for the project, the location  
13 of where the utilities would be located was already decided. And  
14 the Applicant had to keep the cards that were dealt to him in  
15 having to make this building ADA compliant.

16           The fact that it's located along a bus line and in close  
17 proximity to the Congress Heights Metro Station does give me some  
18 comfort. And also the fact that under the current regulations  
19 they would only need to be, they will only have to provide, if  
20 this was approved today, five parking spaces. So based on that  
21 fact, I am comfortable with OP's analysis on this particular  
22 request from the Applicant. And I am in support of the area  
23 variance requested.

1           VICE CHAIR JOHN: Thank you. Mr. Blake or Commissioner  
2 Hood, who would like to go next?

3           MR. BLAKE: Okay. Yeah, I am in support of the area  
4 variance for the required spaces of 16 and the 20-foot-wide  
5 driveway which was the requirement under ZR-58 and the original  
6 order. Obviously, a lot of things happened here, not necessarily  
7 in order and the way they could have been done. But at this point  
8 it certainly, that condition with the ADA ramp, the solar panels,  
9 the air conditioning compressors, all of that do make it  
10 impossible to have a driveway that's passable to allow for  
11 parking.

12           There are only five spaces needed. That, given the  
13 activity on the street, doesn't seem to provide too much of a  
14 problem to accommodate those five spaces. So I don't think that  
15 there's necessarily a detriment to the public good. And certainly  
16 it also does not seem to have an issue with regard to the  
17 impairment or intent of the zoning regulations. So I would be in  
18 favor of supporting it. However, I do want to make sure the  
19 conditions incorporated in the DDOT CF plan are implemented. I'm  
20 not sure that -- we didn't get a chance to ask the Applicant if  
21 they already installed the additional bike parking and things of  
22 that nature that are required, the hammerhead turnaround for the  
23 trash collection and adjusting the curb cut. As this is an up and

1 running situation, I would assume that some of these may have  
2 already been done. But I do want to make sure that that would be  
3 incorporated as well. So otherwise, I'm in support of this.

4 VICE CHAIR JOHN: Commissioner Hood?

5 MR. HOOD: Yes. Thank you, Madam Chair. I appreciate  
6 going being or going after my colleagues, because they have  
7 captured it all. I think -- I won't be redundant. I think they  
8 captured it all. I think the record merits our approval. I think  
9 because of factors and the way things were put together, as one of  
10 the Board members mentioned, I think it warrants, at least me, I  
11 will be in favor of this.

12 But I would also echo Board member Blake's comments  
13 about the DDOT report. I don't want to assume, but I'm pretty  
14 sure that the Applicant is going to take care of the  
15 acknowledgment measures, which DDOT wants to make them,  
16 transportation things, some conditions that DDOT wants. Because  
17 that was not mentioned. At least I don't remember hearing it.  
18 But other than that, I think it captures all. And I will be  
19 voting in support of this application. Thank you, Madam Chair.

20 VICE CHAIR JOHN: Thank you. So I agree with the  
21 comments. And I want to note that the modification is subject to  
22 the original requirement of ZR-58 and not the current regulation.

1 So the requirement would be 16 spaces. And so all other comments  
2 I agree with.

3 And so I would then make a motion to approve application  
4 17702A as read and captioned by the secretary with the condition  
5 that the Applicant comply with the DDOT recommendations that are  
6 listed in the DDOT report. And those conditions concern the PDMP,  
7 the turn around for and trash pickup, and the size of the curb  
8 cut. But all the conditions are more clearly established in the  
9 DDOT report. So I would ask the secretary to refer to the report  
10 for the conditions contained in the DDOT report and ask for a  
11 second.

12 MR. BLAKE: Second.

13 VICE CHAIR JOHN: Thank you. Mr. Moy, would you please  
14 call the roll?

15 MR. MOY: Yes. Thank you. When I call each of your  
16 names if you would please respond with a yes, no or abstain to the  
17 motion made by Vice Chair John to approve the application for  
18 modification of significance as well as the area variance, along  
19 with the conditions as cited in the Vice Chair's motion. The  
20 motion was seconded by Mr. Blake.

21 Zoning Commission Chair Anthony Hood?

22 MR. HOOD: Yes.

23 MR. MOY: Mr. Smith?

1 MR. SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 MR. BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: And we have one Board member not present  
7 today. Staff would record the vote as 4 to 0 to 1. And this is  
8 on the motion made by Vice Chair John to grant. And the motion  
9 was seconded and in support by Mr. Blake. Also in support of the  
10 motion to grant is Zoning Commission Chair, Anthony Hood, Mr.  
11 Smith. And the motion carries on the vote of 4 to 0 to 1.

12 VICE CHAIR JOHN: Thank you, Mr. Moy. We have one case  
13 left, which might take some time. So if you'd like to stretch for  
14 five minutes let me know. If not, we'll keep going.

15 (No response.)

16 VICE CHAIR JOHN: Okay. So go ahead, Mr. Moy, and  
17 please call the last case.

18 MR. MOY: Thank you. So this would be case application  
19 number 20389 of application number 20389 of Samuel Medeiros and  
20 Jessica Ellis. This application is a request for area variances  
21 from the side yard requirements of Subtitle D, Section 206.2 and  
22 from the minimum lot dimension requirements of Subtitle D, Section  
23 302.1. This would subdivide the property into two lots and

1 construct a new, detached principal dwelling unit with a detached  
2 two-story accessory garage at a new lot in the R-1B Zone. The  
3 property is located 1915 Shepherd Street, Northeast, Square 4194,  
4 Lot 841. And, let's see, this was last heard back in January  
5 24th, where preliminary matters were discussed. The merits were  
6 not heard on the case. And it's been rescheduled a couple of  
7 times with the hearing scheduled for today.

8 VICE CHAIR JOHN: Thank you, Mr. Moy. Good afternoon,  
9 Mr. Bello.

10 (No response.)

11 VICE CHAIR JOHN: Hello?

12 MR. BELLO: Good afternoon, Chairman John.

13 VICE CHAIR JOHN: Good afternoon. Can you introduce  
14 yourself for the record, please.

15 MR. BELLO: Yes. Thank you. Toye Bellow, 1917 Benning  
16 Road, representing the Applicant.

17 VICE CHAIR JOHN: And who do you have with you today?

18 MR. BELLO: I believe the architect on and so are the  
19 property owners.

20 VICE CHAIR JOHN: Okay. Could I have the architect  
21 introduce themselves, name and address for the record, please?

22 MR. KEARLY: Yes. My name is Gregory Kearly with  
23 Inscape Studio, 1113 D Street, Northwest, in Washington, DC.

1 VICE CHAIR JOHN: Thank you. And the owners. May I  
2 have you introduce yourselves, please, for the record, giving your  
3 name and address?

4 MS. ELLIS: Hi. I am Jessica Ellis and Samuel Medeiros,  
5 and we own the property at 1915 Shepherd Street, Northeast.

6 VICE CHAIR JOHN: Okay. Thank you. And we have the  
7 commissioner here as well?

8 (No response.)

9 VICE CHAIR JOHN: No? Okay. I see one other person.  
10 I'm not sure --

11 MS. CARLEY: Commissioner Carley.

12 VICE CHAIR JOHN: Oh, hi, Commissioner.

13 MS. CARLEY: Hi, how are you?

14 VICE CHAIR JOHN: Fine, thank you. Can you introduce  
15 yourself, please?

16 MS. CARLEY: Yes. I'm Commissioner Gail Carley. I'm  
17 the representative for 5B01, which encompasses that, where that  
18 property or projected project Applicant lives.

19 VICE CHAIR JOHN: Okay. Thank you very much.

20 Mr. Bello, can you give us your statement?

21 MR. BELLO: Thank you. Mr. Young, can you pull up the  
22 PowerPoint presentation. I'll just walk through that.

23 MR. MOY: Madam Vice Chair.

1 VICE CHAIR JOHN: Yes.

2 MR. MOY: If I can interrupt for just a second. I  
3 forgot to mention that there was testimony in opposition from a  
4 Edward Johnson that was submitted late, within the 24 hour block.  
5 So that's something that you may wish to address.

6 VICE CHAIR JOHN: Okay. So please remind me at the  
7 appropriate time, Mr. Moy. Thank you.

8 Go ahead, Mr. Bello.

9 MR. BELLO: So this application seeks two areas of  
10 relief, both area variances. One is to subdivide the subject  
11 property into two lots, lots "A" and "B." Lot "A" is requesting a  
12 side yard setback requirement. Next page, please.

13 So this slide is to cite case law that essentially  
14 states that the unique factor can be met through the history, the  
15 zoning history of the subject property. And those three case laws  
16 are cited there. Next page.

17 This page -- this slide essentially sets out the zoning  
18 history that is unique to this property. And it tracks the  
19 subdivision history of the subject property from 1907 through  
20 1958. And also with emphasis, the plat of computation that this  
21 property underwent in 1971. So essentially in this square the  
22 subject property that is referred to as Lot 841 does not exist in  
23 that in that configuration. The property actually consists of



1 four record lots and one sliver of a tax lot. And that  
2 configuration remained the same up to 1971. And it is uniquely  
3 the only property that hadn't undergone some kind of tax or plat  
4 lot computation before 1958. In essence, all of the ownership  
5 structure and configuration for every other property in this  
6 square were established prior to May 12, 1958. And that these  
7 lots remain today to valid record lots, four record lots, three  
8 record lots, Lots 9, 10 And 11, and what is now a sliver of a tax  
9 lot. Next page.

