

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

AUGUST 4, 2021

+ + + + +

The Public Meeting by the District of Columbia Board of Zoning Adjustment convened via videoconference at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Commissioner
PETER SHAPIRO, Commissioner
MICHAEL G. TURNBULL, Commissioner
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
STEPHEN MORDFIN

OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
JACK RICE, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the
Public Hearing held on August 4, 2021.

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

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

2 (9:30 a.m.)

3 CHAIRPERSON HILL: Good morning, ladies and gentlemen,
4 to Board of the Zoning Adjustment. Today's date is 8/4/2021.
5 The public hearing will please come to order.

6 My name is Fred Hill. I'm the Chairperson of the
7 District Columbia Board of Adjustment. Joining me today is Lorna
8 John, Vice Chair; Board Members Carl Blake and Chrishaun Smith;
9 and Zoning Commission Members Anthony Peter Shapiro, Peter May,
10 Rob Miller, and Michael Turnbull. I managed to mention everybody.

11 Today's meeting and hearing agendas are available on
12 the Office of Zoning's website. Please be advised that this
13 proceeding is being recorded by court reporter. It's also webcast
14 live via Webex and YouTube Live. The video of the webcast will
15 be available on the Office of Zoning's website after today's
16 hearing.

17 Accordingly, everyone who is listening on Webex or by
18 telephone will be muted during the hearing. Also, please be
19 advised that we do not take any public testimony at our decision
20 meeting sessions. And we will be jumping in and out between
21 decision meeting and hearing meetings due to different
22 Commissioners joining us. If you're experiencing difficulty
23 accessing Webex or with your telephone call-in, then please call
24 our OZ hotline number at 202-727-5471 to receive Webex login or
25 call-in instructions.

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

10 In today's hearing session, everyone who is listening
11 on Webex or by telephone, will be muted during the hearing and
12 only persons who have signed up to participate or testify will
13 be unmuted at THE appropriate time. Please state your name and
14 home address before providing any oral testimony or your
15 presentation. Oral presentations should be limited to the
16 summary of your most important points. When you're finished
17 speaking, please mute your audio so that your microphone is no
18 longer picking up sound and background noise.

19 Once again, if you're experiencing difficulty with
20 Webex, call our OZ hotline number at 202-727-5471. Once again,
21 202-727-5471.

22 All persons planning to testify either in favor or in
23 opposition should have signed up in advance. They will be called
24 by name to testify. If this is an appeal, only parties are
25 allowed to testify. By signing up to testify, all participants

1 complete the oath or affirmation as required by Subtitle Y 408.7.

2 Requests to enter evidence at the time of the online
3 virtual hearing such as written testimony or additional
4 supporting documents other than live video, which may not be
5 presented as part of the testimony, may be allowed pursuant to
6 Subtitle Y 103.13, provided the person making the request to
7 enter an exhibit into the record explains how the proposed exhibit
8 is relevant, the good cause it justifies allowing the exhibit
9 into the record including an explanation of why the requester did
10 not file the exhibit prior to the hearing pursuant to Subtitle Y
11 206, and how those exhibits would not unreasonably prejudice any
12 parties. The order of procedures for special exception and
13 variances are pursuant to Y 409. The order of appeals is Subtitle
14 Y 507.

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

20 If additional written testimony is accepted, the
21 parties will be allowed a reasonable time to respond as determined
22 by the Board. The Board will then make its decision at its next
23 meeting session, but no earlier than 48 hours after the hearing.
24 Moreover, the Board may request additional specific information
25 to complete the oath and the record. The Board and the staff

1 will specify at the end of the hearing exactly what is expected
2 and the date when the person must submit it to the Office of
3 Zoning. No other information shall be accepted by the Board.

4 Finally, the District of Columbia Procedures Act
5 requires that the public hearing on each case be held in the open
6 before the public. However, pursuant to Section 405(b) and 406
7 of that Act, the Board may, consistent with its rules and
8 procedures and the Act, enter into a closed meeting on a case
9 for purposes of seeking legal counsel on the case pursuant to
10 D.C. Official Code Section 2-575(b)(4) and/or deliberating on a
11 case pursuant to D.C. Official Code Section 2-575(b)(13), but
12 only after providing the necessary public notice and in the case
13 of an emergency closed meeting after taking a roll call vote.

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

15 MR. MOY: Good morning, Mr. Chairman, and members of
16 the Board.

17 We do have preliminary matters, but as has been
18 customary, I will identify those when I call the specific case
19 for efficiency. Other than that, I have no other matters to
20 present to the Board.

21 CHAIRPERSON HILL: Okay. Great. Okay.

22 Mr. Moy, you sit at the dais too.

23 MR. MOY: I don't have a to vote sit.

24 CHAIRPERSON HILL: Yeah. All right.

25 Let's see. The one thing about the order, is that I

1 have to -- I have a hard stop at 3 o'clock. I don't think we're
2 going to go that late. But just in case, Mr. Moy, if you could
3 move the one case that I'm not on until the end, so that would
4 be case 20469. That's going to go after the remand.

5 Okay, Mr. Moy?

6 MR. MOY: Yes. I got it.

7 CHAIRPERSON HILL: Okay. Great. All right.

8 With that then, you can go ahead and call our first
9 case, which I believe is a decision case, correct?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Okay. Great. Thank you.

12 MR. MOY: Okay. So this would be Case Application No.
13 20065 of Dilan Investments, LLC. As the Board will recall, the
14 Board entertained this case at its meeting session on June the
15 23rd. At that time, the Board deliberated and on its own motion
16 rescinded its vote and reopened the record. And participating
17 on this decision-making is Zoning Commissioner Peter Shapiro,
18 Chairman Hill, Vice Chair John, Mr. Blake, and Mr. Smith.

19 CHAIRPERSON HILL: Okay. All right. Commissioner
20 Shapiro's on this one, correct?

21 COMMISSIONER SHAPIRO: Yes, Mr. Chair.

22 CHAIRPERSON HILL: Okay. So I'm going to start and
23 then we can see where we get with it.

24 The record is pretty full. What we did allow recently
25 is the applicant added something to the record, which I believe,

1 Mr. Moy, I don't know whether I need to, but unless anyone has
2 any opposition to it, it was an argument how they're meeting the
3 criteria for a variance. And I believe that we should go ahead
4 and include that into the record unless someone else has an issue.
5 And if so, please speak up. Okay. So we're going to go ahead
6 and allow that into the record.

7 I think that this is again, something whereas we were
8 going through the process of writing the order, there was some
9 concern about how this was approached. And now, I believe that
10 the record is full, and that we're able to make a decision about
11 this case.

12 I do believe that the applicant has made their argument
13 as to how they're meeting the criteria for the variance. And I
14 believe that -- also, the analysis that the Office of Planning
15 has provided as well as again, the initial -- I believe they have
16 met the criteria, so I'm going to go ahead and vote in favor of
17 this application.

18 I'm going to go around the table and see if anybody
19 else would like to add anything to this discussion. I'm going
20 to start with you Commissioner Shapiro.

21 COMMISSIONER SHAPIRO: I have nothing to add, Mr.
22 Chair.

23 CHAIRPERSON HILL: Okay. Mr. Smith.

24 BOARD MEMBER SMITH: I have nothing else to add.

25 CHAIRPERSON HILL: Vice Chair John.

1 VICE CHAIR JOHN: I believe the applicant meets the
2 criteria for the variance relief, and I really have nothing to
3 add.

4 CHAIRPERSON HILL: Okay. Great. All right. Let's see
5 then.

6 I'm going to go ahead and make a -- I'm sorry, Mr.
7 Blake.

8 BOARD MEMBER BLAKE: Yes. I, too, agree that the
9 criteria for both variance relief and request have been met.

10 CHAIRPERSON HILL: Thank you.

11 I'm going to go ahead and make a motion to approve
12 Application No. 20065 as amended for variance relief as captioned
13 and read by the Secretary. I ask for a second, Ms. John.

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: The motion has been made and
16 seconded, Mr. Moy, if you would like to take a roll call?

17 MR. MOY: When I call each of your names, if you would
18 please respond with a yes, no, or abstain to the motion made by
19 Chairman Hill to approve the amended relief, which is now for
20 variance relief. This motion was seconded by Vice Chair John.

21 Zoning Commissioner Peter Shapiro.

22 COMMISSIONER SHAPIRO: Yes.

23 MR. MOY: Mr. Smith.

24 BOARD MEMBER SMITH: Yes.

25 MR. MOY: Mr. Blake?

1 BOARD MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John.

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill.

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would record the vote as 5-0-0. And
7 this is on the vote -- not on the vote -- on the motion made by
8 Chairman Hill to approve the amended relief. And this motion -
9 - in support of the motion was seconded by Vice Chair John. Also,
10 supporting the motion to approve is Zoning Commissioner Peter
11 Shapiro, Mr. Smith, and Mr. Blake. Staff would record the vote
12 as 5-0-0. The motion carries.

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

14 Ms. John. You're on mute, Ms. John.

15 VICE CHAIR JOHN: I'm going to log back in. I seem to
16 be having technical difficulties here.

17 CHAIRPERSON HILL: Okay.

18 COMMISSIONER SHAPIRO: And I think my job is done, Mr.
19 Chair.

20 CHAIRPERSON HILL: All right, Commissioner.

21 Let's see before you go, Commissioner.

22 Commissioner Turnbull, can you hear me? Commissioner
23 Turnbull, can you hear me?

24 COMMISSIONER TURNBULL: Yes, I can hear you.

25 CHAIRPERSON HILL: Great. You want to turn your camera

1 on for a second, Commissioner?

2 COMMISSIONER TURNBULL: Well, okay. I can't put that
3 wonderful background up.

4 CHAIRPERSON HILL: That's all right. I don't think
5 this one's going to last, you don't have to worry, or at least
6 it is not going to last for me. Let's see -- yeah.

7 Commissioner Shapiro, and I know that many things have
8 been said. This is Commissioner Turnbull's -- I think this is
9 your last official act, right, Commissioner?

10 COMMISSIONER TURNBULL: It is.

11 CHAIRPERSON HILL: Right. I mean we're going to say
12 goodbye a couple of times, Commissioner, but Mr. Shapiro, that's
13 it. Commissioner Shapiro, that's it.

14 COMMISSIONER TURNBULL: I think Peter is gone.

15 CHAIRPERSON HILL: All right.

16 COMMISSIONER SHAPIRO: No, no. I'm still here.

17 CHAIRPERSON HILL: Bye-bye.

18 COMMISSIONER SHAPIRO: So Mike --

19 COMMISSIONER TURNBULL: Hey, Peter.

20 COMMISSIONER SHAPIRO: Good luck (indiscernible).

21 COMMISSIONER TURNBULL: Well, it's good to see you on
22 the dais.

23 COMMISSIONER SHAPIRO: Thank you. Thank you. Thank
24 you. Bye-bye. Be well.

25 COMMISSIONER TURNBULL: All right. Take care.

1 CHAIRPERSON HILL: Okay. Let's see now. Yeah. Ms.
2 John is trying to log back in.

3 Commissioner Turnbull, you're on 20280, correct?

4 COMMISSIONER TURNBULL: That's correct.

5 CHAIRPERSON HILL: Okay. Thank you.

6 Ms. John, can you hear us?

7 VICE CHAIR JOHN: Yes, I can. I thought switching my
8 browser would help my video, but this is not working well.

9 CHAIRPERSON HILL: Okay. You want to try to do another
10 thing?

11 VICE CHAIR JOHN: No. This is fine. Go ahead. And
12 maybe I'll do something else if it's okay.

13 CHAIRPERSON HILL: Okay. I think Mr. Blake is not on
14 this case; is that correct, Mr. Blake? Okay. All right. We'll
15 see you later, Mr. Blake.

16 All right. Let's see. Mr. Moy, you can go ahead and
17 call our next case.

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

19 So this will be a Case Application No. 20280 of VBS
20 Community Builders, LLC. And this -- yeah, let me state for the
21 record. This is an application that was amended for special
22 exceptions under the residential conversion requirements of
23 Subtitle U, Section 320.2, and from the rear addition
24 requirements of Subtitle E, Section 205.4. This would convert
25 an existing residential building into a four-unit apartment house

1 in the RF-1 Zone. The property is located at 6221 I Street N.E.,
2 Square 857, Lots 32 and 113. And participating on this
3 application is Zoning Commissioner Michael Turnbull, Chairman
4 Hill, Vice Chair John, and Mr. Smith.

5 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
6 Give me one moment here.

7 Ms. Moldenhauer, can you hear me?

8 MS. MOLDENHAUER: Yes. Good morning, Chair.

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

11 MS. MOLDENHAUER: Good morning. Meridith Moldenhauer
12 from the law firm of Cozen O'Connor, here on behalf of the
13 applicants.

14 CHAIRPERSON HILL: Great. Thank you. Let's see. Who
15 are you here with Ms. Moldenhauer? Who's with you here?

16 MS. MOLDENHAUER: Good morning. I have Mr. Bryon Wells
17 from the applicant Menkiti Group, as well as Mr. Whitney Smith
18 from the applicant at Menkiti Group, as well as Ms. Emilie
19 Rottman, the project architect.

20 CHAIRPERSON HILL: Okay. Great.

21 Mr. Wells, could you introduce yourself for the record,
22 please?

23 MR. WELLS: Yes. Good morning. My name is Bryon Wells.
24 I'm a Development Project Manager with the Menkiti Group, the
25 applicant.

1 CHAIRPERSON HILL: Okay. Great. Thank you.

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

4 MR. SMITH: Good morning. Whitney Smith with Menkiti
5 Group, Vice President of Development and Finance.

6 CHAIRPERSON HILL: Great. Thank you.

7 Ms. Rottman, could you also introduce yourself for the
8 record, please?

9 MS. ROTTMAN: Yes. Good morning. Emilie Rottman from
10 Square 134 Architects on behalf of the applicant.

11 CHAIRPERSON HILL: Great.

12 Commissioner Eckenwiler, can you hear me?

13 COMMISSIONER ECKENWILER: Yes, I can. Good morning,
14 Mr. Chairman.

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

17 COMMISSIONER ECKENWILER: Sure. Mark Eckenwiler, Vice
18 Chair of ANC 6C, here on behalf of ANC.

19 CHAIRPERSON HILL: Great. Thanks, Commissioner. Your
20 video is kind of breaking up, so we'll see how it goes. You
21 might want to turn off your video and just have the audio, but
22 we can just see how it goes. Okay. Great.

23 Ms. Moldenhauer, can you tell us what happened since
24 the last time you were here?

25 MS. MOLDENHAUER: Good morning, Chair, and members of

1 the Board. Since the last time we were here, we removed some of
2 the relief and modified the project substantially. We haven't
3 had a chance to actually walk the Board through all the changes
4 that have occurred, and we look forward to doing that today.

5 CHAIRPERSON HILL: Okay. Do you have a new PowerPoint
6 or no?

7 MS. MOLDENHAUER: We do. No. We don't have a new
8 PowerPoint from the last hearing, it's at Exhibit 102.

9 CHAIRPERSON HILL: Okay. So that's the same one.

10 MS. MOLDENHAUER: Yes, the same presentation.

11 CHAIRPERSON HILL: Okay. Great. All right.

12 Well, then you can go ahead and begin whenever you
13 like.

14 MS. MOLDENHAUER: Fantastic. If Mr. Young could bring
15 up the PowerPoint at Exhibit 102, that'd be helpful. Thank you.

16 Next slide. So Board members, we're here today to talk
17 about a project that we believe has had extensive community
18 outreach and discussions with the neighbors. We have reduced the
19 project that we'd like to kind of talk about today that had
20 originally had five units. It was a five-unit conversion. We
21 reduced it down to a four-unit conversion. We've also updated
22 the relief. Here today, we're asking for a special exception for
23 an apartment building conversion, a special exception to extend
24 the 10-foot rule. We have removed variance relief for the 900-
25 square-foot requirement, and we have also removed the need for a

1 waiver on the rooftop architectural elements. We'll walk through
2 some additional changes that we've made to the project and
3 additional conditions that we are proffering today.