10 This two attachment are illustrations of what existed in  
11 1907. So the base map, which is an extract from the surveyor's  
12 records, shows the existing configuration of the property, of the  
13 entire square in fact as of 1907. And then the slide, the  
14 document to the right of that, and if you look at the date at the  
15 bottom of that document, you will see that the computation of that  
16 sort of divided these lots into four tax lots were not created  
17 until 1971, long after May 12, 1958. And the affect as far as the  
18 computation for zoning purpose are actually to make more  
19 nonconforming those record lots. They were already only 25 feet  
20 wide and much less than the 5,000 square feet required in the  
21 underlying zone. Most of these lots were 4600 square feet. Next  
22 page.

1           Again, this is a base map which does not show how this  
2 square was configured as of May 12, 1958. And it also evidences  
3 that as of that date 12 other lots in the square had undergone a  
4 private computation. And that only these lots, this property, had  
5 not undertaken that plat of computation illegally. Next page,  
6 please.

7           So the second prong of the burden of proof test is the  
8 peculiar and impractical difficulty of that uniqueness imposed on  
9 this property. The ANC lots affected by a private computation in  
10 1971 were not prohibited. It's made more nonconforming those lots  
11 that made up this property in reducing their lot size. The  
12 existing building on the -- the existing building is located on  
13 Lots 9 and 10, and lot 11 is a free-standing lot. It is important  
14 to note that these lots remain valid up to today. And that  
15 uniquely, these properties uniquely are affected in that way. And  
16 the peculiar practical difficulty in that it is that whereas this  
17 private computations change the ownership structure, they did not  
18 change the validity of the record lots that still exist and still  
19 are valid. Next page, please.

20           So taken into context the corporation counsel opinion of  
21 1977, which in summary states that a plat of computation is not an  
22 instrumental to zoning regulation. No subdivision has actually  
23 occurred on this property for zoning purposes. Record lots are

1 the only lots that are recognize as the instrument of the zoning  
2 regulations in terms of land use. So this slide is an  
3 illustration of what is possible or tentatively, which is not what  
4 the applicant desires. And clearly, it's not an outcome that  
5 would be compatible with what prevails in that square. The  
6 majority of this, the lots in this square are about 4600 square  
7 feet to about 7500 to 8000 square feet, which is essentially what  
8 this subdivision tries to accomplish. So rather than looking at  
9 this application as a subdivision to subdivide Tax Lot 841, it is  
10 in fact a subdivision to realign three record lots and the tax lot  
11 to make them more compatible with the condition in the square.  
12 Next slide, please.

13 So in comparison, this is the layout that the  
14 application proposes, and which Applicant believes is more  
15 consistent with what prevails in the square. Lot "A" retained the  
16 exiting building would be over 7,0000 square feet lot area. And  
17 Lot "B" would also comply with minimum lot area.

18 The relief that this applicant seeks is one of lot  
19 width. Quite frankly, in trying to configure this lot are  
20 unavoidable because the total width of the combination of lots  
21 have been established since prior to May 12, 1958, and because the  
22 property is abutted by a public alley to its north. There's no  
23 other opportunity for expanding that lot width. So this is

1 | essentially the best outcome for this site. And it also is  
2 | consistent with the lot width in the square. When the architect  
3 | presents the layout he will show the average lot width in that  
4 | entire square. Next page, please.

5 |           Does this result in substantial detriment to the public  
6 | good? The Applicant does not believe that that's the case. One,  
7 | for the (indiscernible) reasons. Again, this is more of a  
8 | configuration of a site to make it more consistent with what other  
9 | properties in the square had undertaken prior to May 12, 1958.  
10 | Again, those tax lots, a portion of this property is actually  
11 | (indiscernible) through a plat of computation to the lots west of  
12 | the property, which would be Lots 40 and 39. Although that Lot  
13 | 836 and 841 do not exist in the DC surveyor's office. In fact,  
14 | Lot 841 was only brought to the attention of the surveyor's office  
15 | when the private surveyor extracted it from OTR's record. Next  
16 | page.

17 |           The Office of Planning recommends denial. In so doing  
18 | the Applicant believes that the Office of Planning focused solely  
19 | on looking at this letter as a single tax lot, which for the  
20 | purposes of the zoning regulations Applicant believes that the  
21 | review really should be based on an instrumentality of the zoning  
22 | regulations, which are the record lots. And those record lots are  
23 | a series of record lots that are nonconforming at this point. In

1 this configuration actually brings them more conforming. So this  
2 is not a situation where the reconfiguration of subdivision from a  
3 conforming situation or nonconforming situation. It is in fact an  
4 attempt to make more conforming than nonconforming situation.

5 The applicant does not believe that OP's report gives  
6 greater weight to the corporation counsel in this matter, but give  
7 great weight to the case law that is applicable to it. That's the  
8 Applicant's position. Next slide.

9 The Applicant believes that the application has met the  
10 burden of proof, consistent with the case law, and that the  
11 subdivision effectively improves the upon the nonconforming  
12 situation. And that would be our submission. I believe the  
13 architect will walk you through the plans, Madam Chair, if you  
14 want that at this point.

15 VICE CHAIR JOHN: I just have a question before we  
16 continue because I'm having difficulty understanding your  
17 argument. Are you saying that this 841 is not a tax lot?

18 MR. BELLO: The 841 is a tax lot that exists in OTR's  
19 records, not the DC surveyor's record. And that 841 was created  
20 through a plat of computation in 1971.

21 VICE CHAIR JOHN: Okay. Let's start there. What is  
22 the significance that it was created by a plat of computation;

1 | what is the difference from any other tax lot in that square? How  
2 | is that different?

3 |           MR. BELLO: Okay. So Madam Chair, if you review the  
4 | application and the statement in the context of the corporation  
5 | counsel opinion, which is that a tax lot is not a zoning tool, and  
6 | that it's really a tool for determining ownership of property.  
7 | Our argument is that the record lot was -- and the zoning  
8 | administrator accepted this in allowing the validity of record  
9 | lots to continue to exist in this kind of circumstance, on the  
10 | basis of the corporation counsel's opinion. This property should  
11 | be viewed or should be reviewed in the context of the zoning  
12 | validity, not its ownership.

13 |           VICE CHAIR JOHN: And, Mr. Bello, we have had these  
14 | situations before, and my Board members can help me, where tax  
15 | lots overlay record lots. And I believe the rule has been that  
16 | the record lot is extinguished. And then the Applicant would have  
17 | to apply for a record lot. So I do know that the corporation  
18 | counsel says that the tax lot designates ownership, and is not a  
19 | zoning designation. But then those record lots were extinguished  
20 | were they not?

21 |           MR. BELLO: Respectfully not, ma'am. If you read  
22 | carefully the corporation counsel opinion, and the zoning  
23 | administrator has accepted them even today for -- and the

1 surveyor's office, for the continuation of the validity of record  
2 lots. The creation of a tax lot does not extinguish the record  
3 lot at all. The opinion of the corporation counsel is actually  
4 contrary to that.

5 VICE CHAIR JOHN: Okay. Well, I would have to consult  
6 OAG on that particular issue. But that's not my understanding.  
7 And I could be incorrect. But my recollection is that we've had  
8 this before with a tax lot that -- record lots that have been  
9 converted to tax lots. And those record lots do not continue to  
10 exist. So we'll clarify that. If I'm incorrect, then we will  
11 find out. Let's move on then. Mr. Hood?

12 MR. HOOD: Very quickly, Madam Chair. Mr. Bello, I  
13 noticed in the last case you always bring us the corporation  
14 counsel findings, which I think is very helpful. Might not always  
15 agree with. Would you be willing -- and Madam Chair, very quick.  
16 Mr. Bello, would you be willing to go back to the OAG and have  
17 this reaffirmed? Because corporation counsel in 1977 -- and I've  
18 done this in other situations -- to reaffirm their opinion.  
19 Because, you know, and I understand opinions change. But a lot of  
20 things have changed since 1977. Are you willing to do that?

21 MR. BELLO: Absolutely, if it brings clarity to the  
22 issue. But yes. But this --

1 MR. HOOD: Okay. That's all. Thank you. Thank you,  
2 Madam Chair.

3 VICE CHAIR JOHN: So okay. Let's go ahead to the  
4 architect. And I will continue to look into the issue of the tax  
5 lot. And I'll try to clear that in, clear that up as we go along.  
6 Thank you.

7 MR. KEARLY: Okay. Well, thank you for (audio  
8 interference) today. And I can take you through the project. If  
9 you can bring up the plans and drawings, I'll take you through  
10 this fairly quick. But if you would like to see that, if we can  
11 see that exhibition up.

12 Yeah. This is -- let's start here. This is the site  
13 right here, what you're looking at. This is the existing house to  
14 the left. And the side yard, the large side yard, what you have -  
15 - and if you go back to Toye, the existing house actually  
16 straddles two lots. And so what we're doing is we're proposing to  
17 resubdivide this based on the three lots plus the sliver of the  
18 tax lot -- Toye, correct me if I'm wrong in terms of the zoning  
19 issues -- and creating two lots out of what is now four lots. And  
20 so the proposed house is to the right of the existing house that  
21 you're looking here right now. So if you can take us to the next  
22 slide.



1           This is how it would look like in terms of the site  
2 plan. We're proposing a fairly modest two-story house of about  
3 2300 square feet, and then a garage with a home office above, here  
4 in the back. All this is as a matter of right. The relief we're  
5 looking for is the width of the newly subdivided lots and a side  
6 yard of the existing house. Next slide.

7           This was a computation in terms of the width. I don't  
8 know, Toye, can you help me with this one?

9           MR. BELLO: Yeah. So on Lot "A" the average lot width  
10 with a 10-foot interval method was used. And when you use that  
11 you come up with a average lot width of 48.8 feet, rather than  
12 just the linear distance of 41. So that's the point of the slide.