4 Next slide. This is just an image of the property.
5 I'm going to introduce Mr. Whitney Smith to kind of walk through
6 the rest of the few slides before our architect takes over.

7 MR. SMITH: Good morning again.

8 So this slide provides you just an idea of where the
9 project is located. It's outlined in red. There, you can see,
10 we have our neighbor to the west and east, 620 and 624.

11 You can go to the next slide. So this provides an
12 overview of the existing condition. From left to right, we have
13 the front facade of the building. The next picture is the rear,
14 facing the back of that structure. And then further to the right,
15 provides you a view from the alley into the rear lot.

16 You can go to the next slide. This image shows sort
17 of more of the context of the street where the building is
18 located. So our structure, 622, is about halfway down the block.
19 You can see to the right is The Apollo, 430-unit PUD. That's the
20 building with the Whole Foods on H Street. In addition, you can
21 see multiple properties to the left and somewhat to the right
22 with additional -- addition's additional density.

23 You can go to the next slide. So walking through,
24 we've made a number -- as Meridith mentioned -- a number of
25 changes, architectural changes to decrease the unit count to

1 minimize the impact on neighboring neighbors, including reducing
2 the overall length of the rear portion of the project from 45-
3 feet 6-inches to 39-feet 2-inches. This reduced the distance
4 beyond adjoining neighbors, neighboring properties from 81-feet
5 to 78-feet 6-inches.

6 We've increased the setback between the rear portion
7 of the project of the neighboring property at 620 I Street N.E.
8 That's the structure to the west. The setback was previously 35-
9 feet 6-inches -- six-and-three quarter inches and is now 39-feet,
10 four-and-three quarter inches. We've increased the rear yard
11 from 23-feet to 25-feet six and one-quarter inch. We've added a
12 setback to a four-feet eight-inches on the third story of the
13 rear portion of the project. That's the southern side, the side
14 facing the 620 existing structure, as well as the neighbors.

15 We've added a three-foot setback for the third-floor
16 addition on the street facing portion of the project. And what
17 this does is it eliminates the relief from the rooftop
18 architectural element requirement. We removed the western side
19 yard on the rear portion of the project. And we redesigned
20 meaningful -- to clarify, there was no substantial changes to
21 meaningful connection. I think we have noted here that we've
22 redesigned it. That's a direct (phonetic).

23 Next slide. So this image shows you essentially the
24 amount of community outreach we've done here. We've pretty much
25 canvassed the entire neighborhood. We were able to receive 26

1 letters of support, 17 of those were within the 200-foot
2 properties. So as you can see, we've gotten a lot of support,
3 and we've been very involved in the community in doing so.

4 Next slide. So for these next slides, I'm going to
5 turn it over to our architect, Emilie. Before I do, just to sort
6 of summarize, we, as the Menkiti Group are -- pride ourselves on
7 getting involved in the communities. We have really focused our
8 energies on canvassing the neighborhood and finding out what the
9 neighbors are interested in seeing. A lot have expressed support
10 based off of the 26 letters of support.

11 They're very excited to see something happen with 620
12 as well as that rear alley. There have been many concerns about
13 the rear alley and the lack of density on the alley, so we're
14 hoping to address those. So with that, I'll have our architect
15 take us through the remaining slides.

16 MS. ROTTMAN: Thank you, Mr. Smith.

17 Just following up on the front façade, we went through
18 a number of iterations in designing the building and through the
19 feedback from the community, adjacent neighbors, the ANC and the
20 BZA. And originally, had a more modern roof and then went to a
21 more traditional design and ultimately chose to set back that
22 traditional design the three feet to avoid the architectural
23 relief required. And we feel that this transition in the design
24 relates more to that existing character of the neighborhood and
25 helps enhance the existing two-story structure.

1 Next slide. As you can see in the revised site plan,
2 to update the privacy concerns, we extended the building lot line
3 to lot line, so we were able to increase the size of the space,
4 I guess in that internal court between the rear addition of the
5 original structure and the rear addition that's being proposed
6 in the back.

7 And we also removed the roof deck and are still
8 maintaining that Board order from -- I know it's not seen, or
9 it's hard to see here in the site plan, but along at the southern
10 edge of this image, there is a through connection in the addition
11 to maintain access to the rear yard from the meaningful connection
12 site.

13 And as you can see here, we provided the three-foot
14 setback along the front facade and also put a setback in at the
15 third story to then create as much light in between our proposed
16 addition and the adjacent neighbors.

17 Next slide. As noted previously, we removed the Juliet
18 balconies and are purposefully maintaining just the meaningful
19 connection at the first floor to really allow for as much light
20 and air to circulate between the adjacent properties. And as you
21 can see in the lower left image, or in the left image in the
22 lower left corner, we are maintaining that open connection
23 between the court to the rear yard.

24 Next slide. I've worked with a number of developers
25 throughout the District on various projects, and I have to say

1 that I do really feel that the client is going above and beyond
2 to try to address the privacy concerns of the adjacent neighbors.
3 Instead of just doing one or two items and perhaps redoing the
4 fence, they're really trying to consider this from every aspect
5 possible. They removed the Juliet balconies to maintain the
6 privacy; adding vegetation, even promising to add vegetation at
7 least to a certain height; as well as incorporating anti-glare
8 film to even consider sun and solar considerations with the
9 adjacent neighbors to really reduce any impact that would have
10 on them.

11 Next slide. And these are just the west elevation,
12 north elevation where you can again see the proposed connection
13 that's still being maintained along the first floor to provide
14 access to the rear yard.

15 Next slide. And although the addition will be visible
16 in the alley, we do feel that the sides (indiscernible) in line
17 with the adjacent character of the other structures that are
18 facing the alley.

19 Next slide. And this is just (indiscernible). This
20 is a different character from the photograph.

21 Next slide. So in terms of the shadow studies that
22 we've provided, we compared the proposed addition in comparison
23 to what would be allowed matter of right. And the diagonal hatch,
24 where it's a little bit darker, if any additional shadows are
25 being cast beyond with allowed matter of right. And anywhere

1 | where there's sort of that light, in fact, it's actually any
2 | shadow that's less than what we've seen (audio interference) as
3 | matter of right.

4 | And as noted in the OP report, the amount of shadows
5 | being cast do not provide any additional undue hardship. As with
6 | the north-south orientation the shadow is mainly in the yards and
7 | not really impacting any direct visibility into the adjacent
8 | neighbors. And if you could just sort of go through these. We
9 | looked at June -- we looked at three seasons, we're covering
10 | June, September and December.

11 | So if you could go to the next slide. And you'll note,
12 | actually in the wintertime, there is no increase in shadow in
13 | comparison to the matter of right structure.

14 | Next slide. And if you were to look at the proposed
15 | shadow in comparison to the existing condition with the tree
16 | foliage from the existing canopy, the proposed shadow that our
17 | addition is providing will actually be less than that of the
18 | existing shadow from the trees that are there. We have been
19 | working with the direct neighbors. I know that the trees are
20 | being proposed to be removed for a proposed addition and also in
21 | support with the neighbor. And I believe that our client can
22 | talk more into detail about that. But as again, we believe that
23 | there's no adverse impact from the shadow being proposed from our
24 | addition. And with that, I'd like to turn it back to Ms.
25 | Moldenhauer.

1 MS. MOLDENHAUER: Sure. Great.

2 We can go to the next slide. But before I walk through
3 the next slide, I just want an opportunity for Mr. Smith, Ms.
4 Rottman brought up the two abutting neighbors. And so I'd like
5 Mr. Smith to talk a little bit about the overall communication
6 that you've had with the two abutting neighbors. And we can
7 obviously provide more detail, either, you know, during rebuttal
8 or on questions from the Board.

9 MR. SMITH: Thank you very much.

10 So in terms of our outreach, again, we've been reaching
11 out to our neighbors, meeting with them, speaking with them since
12 2020. So we've spent quite a bit of time, over a year, meeting
13 with in person and then transitioning to virtual telephone and
14 then back to distance in person.