13           MR. KEARLY: So next slide, please. Again, the site  
14 plan. This shows the record lots with the unrecorded tax lot  
15 right here. So it shows the configuration of the four lots and  
16 our proposed subdivision of that lot. Next slide.

17           MR. BELLO: So I'm sorry. If I could just make one more  
18 point about that slide. Thank you. So the broken lines are the  
19 existing lot lines, with a little sliver of --

20           MR. KEARLY: Right here?

21           MR. BELLO: Yes. That would be to the south of the  
22 property. No, that was -- no, that would be --

23           MR. KEARLY: That would be the west of the property.

1           MR. BELLO: The west of the property. So to the west of  
2 the property you have a little sliver of a five foot lot.

3           MR. KEARLY: That's actually the assistant of the  
4 property. The public alley is the west of the property.

5           MR. BELLO: All right. So the point that I just wanted  
6 to emphasize is that the existing lot line between Lots 9 and 10  
7 actually straddles and cuts through the property lot line. SO in  
8 reconfiguring this property, though we're asking for a side yard  
9 relief, we're actually abating an anomalous situation by moving  
10 the lot line this way. Thank you.

11           VICE CHAIR JOHN: May I interrupt you. The public  
12 alley at the bottom of the page and the top of the page. So how  
13 are the -- how are the underlying lots represented? Those lines  
14 going left to right, to my left and my right, that intersect the  
15 house, is that the underlying record lot?

16           MR. BELLO: That's correct, Madam Chair.

17           VICE CHAIR JOHN: There are three -- so I'm looking at  
18 this horizontally. Right? So three underlying records lots and  
19 one record lot where the house is or one unidentified record lot  
20 where the garage is? I'm sorry, the garage is to my right.

21           MR. KEARLY: That would not be correct. There is three  
22 record lots. Start at the public alley and one, two, three as  
23 you're going up. And then as you go farther up the page you have

1 the unrecorded lot, which is that sliver of a lot, which is like  
2 four or five feet.

3 VICE CHAIR JOHN: Oh, okay. Thank you. And so the  
4 house now sits on two underlying record lots?

5 MR. KEARLY: It straddles the lots. Yes.

6 VICE CHAIR JOHN: Okay.

7 MR. KEARLY: And so what we're doing is, in our opinion,  
8 correcting that and moving that to subdivide these four lots into  
9 two lots where the existing house would not straddle a lot, but  
10 would be within the subdivided lot.

11 VICE CHAIR JOHN: Right. But then -- but then you  
12 would still have to meet all of the development standards. You  
13 can't create a new lot that doesn't comply with the standards.

14 MR. KEARLY: Well, that's what we're here for, for the  
15 two relief. We're asking for relief from the width of the lots,  
16 which is 50 feet. And we're going to be down to 39 and 41 feet.  
17 And the side yard of the existing house which will be on what  
18 we're calling lot "A."

19 VICE CHAIR JOHN: Okay. And so really what you're  
20 saying is that the exceptional condition is the three underlying  
21 record lots and the unidentified lot, and the fact that the house  
22 straddles two underlying record lots?

1 MR. BELLO: Insofar as it constitutes a zoning history  
2 for the property. And we cited case law that says the zoning  
3 history of a property can be used to meet the variance test and  
4 its uniqueness test. That's correct.

5 VICE CHAIR JOHN: I understand that the zoning history  
6 can be used to demonstrate that that property is unique. But it  
7 has to meet that test. It just can't be any history. But we can  
8 move on.

9 MR. KEARLY: All right. So next slide. These are the  
10 proposed plans. We're proposing a basement. You can see here we  
11 have living, dining, kitchen. Move up to the next slide.

12 It's a three-bedroom. And look to the right above the  
13 garage. We have a small home office. Next slide.

14 These are the proposed elevations. Next slide.

15 Next slide. The elevations of the garage. Next slide.

16 And some perspectives of the proposed development.

17 Just very quickly. I would request that we pull up  
18 exhibit 30, which is a comparison of our subdivided lots with the  
19 neighboring properties. Can we pull that up. That's lot widths  
20 and side yards. So this exhibition communicates how the  
21 subdivided, the proposed subdivided property from going from four  
22 lots to the two lots is much more consistent with the neighborhood  
23 than the current configuration of the four lots. Again, we're

1 proposing 41 and 39 feet for the widths of the lots. And so when  
2 you look at this document, the average width of the lots on the  
3 south side of the street are 41 feet. And those run from 40 to 45  
4 feet. And on the north side of the street the average widths run  
5 from 37 feet to 42 feet, with an average of 40.4 feet. So -- and  
6 then I also have the combined side yards. So even though we're  
7 reducing the side yard of the existing house, the combined side  
8 yards of this project are consistent with every other adjacent  
9 properties. And one thing to note in terms of the side yard is,  
10 it's seven-and-a-half feet to the house. It's the unoccupied,  
11 unconditioned porch that we get tight on. So it's not livable  
12 space, occupiable space where you have that open porch of the  
13 existing house that would become fairly tight on that side yard.  
14 SO I just wanted to point out that it's not -- it's not -- it's a  
15 little bit unique because it's not specific to occupiable and  
16 condition space where we're getting very tight.

17           And so that is a brief description of the project and  
18 our process of trying to create something that is very conforming  
19 with the rest of the neighborhood. I know it's difficult for  
20 people when you have a large lot to come in in the neighborhood  
21 and, you know, any change is sort of, well, we like having the  
22 open space. But this is private property, and it's not open

1 public space. So we feel that the reconfiguration is, again,  
2 consistent with everything else on the block.

3 So thank you for my time.

4 VICE CHAIR JOHN: Thank you. Do you have other  
5 testimony, Mr. Bello.

6 MR. BELLO: I think the property owner, the Applicants  
7 may want to address certain issues that some of the opposition has  
8 raised.

9 MS. ELLIS: Hello. We would love to speak briefly if  
10 allowed. Sam and I purchased this property in January of this  
11 year. We initially toured this property back in September or  
12 October. And at the time the seller walked us through the  
13 property, showed us stakes in the ground and said I'm already in  
14 the process of subdividing these lots. I'm planning to build a  
15 second house and to sell them separately. This is what I'm  
16 offering you for sale. And we were enchanted with the house,  
17 enchanted with the neighborhood and said, okay, great. We're  
18 going to take the smaller one. This is all going to be done. He  
19 recommended that we close in January so that he could pursue the  
20 full division process. And we, at that time, when we were going  
21 through all of our financing and purchasing the home were under  
22 the impression that the division would be completed by the time

1 that we closed, and we would own that 7,000-square-foot lot as he  
2 proposed, and the seller would own Lot "B."

3 As time went on it became clear that the process was not  
4 going to be complete. And we negotiated the purchase of the  
5 entire property, and paid for it with the price being set that it  
6 would accommodate the ability for this to be subdivided.

7 Sam and I have gone to so many meetings, put in a lot of  
8 time to this process at this point. And while we've said again  
9 and again that we have no immediate plans to build. This is our  
10 first home. We've obviously sunk a lot of money into this. So  
11 whenever anyone asks about when are you going to build? Like,  
12 with what money? We're not building a house tomorrow. That's in  
13 on one's plans. But since this process was already underway, the  
14 seller very generously allowed us to inherit the process, inherent  
15 the plans that he had already put together, and to continue this  
16 essentially. So that's what we have been doing for the past seven  
17 months. We have no immediate intent to build, but we are fully  
18 committed to seeing this process through. As we paid for the  
19 house with the value impression that this was going to be  
20 something that could have a second home divided on it.

21 So while I've made reference at other meetings that I'm  
22 contractually obligated to follow this process, I am contractually  
23 obligated because we paid for the home with the impression that

1 | it's subdividable. If we come to the end of the process and this  
2 | property and it is not subdividable, we are entitled to a  
3 | substantial refund based on the amount paid. So that is -- I  
4 | think it's going to come up with a letter from one of our  
5 | neighbors that we do not want to follow through this process. We  
6 | just want to be very clear that we do have an interest and a  
7 | commitment to following through on this process. And I think that  
8 | the time that we've sunk in at this point really speaks to that.  
9 | We've listed a lot of personal attacks from our neighbors  
10 | throughout this, and would have withdrawn our application a very  
11 | long time ago if we were not seriously committed to seeing this  
12 | through to the end. So I thank you for giving us the time to  
13 | speak. And I'm also happy to answer any questions.

14 |           VICE CHAIR JOHN: Thank you. I have no questions.

15 |           So does that complete your presentation, Mr. Bello?

16 |           MR. BELLO: Yes, Madam Chair.

17 |           VICE CHAIR JOHN: Okay. Do the Board members have any  
18 | questions?

19 |           MR. SMITH: I have no questions.

20 |           VICE CHAIR JOHN: Mr. Hood?

21 |           (No response.)

22 |           VICE CHAIR JOHN: Mr. Blake?

23 |           (No response.)



1 VICE CHAIR JOHN: Okay.

2 MR. HOOD: Madam Chair, I have no questions. But I want  
3 the Applicant to know that as far as I'm concerned still have a  
4 heavy lift because I interpret the case law, even what Mr. Bello  
5 gave me, totally different. And I'm willing to continue. And I  
6 kind of go along with you, Madam Chair, and your line of  
7 questioning. Because I'm even wondering why we're even  
8 continuing. But anyway, I will leave it at that. So thank you,  
9 Madam Chair.

10 VICE CHAIR JOHN: So I will move to -- is the ANC here?

11

12 MS. CARLEY: Ma'am, I am.

13 VICE CHAIR JOHN: Okay. I just want to be sure. So I  
14 will move to the -- well, let me ask you, do you have any  
15 questions for the Applicant?

16 MS. CARLEY: Um, yes. Because I noticed all of the  
17 diagrams that was, the visuals that was put up. But I did not see  
18 the diagram or the 3D diagram that I requested so that I can go  
19 out to the neighbors and they can see exactly what that structure  
20 would look like once it is built. And I'm just wondering is that  
21 available for view for the Board?

22 VICE CHAIR JOHN: I will -- you can ask that to the  
23 Applicant.

1 MS. CARLEY: That's who I'm asking.

2 VICE CHAIR JOHN: Mr. Bello?

3 MR. BELLO: The architect can address that. I wasn't  
4 involved in the ANC meeting, meetings.

5 MR. KEARLY: I think to answer that, that was submitted  
6 to the ANC. We had a request for the neighbors to be able to see  
7 that. But I don't believe that was part of the record. I can  
8 get that to everybody if you would like to see that. But it was  
9 not part of the record.

10 MS. CARLEY: Oh, I would appreciate that. Thank you.  
11 And I just also wanted to mention, I did confirm that the Board  
12 received the resolution that was voted on for supporting my  
13 opposition, and one abstain. And I also want to reiterate that  
14 while the architect brought up the other structures in that  
15 neighborhood, the lot width, which of course was, when it was  
16 built back in the 30's I believe, none of these lots violate that  
17 8-foot -- well, let me rephrase that. While they may violate the  
18 eight feet variance, the last regulation states that if you will -  
19 - if you decrease the side yard, it should not be decreased less  
20 than five feet. So I wanted to mention that, since yours was,  
21 what, 2.4 feet from the -- between each other. So I wanted to  
22 mention that.

1           VICE CHAIR JOHN: I don't really want to interrupt you.  
2 But right now we're just --

3           MS. CARLEY: Okay. Great. I'm looking at the time too.  
4 Okay. So if anyone have any questions, so you have my resolution.  
5 You understand that I went from door to door. The first time I  
6 went they basically wanted to see the structure before they made  
7 any type of, you know, commitment or whether or not they oppose or  
8 support. And it wasn't until they saw the actual 3D picture and  
9 literally saw how close it was going to be and how much it was  
10 going to violate the guidelines and rules that are in place.

11           VICE CHAIR JOHN: Okay. Thank you. So I'll go to the  
12 Office of Planning now.

13           MS. VITALE: Good afternoon, Madam Vice Chair and members  
14 of the Board. Elisa Vitale with the Office of Planning,  
15 testifying in BZA case 20389. The Office of Planning filed its  
16 first report in this case on February 12, of 2021. In that report  
17 the Office of Planning recommended denial of the variance relief  
18 requested. The case was postponed to May 19th, and then  
19 reschedule to June 9th. New information was not filed in the  
20 case. And, you know, OP supplemented the record on May 27th,  
21 noting that new information was not filed and continued to  
22 recommend denial.

1           The Applicant requested a postponement to today's date.  
2 And OP had requested that the Applicant provide an updated burden  
3 of proof to the record. However, that was not uploaded. But the  
4 Applicant did submit the PowerPoint, plat of computation and  
5 survey on Monday of this week. OP did not file an additional  
6 report. However, OP continues to recommend denial of the variance  
7 request. OP does believe that the Applicant has demonstrated an  
8 extraordinary condition that is unique to the subject property  
9 that would justify the lot width and side yard variance request.

10           I will conclude my presentation there, but I am  
11 available to answer any questions that you might have. Thank you.

12           VICE CHAIR JOHN: Thank you, Ms. Vitale. If you were  
13 to -- so there's been information submitted in the record today,  
14 and I believe we need to make sure that we can waive that. So  
15 I'll take care of that now. How much time would you need to, you  
16 know, write a supplemental report based on the information you  
17 have today? Because it's fair to assume that the information you  
18 have now is what the Applicant intended to submit.

19           MS. VITALE: Well, I'm certainly happy to speak to what  
20 the Applicant has provided today on the record. We agree with the  
21 Applicant that, you know, an underlying record lot that is, you  
22 know, covered by a tax lot, if you will, that the record lot is  
23 what, you know, remains and what would be valid. So I agree with

1 the Applicant's attorney in this instance. If the Applicant  
2 reported a larger record lot, say one that covered Lots 9, 10 and  
3 11 in this instance, a new record lot would extinguish any  
4 underlying record lots. However, a tax lot would not extinguish  
5 underlying record lots. We would certainly, you know, defer to  
6 OAG. You know, I understand that Commissioner Hood has requested  
7 the Applicant's attorney to get confirmation from OAG regarding  
8 this fact and to kind of reaffirm the corporation counsel memo.  
9 So, you know, I'm happy to speak to that.

10 I will say, we also researched the subdivision history.  
11 You know, it was Tindall (phonetic) subdivision in 1907 that  
12 created -- and this was on the Applicant's first slide in the  
13 presentation. It created this pattern of narrow record lots that,  
14 you know, do not conform to the current lot width requirements of  
15 the zone. However, in our review of the application, and this is,  
16 you know, was outlined in our original report, that situation is  
17 prevalent -- the original 1907 subdivision didn't actually cover  
18 the full square. The square is unique in that if you kind of move  
19 to the south there's actually a cul-de-sac in the south portion of  
20 this square. I would say that this square doesn't have, you know,  
21 a typical pattern. And I had also note that, you know, the  
22 situation that we see for the subject property, where you have  
23 smaller record lots with a home that spans, and structures that

1 span multiple record lots, that is found elsewhere. You know, if  
2 you move east along Shepherd Street in this square, that is  
3 characteristic of this neighborhood. But this is certainly not  
4 the only property where you have that situation of a tax lot, you  
5 know, overlying these smaller record lots that remain below.

6           What we're faced with now though is, you know, a house  
7 that spans record lots, an associated detached garage that span  
8 record lots. And, you know, frankly, in this instance the  
9 approach that, you know, we believe would be most consistent with  
10 the zoning would be to create one large record lot that takes in  
11 the house and the garage, that conforms to the minimum lot width  
12 requirements, that provides the zoning mandated side yards. And  
13 so we just -- we didn't find the Applicant's assertion that this  
14 large tax lot created a unique situation for the property that  
15 would lead to a practical difficulty. We just -- we couldn't get  
16 there in terms of the nexus between the first two prongs of the  
17 variance test. And so I don't know that additional time to review  
18 what the Applicant provided today would change our recommendation.

19           VICE CHAIR JOHN: Thank you, Ms. Vitale. I did also  
20 confirm that the tax lot does not extinguish the record lot. So  
21 OAG is in agreement with that.

22           So does the Applicant have any questions for the Office  
23 of Planning, Mr. Bello?

1 MR. BELLO: Yes. Madam Chair, just a couple.

2 VICE CHAIR JOHN: I'm sorry. I'm sorry. Does the Board  
3 have any questions for the Office of Planning?

4 (No response.)

5 VICE CHAIR JOHN: No? Okay. Mr. Bello, do you have  
6 any questions for the Office of Planning?

7 MR. BELLO: Yes, Madam Chair. Ms. Vitale, thank you for  
8 your report. The distinction that all the other lots in this  
9 square have undertaken the tax lot or plat of computation  
10 configuration or reconfiguration plan to May 12, 1958, and that  
11 this property is uniquely the only one that didn't have the  
12 benefit of that. Would that make any difference to your analysis  
13 of the uniqueness of that?

14 MS. VITALE: No, I don't believe it does. And right now  
15 we're faced with these record lots. And I believe -- I have  
16 questions with respect to how the creation of the proposed  
17 subdivision would create other nonconformities. You know, I think  
18 the chair alluded to this too. We're dealing with the 2016 zoning  
19 regulations before us now. And I don't see that that history of  
20 the other properties in the square having gone either -- as you  
21 said yourself, the tax lot or plat of computation isn't valid for  
22 zoning purposes. So there are other properties in the square that  
23 haven't, you know, pre-58 or pre-16 proceeded to create a new

1 record lot. So I don't find that unique or exceptional for this  
2 particular property, in this instance. And I would say again, you  
3 know, for this property that is proceeding forward under the  
4 current zoning regulations, we are now faced with an application  
5 that creates greater nonconformities. By creating these two  
6 record lots we're creating two lots that don't use the zoning  
7 required lot width, and we're creating a nonconforming side yard  
8 for the existing property, which if left alone has the required  
9 side yard, or if a new record lot was recorded that took in lots,  
10 the portion of Lot 8, 9, 10 and 11 would be a conforming record  
11 lot.

12 MR. BELLO: Okay. One last question. You recognize  
13 that these underlying record lots are transferrable, fee-simple to  
14 a property owner?

15 MS. VITALE: Sure. I mean, they could be sold out; is  
16 that what you're asking?

17 MR. BELLO: Yeah. For instance, Lot 11 could be sold  
18 off. And the new owner could come before the Board of Zoning  
19 Adjustment for relief to develop Lot 11. And I don't want to  
20 argue that case in advance, but it would be a record lot, and 2016  
21 a substandard record lot is permitted to be developed provided it  
22 can meet all the requirements. So that outcome as we showed or  
23 illustrated graphically, it would deem that to be more egregiously



1 anomalous to what we're proposing here, wouldn't you, from a  
2 zoning standpoint?