15 But speaking specifically about our neighbor to the
16 west, 620, the Robinsons, we have -- I and the rest of my team
17 met with them on multiple occasions. I think we have over 20
18 plus touch points to discuss any issues that they may have with
19 the project, but high level, there really were no issues with the
20 design. And we were attempting to kind of suss out any other
21 issues we can address, but it wasn't as clear if there were any
22 issues that they wanted us to address in terms of the design.

23 With our neighbors to the east, 624, again, we've been
24 in constant communication with them with over 15 touch points.
25 Personally, I discussed the overall project, but in addition to

1 | the overall maintenance of the project, so I'm in constant
2 | communication with them as recently as this weekend. So again,
3 | same as the Robinsons, we've met them in person, transitioned to
4 | virtual, and then back to distance in person. And now, more
5 | recently, text message, if there are any issues that come up.

6 | So we have really done everything that we can to find
7 | out if there are any issues with the project. We've worked with
8 | them to address concerns of privacy as mentioned. We will
9 | continue to work with both to make sure the project is developed
10 | in their vision and with their input. So again, we've done a
11 | lot, and we will continue to do so.

12 | MS. MOLDENHAUER: Thank you very much.

13 | So I've just now turned to the legal standard to kind
14 | of close out our presentation. We are asking for two special
15 | exception reliefs and believe that both reliefs are in harmony
16 | with the purpose and intent of the zoning plan. This is a very
17 | large lot that is adjacent to the H Street commercial corridor.
18 | It is directly across the street.

19 | As mentioned in one of the images, as you can see from
20 | the Apollo, which has the whole (indiscernible), home to 430-
21 | units as well as the Whole Foods. It's also, in the area of the
22 | AVA H Street Apartment Complex and the Anthony, and that this is
23 | a very large alley lot and large alley network with other
24 | structures on and abutting in the neighborhood.

25 | There is a -- it maintains the rooftop architectural

1 elements based on kind of the three different stages of changes
2 that we've had in the front architectural design now, which is
3 set back and is more traditional in design than original. And
4 we have engaged with a lot of community support, 26 letters of
5 support, 17 within 200-feet. And after the variance was removed,
6 the Office the Planning has now continued, in two supplemental
7 records, to support both areas of special exception relief.

8 Next slide. We believe there's no adverse impact.
9 There's been a roof reduction of the overall length of the rear
10 addition. There is this one-story meaningful connection, which
11 creates an opening for the massing in the rear. That will allow
12 for light and air. The project complies with height and all the
13 yard requirements and lot occupancy standards.

14 In addition, we have increased the setback of the
15 courtyard level to over 39-feet from the neighbor at 620 I Street.
16 There's an addition of a new setback on the rear third floor. We
17 have no eastern facing windows, and there is an existing and
18 proposed fence will maintain privacy.

19 In addition to that, I'll just note that we did, at
20 Exhibit 107, identify an additional number of conditions that we
21 would be able to -- that we are proffering as part of our
22 application for addressing any mitigation.

23 Next slide. We believe that based on the conditions
24 that we are proffering in our Exhibit 107, as well as the proposed
25 relief, we believe we satisfy the standards and are open for

1 questions from the Board. Thank you.

2 CHAIRPERSON HILL: Does the Board have any questions
3 for the applicant?

4 COMMISSIONER TURNBULL: Yes, Mr. Chairman.

5 CHAIRPERSON HILL: Vice Chair John.

6 VICE CHAIR JOHN: Go ahead, Mr. Turnbull.

7 CHAIRPERSON HILL: Commissioner Turnbull.

8 COMMISSIONER TURNBULL: Yeah. I have a question for
9 Mr. Smith. You talked about lack of density on the alley; I'm
10 not sure I understand what you mean. You're satisfying the need
11 for lack of density on the alley.

12 MR. SMITH: Yeah. I can give more insight. I think
13 what I meant is, eyes on the alley, and it was a security issue
14 that came up with a lot of neighbors. So in our conversations,
15 they were happy to see that we were adding density and putting
16 additional eyes to the alley for that security purpose.

17 COMMISSIONER TURNBULL: But you do realize that the
18 Zoning Regulations in the RF Zone cannot require both density in
19 the alley. We are not looking for density in the alley. Do you
20 understand that?

21 MR. SMITH: I do, yes.

22 COMMISSIONER TURNBULL: All right. The other thing is
23 when you talked about talking -- communication with the
24 neighbors, but do you have approval from the other -- the two
25 neighbors on either side of you, that they're okay with this

1 project?

2 MR. SMITH: We don't have approval. We don't have
3 written approval. During our conversation, we felt we were
4 getting close on both sides in terms of getting the approval or
5 support, but to note, they have not opposed the project.

6 COMMISSIONER TURNBULL: Well, let's take each one.
7 Just look at 620. What is the main concern about the neighborhood
8 at 620?

9 MR. SMITH: We're actually having difficulty really
10 understanding what the concerns were. One item that did come up
11 was access to the rear lot and the actual alley. They are a
12 land-locked lot. So we had conversations about whether or not
13 she had that prior. And we went as far as to consider adding a
14 gate so that she would then have access for emergencies to the
15 alley.

16 COMMISSIONER TURNBULL: And you are now showing a gate
17 at the rear; is that correct?

18 MR. SMITH: I'm sorry. I would have to defer to our
19 architect.

20 MS. ROTTMAN: Yes. That is shown on the site plan.

21 COMMISSIONER TURNBULL: Okay.

22 MS. MOLDENHAUER: Yes. That's part of the record,
23 Commissioner Turnbull.

24 COMMISSIONER TURNBULL: Well, I see -- well, I just
25 want to hear it for sure that you are providing a gate. That's

1 all, Ms. Moldenhauer. We just want to make it on the record.
2 What about 624?

3 MR. SMITH: 624, again, we have had many conversations,
4 long lengthy conversations about the course, so the privacy,
5 density, and materiality of the rear structure. We have offered
6 various options to provide additional privacy and landscaping.
7 We have discussed the materiality (indiscernible) that are
8 interested in working with them to achieve a look that they're
9 comfortable with. In addition to the meaningful connection,
10 providing slightly more heightened their fence provided
11 additional privacy that we were also discussing.

12 COMMISSIONER TURNBULL: But you have not come to an
13 agreement on any of those; is that correct?

14 MR. SMITH: That's right.

15 COMMISSIONER TURNBULL: Now, the ANC is not in support.
16 We're going to hear from Commissioner Eckenwiler in a little
17 while. And you've presented to them, you've listened to their
18 concerns, and how are you dealing with those?

19 MR. SMITH: Well, I think a lot of the architectural
20 changes we've made to the rear structure were in response. We
21 believe that the issue they had was with the 10-foot setback.
22 And the density we're putting there, but we believe we are --
23 and again, I defer to our attorney on this, but I believe that
24 we should be able to build that structure. And I think that's
25 it.

1 COMMISSIONER TURNBULL: And would the -- not only is
2 the ANC opposed to this, but the CHRS is also opposed to you
3 going back as far as you are going; is that correct?

4 MR. SMITH: Right. Yes, that's correct.

5 COMMISSIONER TURNBULL: Have you talked with them at
6 all or met with them?

7 MR. SMITH: We have, yes.

8 COMMISSIONER TURNBULL: Okay. Ms. Rottman, I could not
9 -- I don't know whether your mic was low or you're just speaking
10 low. I could not really understand your discussion on the shadow
11 studies. I wonder if you could go back and highlight the high
12 points and show me exactly where beyond matter of right you are
13 increasing the shadows on the neighboring properties.

14 MS. ROTTMAN: Sure. Is there any way to provide the
15 PowerPoint again?

16 COMMISSIONER TURNBULL: I think Mr. Young would be
17 delighted to.

18 MS. ROTTMAN: Thank you.

19 So anywhere that has that darker red patch, with the
20 diagonal hatches, anywhere where there's additional shadow being
21 provided beyond matter of right. And for matter of right, we
22 looked at both the 10-foot addition to the existing structure,
23 and also in terms of massing, what would be allowed as an alley
24 structure matter of right. And I would like to note that, so if
25 you look at the top row of drawings, those are showing the matter

1 of right shadow, and the lower row of drawings are showing the
2 proposed addition.