3 MS. VITALE: That's not the case that's before us now.  
4 We're not evaluating that development scenario.

5 MR. BELLO: Okay. Thank you. No further questions.

6 VICE CHAIR JOHN: Thank you. Mr. Bello, Lot 15, where  
7 is that lot? Is it to the south?

8 MR. BELLO: Which lot, ma'am?

9 VICE CHAIR JOHN: Where is that underlying record lot  
10 that you're referring to?

11 MR. BELLO: Lot 11.

12 VICE CHAIR JOHN: Lot 11.

13 MR. BELLO: That would be the one by the alley.

14 VICE CHAIR JOHN: By the alley? Okay.

15 MR. BELLO: Yeah.

16 VICE CHAIR JOHN: Okay. And would it have street  
17 frontage? I don't remember.

18 MR. BELLO: It does. And I think we -- if Mr. Young  
19 will pull it back up. I think we have it on the slide,  
20 comparative Office of Zoning. We have a slide that shows that  
21 outcome. In essence, --

22 VICE CHAIR JOHN: What slide is that?

23 MR. BELLO: I'm sorry?

1 VICE CHAIR JOHN: What slide is that? Can you direct  
2 me, please.

3 MR. BELLO: That would be slide eight.

4 VICE CHAIR JOHN: Mr. Young, could you put slide eight  
5 on.

6 MR. KEARLY: And Toye, that particular lot has a 25-  
7 foot street width at the street, and it's at the west of the  
8 property, adjacent to the alley.

9 MR. BELLO: Correct. So the answer to my question to  
10 Ms. Vitale is this. And I'm not suggesting that these owners are  
11 interested in doing that. Right now the existing building  
12 straddles two lots. And you have a sliver of a lot to the east.  
13 So for zoning purposes, as long as those lots are valid, the  
14 record lots are valid, the owner is not obligated to combine them  
15 until the point to construct an addition, or they may never  
16 combine them if they're not proposing an addition. Because it  
17 exists in perpetuity. But anyone could considerably transfer fee  
18 simple Lot 11 to another owner. And that owner could come to the  
19 Board with this kind of application. Twenty-sixteen record lots,  
20 substandard lots, but a record lots to be developed as a matter or  
21 right, provided they can meet the requirements. So the  
22 application that would be before the Board would not be anything  
23 to do with the lot configuration, but the fact that the property

1 might not be able to provide the side yard requirements because of  
2 the narrowness of that lot. The same as our application. It's an  
3 improvement in an existing nonconforming situation. And that is  
4 not compatible with the condition acquiescence of this  
5 illustration.

6 MS. CARLEY: I'm sorry. This -- is this exhibit large  
7 enough for me to see? Can you enlarge it?

8 (No response.)

9 MS. CARLEY: Hello? Okay. Because I'm just trying to  
10 see where 11 is.

11 MR. BELLO: Eleven would be the lot that abuts the  
12 public alley.

13 MS. CARLEY: Behind the new structure?

14 MR. KEARLY: It's the lot that's not shaded. Okay.  
15 You see the three lots to the left that are shaded?

16 MS. CARLEY: Yes.

17 MR. KEARLY: The existing house. It's the lot to the  
18 right, which is not shaded, that's showing what could be proposed  
19 if this lot was sold --if this record lot was sold, which you have  
20 a matter of right to sell. And then the lot would be unique  
21 because of its narrowness, which would lead, hopefully, to a -- to  
22 possibly a variance for the lot width.

23 MS. CARLEY: Would it meet the rear yard variance?

1 MR. KEARLY: It would meet everything.

2 MR. BELLO: Well, side yard. It wouldn't be there for  
3 area lot width because it's a record lot.

4 VICE CHAIR JOHN: So Mr. Bello, that's not what you're  
5 proposing now?

6 MR. BELLO: Absolutely not. No. Absolutely not. But  
7 it was just for illustrative purposes.

8 VICE CHAIR JOHN: I understand But technically the  
9 Board can't consider that. And may I ask why you didn't subdivide  
10 the lot based on that separate lot which could be sold?

11 MR. BELLO: I'm sorry, Madam Chair, Could you repeat  
12 that question. I didn't hear it.

13 VICE CHAIR JOHN: So my question -- I guess maybe the  
14 architect --

15 MR. KEARLY: I can answer that. Because that was not  
16 the directive by the client.

17 VICE CHAIR JOHN: I see.

18 MR. KEARLY: He wanted to subdivide the property where  
19 it would be more in tune with the neighboring houses and the  
20 neighboring configuration than to create a situation that would be  
21 really unique to the neighborhood with a very narrow lot. Because  
22 they could do that. So they could sell this tomorrow and we could  
23 come back with a proposal, which I think would be justified

1 | because it would be a unique lot. Right. The practic -- there is  
2 | a practical difficulty if this is a 25-foot lot. But it wasn't --  
3 | the owner didn't want to do this because it would be -- that would  
4 | be very different than the composition and the feel for the rest  
5 | of the neighborhood. Specifically, this block on the north and  
6 | south side of the street.

7 |           VICE CHAIR JOHN:     Okay.     All right.     So I have no  
8 | other questions. I'm trying to figure out where I am. The Board  
9 | has no other questions and the ANC, you've asked all of your  
10 | questions?

11 |           MS. CARLEY:     Well, I have a question for you, Chair.     So  
12 | are you allowing other documents that were not submitted prior to  
13 | the hearing in?

14 |           VICE CHAIR JOHN:     Yes, I will.

15 |           MS. CARLEY:     So will that include Eddie Johnson's as  
16 | well, since you're allowing --

17 |           VICE CHAIR JOHN:     Well, Eddie Johnson has to speak for  
18 | himself. Is he here?

19 |           MS. CARLEY:     Um, no. I was trying to get in touch with  
20 | him. But he did speak with Mr. Robert Reed this morning and when  
21 | he contacted him.

1           VICE CHAIR JOHN:    Okay.    So now the Office of Planning  
2 has made their presentation.  Do you have any more questions for  
3 the Office of Planning?

4           MS. CARLEY:  No, ma'am.

5           VICE CHAIR JOHN:  Okay.    So we'll move onto your  
6 presentation.  I know you spoke earlier and tried to give an  
7 explanation of the neighborhood opposition.  if you want to -- it's  
8 fine if you have something else to say.  You may offer it now.

9           MS. CARLEY:  Well, quickly.  I want to, again, stress  
10 that I reached out to the 200-footers.  And originally the only  
11 thing they had received at the time was a letter and a plat.  So  
12 they didn't have any idea of what type of structure was going to  
13 go there.  So no one or most, the majority did not want to commit  
14 to whether or not they opposed or support the project until they  
15 had more information.  And once I was able to get that picture of  
16 what the structure would look like once built and also the  
17 dimensions, that's when the majority opposed the project because  
18 of, you know, how it deviated from the other homes in the  
19 neighborhood and how close it would be to the existing property.  
20 So, you know, everyone thinks that people are just committed to  
21 disagreeing with anything that's going to get built.  And that  
22 isn't the case.

1           VICE CHAIR JOHN:   Thank you very much.   Does the Board  
2 have any questions for the commissioner?

3           MR. HOOD:   Madam Chair, I do have one quick question for  
4 Commissioner Carley. First, good afternoon, Commissioner Carley.

5           MS. CARLEY:   Good afternoon.

6           MR. HOOD:   My question to you is:   I noticed there was  
7 one abstention (audio interference). Is there a rationale for the  
8 person abstaining? I'm just curious.

9           MS. CARLEY:   Yes.   I asked that person to recuse  
10 himself. And one of the reasons why is because when the architect  
11 -- I invited him to the ANC meeting, you know, so he can listen  
12 and be able to speak. Although, he was not invited because by the  
13 time they had gotten me the agenda was already in place. During  
14 that meeting the commissioner, I did read my resolution. We  
15 decided to, you know, not vote on it that night. And basically  
16 schedule a time when we can invite the architect. One of the  
17 commissioners said, without even reading the resolution, because  
18 that was one of the reasons he said, well, you know what, I can't  
19 vote on it because I have not read the resolution. He said if you  
20 were to take a vote tonight I would vote in support of the  
21 architect. And I asked him to recuse himself because he could not  
22 make an objective opinion because he had not read the resolution.  
23 So that's why he decided to abstain.

1 MR. HOOD: Okay. All right. Thank you very much.  
2 Thank you, Madam Chair.

3 VICE CHAIR JOHN: Thank you. Are there any other  
4 questions from the Board?

5 (No response.)

6 VICE CHAIR JOHN: Mr. Bello, do you have any questions  
7 of the ANC?

8 MR. BELLO: No, Madam Chair.

9 VICE CHAIR JOHN: Okay. Thank you. Thank you,  
10 Commissioner.

11 MS. CARLEY: You're welcome.

12 VICE CHAIR JOHN: Mr. Young, do we have any persons  
13 signed up to testify?

14 MR. YOUNG: Yeah, we have three people.

15 VICE CHAIR JOHN: Could you let the persons in support  
16 in, please.

17 MR. YOUNG: They're all three in opposition.

18 VICE CHAIR JOHN: Oh, okay. Can you let them in,  
19 please.

20 MR. YOUNG: Yes. One is calling in by phone.

21 MR. MOY: Madam Vice Chair.

22 VICE CHAIR JOHN: Yes.



1           MR. MOY:     Just a reminder while we're, you know, at a  
2 slight pause.  There is the matter of opposition letter, testimony  
3 letter that was filed within the 24-hour block.  So you may want  
4 to address whether or not you want to allow that into the record  
5 or not.

6           VICE CHAIR JOHN:   I think I'll allow that.  What's the  
7 person's name?

8           MR. MOY:     Edward Johnson.

9           VICE CHAIR JOHN:   Okay.  Is he on the line or in the  
10 room?

11          MR. YOUNG:     Yeah, he's calling in by phone.

12          VICE CHAIR JOHN:   Okay.  And there's also the question  
13 -- before we move onto the witness, let me go back to Mr. Bello.  
14 Mr. Bello, you needed to request a waiver for submitting the plat  
15 and a couple other documents late?

16          MR. BELLO:     That would be the PowerPoint and the plat I  
17 believe.

18          VICE CHAIR JOHN:   I believe it's the plat.  And could  
19 you tell us why you need the waiver?

20          MR. BELLO:     Again, just to underscore the point that the  
21 record did not exist for Lot 81 with the surveyor lot.  The  
22 original plat that the surveyor issued was in error in terms of

1 the width dimension. So they had to go through a process of  
2 investigating additional plat just a few days ago.

3 VICE CHAIR JOHN: All right. So I'll let it in. So  
4 basically, you're saying that the researching, the history --

5 MR. BELLO: To correct the plat. That's correct.

6 VICE CHAIR JOHN: Thank you. SO we will admit that to  
7 the record.

8 MR. BELLO: Thank you, Madam Chair.

9 VICE CHAIR JOHN: Thank you. Can you let the first  
10 witness in, please, Mr. Young. I believe that's Mr. Cole. Can  
11 you hear me, Mr. Cole?

12 (No response.)

13 VICE CHAIR JOHN: Mr. Cole?

14 (No response.)

15 VICE CHAIR JOHN: Okay. Let me move onto Mr. Williams.  
16 Can you hear me Mr. Williams?

17 (No response.)

18 VICE CHAIR JOHN: Hello. Mr. Williams?

19 MR. WILLIAMS: Yes. Yes.

20 VICE CHAIR JOHN: Okay. So are you choosing not to use  
21 your video.

22 MR. WILLIAMS: Oh, I didn't have the choice. But, yeah,  
23 I'll use my video.

1           VICE CHAIR JOHN:    Okay.  Would you state your name and  
2 address for the record, please.

3           MR. WILLIAMS:       My name is Ray Williams.  I live at 4012  
4 19th Place, Northeast.

5           VICE CHAIR JOHN:    Okay.  So you have three minutes for  
6 your testimony.  Would you start now, please.

7           MR. WILLIAMS:       Okay.  I'd like to read a statement  
8 I've written out.  From the initial purchase of the property known  
9 as 1915 Shepherd Street, Northeast, and 2019 to the present there  
10 have been a number of inconsistencies that have gotten my  
11 attention.  The previous owner made it clear the intentions were  
12 to flip this house, which really didn't have a problem with.  
13 Modifications and improvements were made without permits, which I  
14 thought was very strange.  But apparently the owner knew how to  
15 skirt the system.  At some point I'm sure through consultation,  
16 the decision was made to split the lot to sell them as separate  
17 entities.  This came to fruition as the current owners affirmed  
18 details of their purchase contract.

19           The current owners, Sam and Jessica, have stated on  
20 several occasions as part of their settlement contract they must  
21 go through with this variance hearing to allow separation of the  
22 property into two lots.  While we haven't seen the contract, nor  
23 is it of any of our concern of its contents, stipulation suggests

1 further investigation into its legitimacy. However, Sam and  
2 Jessica's desire to build a principal dwelling on this new lot to  
3 provide living quarters for aging parents seems contrived to me.  
4 Good ways to accommodate aging parents are to modify the interior  
5 of the existing dwelling, which the seller did, build an addition  
6 to the existing dwelling, which there is vacant space to do or to  
7 provide them with a single level dwelling which is ADA compliant.

8           We are presented with a principal home with a separate  
9 garage, with a living space above, on a lot 30 percent smaller  
10 than adjacent lots. This will destroy the character of the  
11 neighborhood and reduce something this neighborhood is revered  
12 for, which is rear yards for enjoyment. While I am not a city  
13 planner nor an engineer, I do know that the addition of the new  
14 dwelling, such as the one proposed, will require water and sewer  
15 connections, which entail excavations, new utility hook ups and a  
16 variety of contractors competed for limited parking spaces in the  
17 area. This brings total chaos to what is now a peaceful, tranquil  
18 neighborhood street.

19           Granting these variances appears to be an economic greed  
20 at the expense of the neighborhood tranquility, continuity of  
21 dwelling architecture and space requirements. I do find this is a  
22 disingenuous nature of the home proposal and the owners of 1915  
23 Shepherd can find a better solution to achieve their needs and/or

1 | goals without subdividing their property and erecting a new family  
2 | dwelling on a lot that the city has defined as too small. That  
3 | concludes my statement.

4 |           VICE CHAIR JOHN:    Thank you.  Does the Board have any  
5 | questions for the witness, for Mr. Williams?

6 |           (No response.)

7 |           VICE CHAIR JOHN:    Does the Applicant have any questions  
8 | for Mr. Williams?

9 |           (No response.)

10 |           VICE CHAIR JOHN:    Does the ANC have questions for Mr.  
11 | Williams?

12 |           (No response.)

13 |           VICE CHAIR JOHN:    Okay.  Thank you for testifying  
14 | today, Mr. Williams.

15 |           MR. WILLIAMS:  You're welcome.

16 |           VICE CHAIR JOHN:    Mr. Cole, are you able to hear me?

17 |           (No response.)

18 |           VICE CHAIR JOHN:    Mr. Eric Cole?

19 |           (No response.)

20 |           VICE CHAIR JOHN:    Hello?  Mr. Cole, I can see you.  Can  
21 | you unmute yourself.  Hello?

22 |           (No response.)

1 MR. YOUNG: He's unmuted. He might need to go into his  
2 audio/video tab and change the microphone setting.

3 VICE CHAIR JOHN: Mr. Cole, can you hear us?

4 (No response.)

5 VICE CHAIR JOHN: Mr. Cole, can you hear us?

6 (No response.)

7 VICE CHAIR JOHN: Mr. Cole, if you can hear us can you  
8 call in by phone. Okay. So the number you should call is 202-  
9 727-5471.

10 MR. YOUNG: Did you want to hear from Mr. Johnson while  
11 he's calling in?

12 VICE CHAIR JOHN: Yes, let's do that.

13 MR. YOUNG: Okay. I'll unmute him now.

14 VICE CHAIR JOHN: And you can mute Mr. Cole.

15 MR. JOHNSON: Can I speak now?

16 VICE CHAIR JOHN: Yes. Please --

17 MR. JOHNSON: Hello.

18 VICE CHAIR JOHN: Mr. Johnson, can you introduce  
19 yourself and give us your name and address?

20 MR. JOHNSON: Yes. My name is Edward M. Johnson. I'm  
21 an architect and urban planner in this neighborhood. I've been  
22 there for more than 35 years, in private practice. My address is  
23 4881 Queens Chapel Terrace, Northeast. Two blocks from this

1 location. And as my statement reflects, I am voting in  
2 opposition. The BZA should deny this application. One, it  
3 doesn't meet the minimum square footage for yard area or lot area  
4 when you subdivide it, 5,000 square feet. It won't meet the side  
5 yard requirements. And it won't meet the lot width.

6 As Ms. Jessica Ellis stated in her last presentation  
7 before us, she clearly stated this was all about making money. It  
8 had nothing with making a contribution to this community.

9 But in addition to what I said, what is paramount in the  
10 city is that we're allowing so much new development everywhere,  
11 it's destroying many of the green spaces. There's one going on  
12 right now, down the street, at 20th and Bunt Hill Road, adjacent  
13 to two-story single-family homes. It's a five-story building. It  
14 can't be 10 feet away from it. And this is going on all over the  
15 city. So the more we destroy our green spaces, the more we  
16 destroy the quality of our air and the quality of our health.  
17 Plus the fact that new development encourages new traffic flow.  
18 So not only traffic disrupt the home, the folks who will live  
19 there, but traffic to support them.

20 And so in lieu of the fact that this project cannot  
21 satisfy once these lots are subdivided, they cannot satisfy the  
22 strict requirements of the zoning regulations. And that needs to  
23 occur in order to protect the health, safety and welfare of this

1 community. And the detriment that will occur, and the negative  
2 precedent that this will set in place, because you will have other  
3 folks to come behind them to want to do the same thing. This must  
4 be denied. Right two blocks away, really a block away, South  
5 Dakota and Taylor, we've got this massive development going on  
6 there. At providence, at 12th and Perry massive development, 4th  
7 and Rhode Island. The more we destroy our green space, the more  
8 we destroy our health. Green trees, plants produce two types of  
9 seeds. One is called stomata which allows these plants to pull  
10 carbon monoxide and dioxide out of the air through the leaves and  
11 buried into the soil. The other is called transportation, which  
12 pulls water out of the soil and releases oxygen into the air. So  
13 the more we allow this kind of development to occur, to kill green  
14 space which could be used for trees and plants, which is really  
15 necessary, the more we're destroying our health.

16           The rate of sinusitis and asthma in the city is  
17 skyrocketing. Major contributor is what these people are  
18 proposing for that site. We need to preserve our green spaces and  
19 we need to oppose what is being planned because it is not in the  
20 best interest for the community.

21           One other point. The fact that these other buildings  
22 have less, may have less than eight-yard side yards. Many of  
23 these buildings were built before the enactment of the



1 regulations. The regulations are constantly being upgraded. Why?  
2 To improve the quality of our lives. And to allow these two lots  
3 to be subdivided and to have three major violations is sufficient  
4 enough for the record to deny this application. And as the Office  
5 of Planning representative mentioned a few moments ago, the  
6 Applicant has brought forth no new information or justification  
7 to generate approval of this project by the BZA. Therefore, I  
8 recommend, again, not only as a resident but as a professional  
9 architect and planner, who work in this community, that this  
10 should absolutely be denied. It's sets a tremendous negative  
11 precedent. Thank you.

12 VICE CHAIR JOHN: Thank you, Mr. Johnson. So does the  
13 Board have any questions for Mr. Johnson?

14 (No response.)