3 Our proposed addition is certainly setting back further
4 than matter of right alley structure would be able to, in terms
5 of privacy, to either adjacent neighbor. And then you'll note
6 in the lower row of those drawings, anywhere where there's a dark
7 red diagonal hatch, is any proposed additional shadow, which is
8 mainly in adjacent neighboring properties. It's not touching the
9 rear facade of any of the main structures. And if you were to
10 go to the next slide.

11 COMMISSIONER TURNBULL: I'm sorry, could you explain
12 that; touching the facade of any structure?

13 MS. ROTTMAN: Because it's a north-south orientation,
14 we're not -- there's no additional shadow being cast into any
15 window or blocking any light into the main house of either
16 adjacent neighbor. Our shadow is being cast into the yards of
17 the neighbors. In fact, most of it is extending, not even into
18 the directly adjacent neighbor, but further. So the amount of
19 shadow impact on the directly adjacent neighbors is minimal.

20 COMMISSIONER TURNBULL: Right. Please continue.

21 MS. ROTTMAN: If you go to the next slide. This is
22 just showing the same conditions and the same diagrammatic
23 comparison, but for September. And again, you'll note the shadow
24 is mainly being cast into adjacent yards and is not creating any
25 new shadow on any of the main habitable structures. Next slide.

1 MS. MOLDENHAUER: Wait, Ms. Rottman. The largest
2 shadow is in that bottom left corner; is that correct?

3 MS. ROTTMAN: That is correct.

4 MS. MOLDENHAUER: And that's lot 828, which we have a
5 letter of support from?

6 MS. ROTTMAN: Yes.

7 And then the next slide. And for December, you'll note
8 that there's absolutely no change in additional shadow between
9 what would be allowed to be cast matter of right and what is
10 being cast from our proposed addition.

11 And if you were to go to the next slide. So this is
12 the existing condition. We do have two very large trees along
13 the property line that both the neighbor would like to have
14 removed, in addition to us needing to remove them for the proposed
15 addition. And you'll note that lighter pink patch is the shadow
16 being cast by those trees in comparison to the red outline, which
17 is showing the shadow cast by our proposed addition, and the
18 amount of shadow cast by our proposed addition. And we chose
19 midday as just a comparison so that we could have a clearer
20 understanding across all seasons. But throughout all seasons,
21 there would be more shadow cast by the existing tree canopy than
22 our proposed addition.

23 COMMISSIONER TURNBULL: Ms. Rottman, let me ask you.
24 Do you feel that the extra amount of shadow that falls into the
25 yards of the neighbors has an impact on them or it doesn't have

1 an impact on them?

2 MS. ROTTMAN: I'm sorry. Who's that question to?

3 COMMISSIONER TURNBULL: It's to you. What I'm
4 basically asking you is, that you talk about having shadows on
5 buildings and not going into their yard, into their windows
6 directly. Do you not feel that shadows, increasing shadows into
7 the yards of neighbors is also an impact to them enjoying their
8 yards?

9 MS. ROTTMAN: In fact, I think it'd probably provide
10 more shade when it's like hot out or other things of that sort.
11 So I don't necessarily see shadows cast into the yard as an
12 obstruction of use.

13 COMMISSIONER TURNBULL: So we could have shadows --
14 well, shadows everywhere would be okay with you?

15 MS. ROTTMAN: I think to me, it's more if like a space
16 feels dark in the interior. If you're outside, you do get to
17 have that flexibility of light coming and cast in all the various
18 directions.

19 COMMISSIONER TURNBULL: All right. Thank you.

20 MS. ROTTMAN: I don't see it as an impact.

21 COMMISSIONER TURNBULL: Thank you. That's it for me,
22 Mr. Chair.

23 CHAIRPERSON HILL: Okay. You can leave the PowerPoint
24 up, Mr. Young.

25 Ms. Rottman, I'm just trying to see the difference

1 between how the rooftop architectural elements are not being
2 changed. Because I put back -- I went back all the way to the
3 original proposal -- I'm sorry, PowerPoint that you did. Can you
4 show me how you're keeping the existing architect -- rooftop
5 architectural elements?

6 MS. ROTTMAN: You're saying along the front facade?

7 CHAIRPERSON HILL: Yeah.

8 MS. ROTTMAN: Sure. If you go to, I guess it's, I
9 think it's slide --

10 MS. MOLDENHAUER: Slide 8.

11 MS. ROTTMAN: 8.

12 MS. MOLDENHAUER: Slide 8.

13 MS. ROTTMAN: Right here. So the existing structure
14 is the one shown on the very left. We're actually in-filling
15 the missing notch, and we'll be maintaining the cornice line
16 along that front facade. For the proposed addition, originally,
17 we were setting the mansard roof directly adjacent along that
18 front facade, and it was a little bit more contemporary opening
19 that was asymmetrical.

20 MS. MOLDENHAUER: Emilie. Ms. Rottman. By "adjacent,"
21 you mean it was on top, it was -- that there was no setback,
22 correct, that it was on?

23 MS. ROTTMAN: Yes. It was directly on top along the
24 property line. There was no setback from the front property
25 line.

1 CHAIRPERSON HILL: I got you. Okay. That's helpful.
2 Right. I got you.

3 MS. ROTTMAN: Yeah.

4 CHAIRPERSON HILL: Okay. That's fine. Okay. All
5 right. That's the first one. Okay. You can drop the PowerPoint,
6 Mr. Young. Thank you.

7 Ms. John, I saw you had your hand at one point as does
8 Mr. Smith -- I think everybody's going to have questions, so
9 we're just going to go around the table.

10 VICE CHAIR JOHN: I had a question about the surveyor's
11 plat. That's Exhibit 111A, the revised surveyor's plat. And how
12 many units in total is the application providing; is it four or
13 five?

14 MS. ROTTMAN: There will be four units being provided.

15 VICE CHAIR JOHN: So if you could take a look at the
16 plat, I believe it says five.

17 MS. ROTTMAN: Okay. That may have been a mistake. We
18 were asked relatively late to add an updated plat to show the
19 massing changes in relationship to the proposed architectural
20 changes with the site plan. So my guess is that when we asked
21 that to be done quickly, we overlooked that, but there will be a
22 total of four units not five.

23 VICE CHAIR JOHN: Okay. So there should be an amended
24 plat.

25 MS. ROTTMAN: Yes. We can provide an amended plat.

1 VICE CHAIR JOHN: That was the only question I have at
2 the moment.

3 CHAIRPERSON HILL: Okay. Let's see. Mr. Smith.

4 BOARD MEMBER SMITH: Yeah. This question is to Ms.
5 Rottman. It would have been great to get some more context as
6 far as renderings along the alley, just to get to this question
7 and maybe raised by the ANC and some of the neighborhoods'
8 concerns from the last time we were at this hearing. But just
9 to ask the question and get on the record. The revised rear
10 addition, and I've heard discussions about the large alley
11 structure in the rear to the east. Is that in line -- is this
12 particular proposed proposal, as it stands now, in line with that
13 particular structure that was referenced earlier? And also, is
14 it the same height?

15 MS. ROTTMAN: It is in close proximity to both height
16 and size of that neighboring adjacent structure. We obviously
17 haven't surveyed or measured the neighboring adjacent structures
18 but --

19 BOARD MEMBER SMITH: Right.

20 MS. ROTTMAN: Yeah. If you were to -- I guess we don't
21 have to pull up the PowerPoint. So if you were to look at the
22 alley context image, there's a really tall two-story structure
23 directly next door to us that is an accessory dwelling unit. And
24 then two buildings down from that is that (audio interference)
25 three-story structure, and ours would sort of comfortably fall

1 | visually between those two buildings.

2 | BOARD MEMBER SMITH: What exhibit is the alley context
3 | image again?

4 | MS. ROTTMAN: It's page 14.