15 VICE CHAIR JOHN: Does the Applicant have any questions  
16 for Mr. Johnson?

17 MS. ELLIS: I would like to clarify one thing about  
18 this. Which is that I never stated in any meeting previous that  
19 this was about making money. This is about a possible partial  
20 refund for us based on the amount that we have already paid for  
21 the home if the lot is not subdividable. As I have said at every  
22 meeting, this is the process that we inherited and did not seek.  
23 And we are not here to flip this house. This house was already

1 flipped. We would have made a very poor investment if that was  
2 our goal here. We plan on living in this neighborhood for decades  
3 to come and absolutely love this home. This is not about making  
4 money. This is about us not having overpaid if the property is  
5 ultimately not subdividable and getting a partial refund on that.

6 MS. JOHNSON: Ms. Ellis, you need to go and listen to  
7 the record. In your statement you made, when I participated  
8 before.

9 VICE CHAIR JOHN: Mr. Johnson, --

10 MR. JOHNSON: that second house was to make money.

11 VICE CHAIR JOHN: Mr. Johnson, we can't have a back and  
12 forth. questions need to be --

13 MR. JOHNSON: Yes, ma'am.

14 VICE CHAIR JOHN: -- asked by members of the Board.  
15 Thank you.

16 MR. JOHNSON: All right. Thank you. Thank you so much.

17

18 VICE CHAIR JOHN: Okay.

19 MR. BELLO: Just one question for Mr. Johnson. Mr.  
20 Johnson, do you know that this subdivision comprises the minimum  
21 lot area requirements for the underlying zone?

22 MR. JOHNSON: The second lot is close. It's on the  
23 border. It's about 5,000 -- no. Five thousand square foot. It's

1 on the border. I'll put it there. It's on the border. It doesn't  
2 meet the side yard requirement.

3 MR. BELLO: No. I'm talking about the lot area now.  
4 You said it didn't meet the lot area. I just wanted to clarify.

5 MR. JOHNSON: Yeah. I think --

6 MR. BELLO: It does meet the lot area.

7 MR. JOHNSON: Yeah.

8 MR. BELLO: Okay. Thank you.

9 VICE CHAIR JOHN: Do you have any more questions of Mr.  
10 Johnson?

11 MR. JOHNSON: It doesn't meet the --

12 VICE CHAIR JOHN: I'm sorry. Were you speaking, Mr.  
13 Johnson?

14 MR. JOHNSON: Yes. I said it doesn't meet -- it  
15 doesn't meet the width of new lots in that area. That's very  
16 important. Otherwise, anyone would be doing it, coming back and  
17 using this case to argue, well, you did it for so and so's client.  
18 Give it to us as well. Doesn't meet side yard, doesn't meet the  
19 width.

20 VICE CHAIR JOHN: Okay. So I went to the Applicant.  
21 Does the ANC have any questions for Mr. Johnson?

22 MS. CARLEY: No, ma'am.

1 VICE CHAIR JOHN: Okay. Well, thank you for your  
2 testimony, Mr. Johnson.

3 VICE CHAIR JOHN: Mr. Cole, can you hear me?

4 MR. COLE: Can you hear me now?

5 VICE CHAIR JOHN: Yes, I can hear you.

6 MR. COLE: Hello?

7 VICE CHAIR JOHN: Yes, I can hear you.

8 MR. COLE: Okay. Yeah, I'm in, I'm in opposition.

9 VICE CHAIR JOHN: Mr. --

10 MR. COLE: -- to the, um, --

11 VICE CHAIR JOHN: Mr. Cole, --

12 MR. COLE: I'm in opposition -- yes.

13 VICE CHAIR JOHN: Please state your name and address.

14 MR. COLE: Okay. My name is Hermanary Cole, and I live  
15 at 1912, which is immediately across the street from 1915.  
16 Previously I tried to introduce myself and say hi to everyone.  
17 And I'm in opposition to the subdivision and the construction of  
18 another home on the subdivided lot. I have a few technical issues  
19 with it that I haven't heard. Per the plan, if you gave the --  
20 neither of the lots would be conforming in area. And if you gave  
21 the new lot the proper side yard, then the existing homeowner  
22 would have only three feet, which wouldn't be enough room for them  
23 to move a lawnmower from front to back to maintain the existing

1 property. Also, there is no alley on the south side of Shepherd  
2 Street, which meant if there were a fire in any of those houses,  
3 there would be no access for fire to go to the rear of those  
4 houses.

5 The proposed design doesn't allow for a proper rear  
6 yard. They don't meet the rear yard requirement. What else?  
7 They don't meet lot occupancy. It would be greater than 40  
8 percent. The front setback, as I looked at the drawings I noticed  
9 that they want to move the proposed structure to be aligned with  
10 the existing structure at 1915. Well, the existing structure of  
11 1915 is not on the common setback along that south side. The  
12 existing structure actually protrudes five feet beyond the  
13 existing setback. So that means that they would put a house that  
14 would be taller than all of the other houses on the block, per  
15 their drawing, five feet beyond the existing setback, which would  
16 totally destroy the character of the block and the neighborhood.  
17 It would block the view for all of us. And so that being said,  
18 let's go back to the rear yard.

19 With the garage back there, there would be no way for  
20 fire to get to -- to get to the rear of 1915 or any of those other  
21 houses on the southern side of Shepherd Street also. This would  
22 totally block out that corner, deny access for all of the safety,  
23 fire and -- and it wouldn't even allow people to have access to

1 maintain the yard. Now, the people can say what they want about  
2 what they want to do with the property, but I can only imagine  
3 that if they were allowed to subdivide this property in that way,  
4 why wouldn't they sell it? Why would they own this? Why wouldn't  
5 they sell it straight off and now we'd be back again fighting  
6 somebody, trying to put a property there.

7 I'm in total opposition to this. There is no way that  
8 they're going to hold this and keep this for any particular  
9 reason. And that's pretty much -- I submitted documents to the  
10 zoning Board. I hope that you had a chance to look at my  
11 documents. I spent some time. I commented on -- I commented on --  
12 - I used the Google Maps to show you the, the setback on the  
13 southern side of Shepherd Street. That was page one of four. I  
14 used their diagram to show the setback and the fact that the  
15 existing property protrudes five feet beyond the setback, and to  
16 show that the side yard wouldn't allow for people to transverse.  
17 As a matter of fact, you could hardly walk between the new  
18 subdivided property and the existing house. That's less than the  
19 sidewalk width. And, um, and then as I look at the zoning, I  
20 found that it hardly complied with any of the zoning regs for this  
21 area. And also, I gave -- I sent a cover letter more or less  
22 explaining my opposition.

1 VICE CHAIR JOHN: Okay. Thank you. Thank you, Mr.  
2 Cole.

3 Does any Board member have any questions for the  
4 witness?

5 (No response.)

6 VICE CHAIR JOHN: does the Applicant have questions for  
7 the witness?

8 (No response.)

9 VICE CHAIR JOHN: Does the ANC have questions for the  
10 witness?

11 (No response.)

12 VICE CHAIR JOHN: Thank you very much.

13 MR. COLE: Thank you.

14 VICE CHAIR JOHN: Is Mr. Johnson still here?

15 (No response.)

16 VICE CHAIR JOHN: Is Mr. Johnson still here?

17 MR. JOHNSON: Yes, I am. Yes, ma'am.

18 VICE CHAIR JOHN: Mr. Johnson, it appears that your  
19 testimony was submitted within the 24-hour time period. So you  
20 would need to request a waiver for us to include that in the  
21 record. So would you like to do that now?

22 MR. JOHNSON: Yes, I would. Yes, Madam Chair.

23 VICE CHAIR JOHN: Can you give us a reason?

1 MR. JOHNSON: I'm sorry? Can I give you --

2 VICE CHAIR JOHN: Yes.

3 MR. JOHNSON: -- a reason why it should be accepted?

4 VICE CHAIR JOHN: Yes, and why it was submitted late.

5 MR. JOHNSON: Okay. First of all, I'm not in  
6 Washington, DC. I'm a long way from there. So I had difficulty  
7 getting to a place where I could get that information in on time.

8 VICE CHAIR JOHN: Okay. I --

9 MR. JOHNSON: I believe -- but I believe that because  
10 of my credentials, my experiences as architect, I'm also a native  
11 Washingtonian. And I've seen so much development in the city that  
12 is going up everywhere. It is really having a negative, in some  
13 instances a major negative impact on existing buildings, existing  
14 configurations. And many of these projects are being developed  
15 primarily for income generators, not to benefit the community that  
16 is there. The gentleman who spoke before me just made some  
17 interesting comments. And I just made a comment about the fact  
18 that there's building going on down the block, maybe two blocks  
19 from this building, that's five stories set adjacent to a two-  
20 story -- a whole street of two-story, single-family homes. And to  
21 allow this to go forward as it's currently configured is, again,  
22 will set a negative precedent for those who come behind, who have  
23 small lots, who want to develop projects. And these projects,



1 many of them -- many of them are being developed primarily for  
2 income generators and not to benefit the community.

3           And when -- and as I stated before, when we destroy  
4 these green areas we're destroying our health. That's not being  
5 said enough. The rate of asthma, sinusitis, heart problems in the  
6 city are rising substantially. And that's in the public record as  
7 well. So, no, we need to preserve the green area here and plant  
8 trees and shrubs because this land cannot -- it's unfortunate it  
9 cannot satisfy the requirements of the zoning regulations which it  
10 must do. It can't. And it needs to be left as green space. And,  
11 therefore, again, I ask and recommend that this application be  
12 denied for its failure to satisfy the current zoning regulations,  
13 which should have been known by the Applicant when they purchased  
14 this land.