5 | MS. MOLDENHAUER: That's Exhibit 15, page 15. I'm
6 | sorry.

7 | MS. ROTTMAN: 14 to 15.

8 | MS. MOLDENHAUER: Yeah, Exhibit 15.

9 | BOARD MEMBER SMITH: You said Exhibit 14?

10 | MS. MOLDENHAUER: Sorry. It's slide 15 on the
11 | PowerPoint.

12 | BOARD MEMBER SMITH: On the PowerPoint. Okay.

13 | MS. MOLDENHAUER: If Mr. Young wanted to bring it up.

14 | MS. ROTTMAN: So this is the existing context of the
15 | alley, which is also nice, but it's a fairly wide alley in this
16 | area. And then if you were to go back to slide 14, you would
17 | see our proposed addition in relationship to the adjacent
18 | massing.

19 | BOARD MEMBER SMITH: Okay. Thank you. That's the only
20 | questions I had.

21 | CHAIRPERSON HILL: Mr. Young, could you leave that up,
22 | please? Just real quick again, Ms. Rottman. The shadow studies
23 | that you're showing, like there's a comparison between again,
24 | what you're saying is matter of right. What's the matter of
25 | right massing that you used when you were comparing the shadow

1 studies?

2 MS. ROTTMAN: For the matter of right massing, it was
3 the 10-foot setback on the existing -- 10-foot setback plus third
4 story on the existing structure, as well as matter of right
5 massing in compare -- for an alley building or structure.

6 CHAIRPERSON HILL: Got it. But you don't have anything
7 other than the shadow study that doesn't show what the matter of
8 right is versus what you're proposing, correct?

9 MS. ROTTMAN: In terms of shadow study, no. The shadow
10 studies were only used to show the matter of right of what -- if
11 you were to look at it and what would be allowed to be built as
12 a maximum massing on the site in comparison to the proposed
13 massing we're suggesting.

14 CHAIRPERSON HILL: No, I got it. But there's nothing
15 you can point me to that shows me what that proposed matter of
16 right massing is?

17 MS. ROTTMAN: It would just be what's shown on the
18 shadow studies.

19 CHAIRPERSON HILL: On the shadow study. Okay. Okay.
20 All right. You can drop it, Mr. Young. Okay.

21 Ms. John.

22 Mr. Smith are you done for now?

23 BOARD MEMBER SMITH: Yes.

24 CHAIRPERSON HILL: Ms. John.

25 VICE CHAIR JOHN: Just a follow up on the matter of

1 right question. What is exactly is matter of right? It would
2 be 10-foot addition and an accessory structure, which would be
3 20-feet wide?

4 MS. ROTTMAN: Yes, that's correct.

5 VICE CHAIR JOHN: Okay.

6 MS. MOLDENHAUER: Well, there also -- so there's two
7 options, Board Member John. There's a three-story addition going
8 10-feet past the rear. Right now, there's no proposal to go 10-
9 feet past the rear nor is there a proposal for three-stories on
10 that rear addition, which would cast a lot more shadow on the
11 abutting properties.

12 There's also the alternative to build to the by right
13 alley lot occupancy and structure on that separate alley lot.
14 And one of the shadow studies shows a by right alley structure,
15 which can take a lot more lot occupancy and create a lot more
16 shadow and would be a lot closer to 620 I Street than the
17 proposal.

18 VICE CHAIR JOHN: So what is the added structure you're
19 discussing? Where the accessory building would be, the 20-foot-
20 high accessory structure?

21 MS. ROTTMAN: It's 20-feet high and 80 percent of the
22 lot. And I believe you're allowed a five-foot setback on those
23 side yards and the front property line, which is what's currently
24 shown.

25 VICE CHAIR JOHN: Were any of those (indiscernible)

1 shown to the ANC?

2 MS. MOLDENHAUER: They were discussed via the shadow
3 study, yes, and the shadow study shows the site conditions.

4 VICE CHAIR JOHN: But for all of the options that you
5 just offered here?

6 MS. MOLDENHAUER: We discussed all of that. We
7 presented the shadow study and explained that this is going to
8 be a less impactful proposal than what could be done by right
9 because it actually sets the building further away. But it
10 doesn't impact the 10-foot -- doesn't come up three-stories, 10-
11 feet next to both abutting property owners. It doesn't do that.
12 And it doesn't provide a larger rear structure that will go closer
13 to the rear of the (indiscernible), 620 I.

14 VICE CHAIR JOHN: Okay. Thank you.

15 CHAIRPERSON HILL: Okay. One second. Okay. Let's
16 see. That's it. Okay. All right.

17 Ms. Elliott, are you there?

18 MS. ELLIOTT: Good morning, Mr. Chairman.

19 CHAIRPERSON HILL: Can you give us an updated report
20 or tell us what you think?

21 MS. ELLIOTT: Sure. Good morning, Mr. Chairman,
22 members of the Board. I'm Brandice Elliott, representing the
23 Office of Planning.

24 This project has been revised a fair amount since we
25 last saw it in October. The applicant had originally requested

1 | some variance relief in addition to the conversion special
2 | exception relief. We were unable to recommend approval of the
3 | variance relief because -- well, the request was for the 900-
4 | square foot rule, which requires 900-square feet of land area per
5 | dwelling unit. We were not in support of that, so then we were
6 | also not in support of the conversion.

7 | Since then, the applicant has removed that request for
8 | relief and we're now just looking at the two special exceptions,
9 | one for the actual conversion and then one for the rear addition,
10 | because it's going beyond 10 -- it's going more than 10-feet
11 | beyond the adjacent property owners.

12 | So we are in support of the special exception relief
13 | that is now being requested.

14 | In terms of the conversion, it does meet the special
15 | exception criteria, the row building was constructed in 1923. So
16 | it meets -- the date of -- its pre '58, so it qualifies for that.
17 | One IZ unit would be provided, which is also a requirement of
18 | the conversion. And then there would also be 1,121-square feet
19 | of land area per dwelling unit, which is more than 900-square
20 | feet, which is required.

21 | In terms of light and air, the applicant has spent
22 | quite a bit of time going over the shadow study, so I don't want
23 | to belabor that too much. But we did find that most of the
24 | shadowing would occur to the north, because this is a north-
25 | south oriented lot. Most of the shadowing occurs to the north,

1 | but some of the -- the two adjacent properties would be impacted
2 | at different times of the day. But the shadowing is not for
3 | extended periods of time throughout the day, and it does change
4 | with each season. We don't find the amount of shadowing to cause
5 | an undue impact in this scenario. In terms of privacy -- I'm
6 | sorry, is there a question?

7 | CHAIRPERSON HILL: No. No.

8 | MS. ELLIOTT: Okay.

9 | CHAIRPERSON HILL: (Audio interference). Yeah.

10 | MS. ELLIOT: Sorry. I think I may have heard someone
11 | off mic.

12 | In terms of privacy to adjacent neighbors, the
13 | development -- the applicant has proffered some conditions that
14 | would limit impact to neighbors including additional landscaping.
15 | There would also be no side windows on the front or rear portion
16 | of the addition. The connection would provide windows, but it's
17 | not tall enough to compromise the privacy of neighbors. There
18 | are no roof decks proposed, that also minimizes impacts to
19 | neighbors.

20 | There's a four-foot-deep terrace provided on the rear
21 | portion of the addition, but there would also be about 40-feet
22 | of distance between that and the nearest row buildings to the
23 | south of it. So overall, we are in support of the conditions
24 | that have been proffered by the applicant that would further
25 | mitigate those impacts to neighbors.

1 And we're also in support of the design, which we do
2 think incorporates some privacy measures for the benefit of the
3 neighbors.

4 And then finally, in regards to neighborhood character,
5 the conversion does include a third-story addition, it's visible
6 from I Street but there are already third-story additions along
7 I Street. This is adjacent to an MU zone that has taller
8 buildings on it, so the third story is not out of character.
9 It's allowed in the RF-1 zone and it is expected to occur at this
10 location.

11 The rear portion of the development would also be
12 three-stories and 35-feet in height. There are other buildings
13 located along the alley. Some of them are single-story, but the
14 applicant has what -- has discussed that the alley context and
15 provided some additional images showing what is happening in the
16 alley, and there are some other structures of similar height.
17 This particular structure is slightly on the periphery of the
18 alley, mind you though, because it is set back from the rear
19 property line, so that also reduces its overall impact to the
20 alley. So overall, we find it to be consistent with the
21 neighborhood character. So OP is in support of the special
22 reception relief that's been requested. I'm happy to take any
23 questions.

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

1 Mr. Turnbull.

2 COMMISSIONER TURNBULL: Ms. Elliott, thank you for your
3 report. And it's nice that the applicant is offering some
4 mitigation that it thinks would be good for either neighbor on
5 either side.

6 My only issue is that we really don't have a sign off
7 or any kind of agreement of either neighbor on either side, that
8 this is really what would satisfy them or make them feel better
9 about this project. So if basically the applicant is coming up
10 with something that I think is not unreasonable and probably will
11 help, but we really don't have a meeting of the minds on this
12 between the neighbors and this applicant. So my only concern is
13 that without that, I feel a little bit ill at ease as to if this
14 is really satisfying what their concerns are. I mean -- and you
15 said you find that the mitigations are well -- are okay. But do
16 you know where I'm coming from, that although there's
17 mitigations, I don't know if the mitigations go far enough to
18 exactly what the people are looking for. Really both, neither
19 neighbor has really said we're in total support of the project,
20 so I'm a little bit out here trying to figure out the impacts on
21 these people. And so it's a little bit uncertain as to whether
22 we are really doing everything -- that the applicant is really
23 do know that is possible for these people.

24 The other question is -- the other thing I had was
25 talking about -- you talked about the alley and all of those

1 other structures. The regulations -- the Zoning Regs do not
2 really say that just because there's things that are at a certain
3 height, that doesn't mean it's okay to do that. There's a certain
4 sense of just because you have everything at 20-feet and 10-feet
5 or whatever that, 30-feet is no big deal. What's your thought
6 on that?

7 MS. ELLIOTT: Sure. Thank you, Commissioner Turnbull.
8 And before I forget, I just wanted to say congratulations on your
9 retirement. It's been a fun number of years working with you, and
10 I've learned a lot.

11 But in terms of the first question regarding privacy,
12 for the record, OP has not had any discussions with the neighbors,
13 so we don't really understand what it is that they're looking
14 for. So I do appreciate their participation with the ANC and,
15 of course, the applicant's outreach to them to try and address
16 their concerns.

17 I would say this is an RF-1 Zone, it's not the optimal
18 zone for privacy. It's rowhouse developments with no setback and
19 no side yards. So any development is going to have some sort of
20 impact on privacy to neighbors. I would say that the proffers
21 that have been mitigated that -- I'm sorry, that have been --
22 the conditions that have been proffered that would mitigate some
23 of those conditions are what we would expect to see from
24 developers, and it's probably a little bit more than we have seen
25 in other projects, just comparatively speaking.

1 Of course, comparing it to other projects is hard
2 because every project is different. But I do think that they
3 have done a good job of trying to address those concerns. And I
4 think if the neighbors have anything additional they would like
5 to see this, this is a good place for them to do that.

6 The other question concerning neighborhood character
7 or the height of that rear portion. Our evaluation was in terms
8 of neighborhood character. As we've stated, there are some other
9 structures; just because they're there, doesn't mean that this
10 is okay automatically. But based on our analysis, the fact that
11 this is an RF-1 Zone that does allow alley structures. An
12 accessory building could be 22-feet in height in the RF-1 Zone,
13 that was recently amended from 20-feet. But the fact that this
14 is pushed back a little bit from the property line, I think also
15 helps it fit into the context a little bit better because it's
16 not necessarily expected to be in line with those alley
17 structures. So it looks like it's more -- maybe a little more
18 incorporated into the neighborhood than the other alley
19 structures. So overall, the height is permitted, and the setbacks
20 are provided, so we do support this.

21 The other option that the applicant has discussed is
22 other matter of right options. What's nice about this particular
23 design is it does take some of that massing and it moves it to
24 the rear of the lot, where more of the shadowing would occur at
25 the rear and have less impact on light into the actual row

1 buildings. Because light into row buildings is an issue because
2 there are no side windows. So this is actually moving some of
3 that massing back and allowing a little more light to infiltrate
4 into the rowhomes.

5 COMMISSIONER TURNBULL: Well, thank you. Thank you for
6 your explanation. I really appreciate it.

7 MS. ELLIOTT: I hope it helped.

8 COMMISSIONER TURNBULL: Thank you.

9 CHAIRPERSON HILL: Okay. Ms. John.

10 VICE CHAIR JOHN: So the rear structure is the same
11 height as the addition, right?

12 MS. ELLIOTT: That is correct. It's 35-feet.

13 VICE CHAIR JOHN: Do you have any concern that
14 (indiscernible) pushback from the alley, it is still 35-feet at
15 the rear of the property. What are your thoughts on that?
16 Because I have to tell you this is the most difficult part of
17 this application that I'm struggling with. And I know that we've
18 have had of meaningful connection projects in the past, but
19 they're still difficult for me when the massing at the rear is
20 so high. And I think 22-feet, we've seen rear 20-feet -- 22-
21 feet high structures, we've seen that developers are still able
22 to put accessory structures that have habitable space or have a
23 dwelling unit in an accessory structure. So 35-feet is a bit
24 difficult for me, even though it's allowed. Do you have any
25 thoughts?

1 MS. ELLIOTT: Our thoughts are the 35-foot is
2 permitted. It's matter of right. It's anticipated in the RF-1
3 Zone, and the applicant has provided in a shadow study that
4 demonstrates what the impacts on the neighbors are. And I think
5 based on it actually being a permitted height in the zone and
6 the results of that shadow study, OP is comfortable with the
7 height.

8 VICE CHAIR JOHN: Okay. Thank you.

9 CHAIRPERSON HILL: Okay. Anyone else have a question
10 for the Office of Planning?

11 And Ms. Cain, can you hear me? Ms. Cain, can you hear
12 me?

13 MS. CAIN: Yes.

14 CHAIRPERSON HILL: And sometimes I get confused. So I
15 knew the -- I do -- I know that Commissioner, I mean the ANC is
16 going to go last after the government people. Am I going to go
17 to the community first?

18 MS. CAIN: No, you're going to go to the ANC.

19 CHAIRPERSON HILL: Okay. I so dislike this video thing.
20 Okay. All right. I'm so (indiscernible). All right.

21 So I'm going to make a motion. Okay.

22 So Commissioner Eckenwiler, can you hear me?

23 COMMISSIONER ECKENWILER: I can, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Commissioner, would you like
25 to go ahead and give your presentation or any kind of commentary?

1 And then also, you'll have an opportunity to ask questions of the
2 applicant and the Office of Planning.

3 COMMISSIONER ECKENWILER: If possible, I'd like to go
4 ahead and ask those questions now, and then we can go into the
5 ANCS presentation, if that would be okay?

6 CHAIRPERSON HILL: Sure.

7 COMMISSIONER ECKENWILER: So I do have some questions
8 for Ms. Rottman. And if Mr. Young can pull up the applicant's
9 PowerPoint, that would be helpful.

10 So Ms. Rottman, I think I understood you to say that
11 the proposal, including the rear addition, is not going to have
12 substantial adverse impacts on the air, light and privacy,
13 specifically the light to the adjacent properties at 620 and 624;
14 is that right?

15 MS. ROTTMAN: Yes. There will not be undue impact.

16 COMMISSIONER ECKENWILER: Okay. And I think I heard
17 you say at one point, please correct me if I misunderstood, but
18 I think you said that the rear addition here, so excluding the
19 existing structure, we've talked addition, including that
20 meaningful connection, but that rear portion, so the additional
21 dwelling units, I think you said that's going to be in line with
22 the accessory structures on neighboring properties; is that
23 correct?