15           VICE CHAIR JOHN:    Okay. Thank you, Mr. Johnson.

16           MR. JOHNSON:        Thank you.

17           VICE CHAIR JOHN:    So I'm going to talk to my Board  
18 members briefly. So it seems to me that we still need additional  
19 information to decide on this application. And my suggestion is  
20 that we, again, continue this case, and that we ask the Applicant  
21 to submit detailed plans showing how the subdivision would create,  
22 would meet the requirements of Section 302.1.

1           And right now I didn't see anything in the record, Mr.  
2 Bello. I don't know if I missed it. But -- and I know this is  
3 self-certified, but I don't know how this application for the  
4 subdivision would comply with C302.1, where it says that where a  
5 lot is divided the division shall be set in a manner that will not  
6 violate the provision of this title for yards, courts, other open  
7 space, minimum lot width, minimum lot area, floor area ratio,  
8 percentage of lot occupancy, parking spaces or loading berths  
9 applicable to that lot or any lot created. And it goes on to talk  
10 about non-alley lots recorded as a tax lot before May. Anyway,  
11 you can read that whole section. The point is that to subdivide -  
12 - to grant the subdivision we need to know how all of these other  
13 conditions are satisfied.

14           So that would be my suggestion to my Board members. Can  
15 I hear from you briefly? Commissioner Hood?

16           MR. HOOD: Okay. You're starting with me first. I  
17 would agree with you, Madam Chair. Actually, I'm looking at  
18 corporation counsel's direction about (audio interference). It  
19 kind of lose some of that -- that's the way I interpret that. So  
20 I would agree with your last statement. So I would like them to  
21 fine tune them exactly as you mentioned. So I'm on board with  
22 meeting again. I'm just making it up front, it's a real heavy  
23 lift for me. So thank you, Madam Chair.

1 VICE CHAIR JOHN: Thank you. Board Member Smith?

2 MR. SMITH: I could honest go either way on this. To  
3 me it is a heavy lift with the information within the record. So  
4 I could honestly go either way on continuing or making a decision  
5 today. But I do -- I mean, I do agree with Chairman Hood and you,  
6 we do need some additional information, or we can ask for that  
7 additional information. I would also ask that the Applicant  
8 provide some additional information on if the proposed -- if the  
9 home, the existing home, if this property is subdivided, would  
10 that meet the lot occupancy requirements? Because if it doesn't,  
11 it would be a nonconforming dwelling unit.

12 MR. KEARLY: It does. The existing home on the lot  
13 would meet the lot size, the lot area, and lot occupancy. That is  
14 not even close to getting up to what is the maximum lot occupancy.

15 MR. SMITH: Yeah. I mean, looking at the, your  
16 proposed plat, I didn't think it would. But it would be great to  
17 have that, like have that in the record.

18 MR. KEARLY: Yeah.

19 MR. SMITH: Also for OP to confirm that in the  
20 supplement before. But, like I said, I can go either way right  
21 now.

22 VICE CHAIR JOHN: Mr. Blake?

1 MR. BLAKE: I too could go either direction at this  
2 point. I would like some more time. I'm not sure what additional  
3 information would be very helpful. Thinking about this would be  
4 helpful. I'm not sure exactly what additional information.

5 VICE CHAIR JOHN: Okay. Thank you. Were you trying to  
6 say something, Mr. Bello?

7 MR. BELLO: No. I was just trying to say that we'd like  
8 to supplement the record as Board member Smith suggests. We  
9 didn't request those reliefs because we complied with that. But  
10 we're glad to submit the supplemental information to confirm that.

11 VICE CHAIR JOHN: Right. For both lots.

12 MR. BELLO: That's correct.

13 VICE CHAIR JOHN: Okay. So I won't ask for closing  
14 arguments now. And I'll leave the record open for submission of  
15 that information.

16 And Ms. Vitale, if you're still listening, I would ask  
17 that you submit a supplemental report as well.

18 MS. VITALE: Yes. We're happy to do that once the  
19 Applicant files any supplemental information.

20 VICE CHAIR JOHN: Okay. And Mr. Moy, can we talk about  
21 a continued hearing date?

22 MR. MOY: Yes. Thank you. Again, as in the other

1 application, and since the Board is scheduling this for a  
2 continued hearing, --

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: -- I think we can still insert this  
5 application on October the 6th. And if we do that, then that,  
6 then that gives ample time for the Applicant to file the  
7 supplemental information as the Board has requested. So I would  
8 suggest that October 6th -- if the Applicant can make their, make  
9 its filing by September 14th. And responses to the Applicant's  
10 filing from the other parties, including OP, by September the  
11 28th.

12 VICE CHAIR JOHN: Okay. Is that it, Mr. Moy?

13 MR. MOY: Yes. I just want to double check if that  
14 timeline is convenient for the ANC. Because I don't know when the  
15 ANC meets in September. Because your response to follow would be  
16 September the 28th.

17 MS. CARLEY: I'm sorry. September 28th for?

18 VICE CHAIR JOHN: for the ANC's response to whatever  
19 the Applicant submits.

20 MS. CARLEY:? So we'll get to see before then?

21 VICE CHAIR JOHN: Um, I --

1 MS. CARLEY: Because whatever they submitted this time,  
2 I didn't get it until -- I heard it for the first time today, or  
3 this evening, or afternoon.

4 MR. MOY: So my question then, Madam Vice Chair, would  
5 be when the ANC's meeting in September?

6 MS. CARLEY: The third -- the fourth Wednesday of the  
7 month.

8 MR. MOY: That would be September the 22nd. So if the  
9 Applicant files by September the 15th, right, which is a  
10 Wednesday, and if the ANC meets on September the 22nd, then the  
11 ANC and then the other parties can make their responses to the  
12 Applicant by September the 29th.

13 MS. CARLEY: I guess my question is, there is definitely  
14 going to be some sort of new information or additional documents.  
15 And the reason why I'm asking is because we always make our  
16 decisions on what's going to be placed on the agenda the first  
17 week of the month. That first Wednesday of the month.

18 VICE CHAIR JOHN: What --

19 MR. MOY: Okay. So --

20 VICE CHAIR JOHN: Go ahead, Mr. Moy.

21 MR. MOY: No. I'm just trying to say, based on what she  
22 has just said, can I refer then that you would need to see the  
23 Applicant's filing before the first Wednesday of the month?

1                   VICE CHAIR JOHN:           I believe that's what the  
2 commissioner just --

3                   MR. MOY:     Okay.

4                   VICE CHAIR JOHN:     Maybe --

5                   MR. MOY:     Okay.  In that case, in that case I would ask  
6 that the Applicant make his filing by August the 25th.

7                   VICE CHAIR JOHN:     Is that something you can do, Mr.  
8 Bello?

9                   MR. BELLO:    It's not a problem, Madam Chair.

10                  VICE CHAIR JOHN:     Okay.  Thank you.  So the Applicant  
11 will file by August 25.

12                  MS. CARLEY:     And so this information I will receive  
13 from the Office of Zoning or will I receive from the Mr. -- what  
14 is his name?

15                  VICE CHAIR JOHN:     I would suggest that Mr. Bello would  
16 meet with the ANC or the architect to go over some of this  
17 information.  As Commissioner Hood said, we have the good neighbor  
18 policy.  So it's always good to communicate with the ANC ahead of  
19 time so we don't have to postpone this again.

20                  MR. BELLO:    Absolutely.

21                  VICE CHAIR JOHN:     Thank you.  Okay.  So Mr. Moy, do we  
22 have this straight now?  The Applicant submits information -- I'm  
23 sorry.  Yes, by the 25th.

1 MR. MOY: The 25th of August.

2 VICE CHAIR JOHN: Of August. Right.

3 MR. MOY: And we can still keep the record open for  
4 responses by up to the September 29th, since the continued hearing  
5 won't be until October the 6th. That gives ample time for  
6 responses.

7 VICE CHAIR JOHN: Okay.

8 MR. KEARLY: October the 6th is, will be the hearing,  
9 and then we will have everything to the ANC by the 25th of August.

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: Right. And of course that would be filed  
12 into the record as well. But Mr. Bello is aware of that.

13 VICE CHAIR JOHN: And Mr. Bello, may I suggest that  
14 you include any analysis in the record. It was pretty hard to  
15 follow what you were saying. If you want to put that in writing,  
16 that would be great. I don't know if it's going to sway anybody  
17 one way or the other, but it was pretty hard to read your slides.  
18 So if you want to do a short summary of your basic argument, that  
19 would be great.

20 MR. BELLO: Thank you, Madam Chair. Will do.

21 VICE CHAIR JOHN: Thank you.



1           Okay. I believe that's it, everybody. Thank you all  
2 for being here. It's been a long day. And I guess everyone is  
3 exhausted. So thank you. And I'll see you in October.

4           Mr. Young, can you please excuse everybody except the  
5 Board members.

6           Thank you all. I can't wait for Mr. Hill to be back.  
7 And it was great hanging out with you today.           MR. HOOD:  
8 Madam Chair, let me just say, I want to thank you. You did a  
9 excellent job today. And the next time the chairman goes away I  
10 hope I'm serving. You make sure you tell him I said that.

11           VICE CHAIR JOHN: Thank you, Commissioner Hood. Thank  
12 you. I think you should tell him I did a good job and he should  
13 never leave me here by myself again.

14           (Laughter)

15           VICE CHAIR JOHN: Okay.

16           MR. HOOD: Take care.

17           VICE CHAIR JOHN: Bye.

18           (Whereupon, the above-entitled matter went off the  
19 record at 5:10 p.m.)

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C E R T I F I C A T E

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 07-28-21

Place: Teleconference

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KATHLEEN A. COYLE