24 MS. ROTTMAN: We'd have not done a site survey of the
25 adjacent properties but tried to have the massing to be in close

1 proximity to those buildings. I don't -- I can't specify to the
2 exact dimension but it would be along the lines of where the
3 other rear structures are located. In terms of the three-story
4 neighbor, that's a couple of doors down.

5 COMMISSIONER ECKENWILER: Okay.

6 Mr. Young, if you could please go to slide 10.

7 So Ms. Rottman, I have a couple of questions about
8 this. This is labeled eastern section, but isn't this, in fact,
9 an elevation showing in the foreground the structures at 624 I
10 Street, and then in the rear, the shaded structures are the
11 applicant's proposal; is that correct?

12 MS. ROTTMAN: I would say that this is the eastern
13 elevation of our building. And this was shown to -- in
14 relationship to the adjacent neighbor to our east, yes.

15 COMMISSIONER ECKENWILER: Right. So it's 624 then.

16 MS. ROTTMAN: Uh-huh.

17 COMMISSIONER ECKENWILER: And so south is to the left,
18 north is to the right. And so on the right, we see the accessory
19 structure at 624, which in this drawing is depicted as two-
20 stories tall compared to the applicant's three-story building.
21 Do you know offhand, what is the difference there? How much
22 further south does the rear addition at 622, your proposal, so
23 that shaded structure at the rear, three stories, how much further
24 south does that extend past the facade of the accessory structure
25 at 624?

1 MS. ROTTMAN: I don't have that exact dimension. Let's
2 see if I can guesstimate off of the site plan. Give me one
3 second. I was looking through other exhibits in them, so let me
4 just pull up the PowerPoint again to correct. That structure
5 though, I would -- yeah. I do not have the number offhand. Let
6 me see if I can get that as you're asking the question.

7 COMMISSIONER ECKENWILER: Would you -- the exact figure
8 I think doesn't really matter here. I mean, would you say that
9 that's at least 25-feet and perhaps more than that?

10 MS. ROTTMAN: I don't know if I would say that it's
11 more than that.

12 COMMISSIONER ECKENWILER: Okay. All right. Fair
13 enough. I don't have any questions, Mr. Chairman.

14 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

15 Do you have a PowerPoint, or you're just going to talk?

16 COMMISSIONER ECKENWILER: I do not have a PowerPoint.
17 I'm just going to talk, so let me start in.

18 If the Board will recall, this case was before the
19 Board back on October 28th of last year. And at the close of
20 that hearing, several members of the Board expressed significant
21 reservations about this project, and in particular, on the
22 adverse impacts to adjacent properties.

23 I would encourage the Board, if you haven't already
24 done so, go back and look at that transcript. And in particular,
25 at Exhibit 95, which is an earlier filing from the ANC, we've

1 attached a short three-page extract that -- where Commissioner
2 Turnbull, where Vice Chair John, and Mr. Smith, all expressed
3 some significant concerns or reservations about this project.

4 I think it's useful to put that frame around where we
5 are now because the truth is, this project has not changed
6 significantly. There have been some technical revisions. So the
7 rooftop element issue with setting back from the cornice at the
8 front, that's been addressed. We know that the variance issue,
9 five units to four, has been addressed.

10 But if we look at this project in gross, the overall
11 massing, the envelope of what is proposed really has not changed
12 except in very marginal ways. And that is why the ANC remains
13 in opposition to this application.

14 As we stated in our most recent filing, that's at
15 Exhibit 108, this does not mitigate our concerns especially about
16 the privacy impacts on the neighbors.

17 And one of the issues that's been raised here is that
18 the applicant has now pushed the facade of that rear portion back
19 a few feet. But what they've also done, and let's remember this
20 was emphasized as somehow a benefit, they've now made that rear
21 addition run the full width of the lot. What that means is that
22 rear addition extends even further west and provides even more
23 direct views directly south into the rear of the dwelling at 620
24 I Street. So it's really -- it's a tradeoff. It didn't really
25 do much to enhance privacy.

1 I would emphasize on the proffers in Exhibit 107, there
2 is no commitment to maintain that proposed foliage once it's
3 planted. It only benefits 620 I Street. There is no benefit
4 from that proposed screening to 624. And really, the key takeaway
5 here is even if say there were some commitment for a period of
6 time to maintain that screening, that -- it doesn't do any
7 screening around the second and third stories of the structure.
8 Yes, they take away the Juliet balconies, but there are still
9 windows. They're still looking straight South at 620 I Street,
10 and at a very slight angle off of due south into the rear windows
11 at 624.

12 Now, Ms. Elliott said, well, this is a rowhouse
13 neighborhood and we -- privacy isn't at a premium. The truth is
14 you know, and we know as an ANC, as we see these applications
15 all the time, a lot of homeowners do rear additions. One of the
16 key things to look for there is no side windows and what you
17 typically have is that addition at the back with windows looking
18 toward the rear of the lot.

19 This is very different. Because of the meaningful
20 connection, because of the way this project is structured, we now
21 have a full lot line to lot line wall of units, of long units
22 and windows, again, looking south back toward -- not just the
23 subject property -- but to the neighbors on either side. And in
24 the ANC's view that will create an undue adverse impact on the
25 privacy of both of those neighbors, and that is why the ANC is

1 | in opposition.

2 | I would note that, in looking at the attendee list,
3 | there are representatives from both of those households present.
4 | I believe they would like to be heard. And it's our understanding
5 | that both of them are in opposition to this project.

6 | Before I conclude, Mr. Chairman, I do want to focus on
7 | the one of the points has been made repeatedly in the applicant's
8 | presentation, both Mr. Smith and Ms. Moldenhauer at multiple
9 | points, emphasize these letters of support that they've gotten
10 | from the neighbors, say within 200 feet. I would urge the Board
11 | take a look at what those letters actually say. And (audio
12 | interference) pull up that --

13 | CHAIRPERSON HILL: Commissioner, Commissioner,
14 | Commissioner, Commissioner. You're breaking up. You're breaking
15 | up. Commissioner, can you hear me?

16 | COMMISSIONER ECKENWILER: This is from Exhibit 49 --

17 | CHAIRPERSON HILL: Commissioner Eckenwiler, can you
18 | hear me?

19 | COMMISSIONER ECKENWILER: -- although here on --

20 | CHAIRPERSON HILL: Can you all hear me?

21 | COMMISSIONER ECKENWILER: I can't --

22 | BOARD MEMBER SMITH: Yes.

23 | COMMISSIONER ECKENWILER: Can you hear me, Mr.
24 | Chairman?

25 | CHAIRPERSON HILL: Yeah. Can you turn off your -- I

1 | lost you -- you started breaking up when you started to say,
2 | "urge the Board to look at the letters." Can you hear me?

3 | COMMISSIONER ECKENWILER: How about now? Is this
4 | better?

5 | CHAIRPERSON HILL: Yeah. We'll try as you go. You
6 | started breaking up when you said you "urge the Board to look at
7 | the letters."

8 | COMMISSIONER ECKENWILER: Okay. Mr. Chairman, can you
9 | hear me?

10 | CHAIRPERSON HILL: Yes.

11 | COMMISSIONER ECKENWILER: If you like, I'm dialed in,
12 | I can switch over. Mr. Young knows exactly which phone line I
13 | am so I can get on --

14 | CHAIRPERSON HILL: No. We can hear you; we just can't
15 | see you. We can hear you. I think since you've --

16 | COMMISSIONER ECKENWILER: Okay.

17 | CHAIRPERSON HILL: -- turned your video off, it's not
18 | buffering as much.

19 | COMMISSIONER ECKENWILER: All right. Very good. I'll
20 | proceed. But if the problem recurs, as I say, I'm happy to do
21 | the callback to the phone.

22 | CHAIRPERSON HILL: Okay.

23 | COMMISSIONER ECKENWILER: I would urge the Board take
24 | a look at what these letters of alleged support actually say.
25 | And just picking one example, they are almost all, I cannot say

1 all, but they're almost all identical form letters. I'm looking
2 at Exhibit 49 and there is language in these letters, in these
3 four letters, it's a bullet point that's almost immediately above
4 the signature. It says -- and this is in a discussion of the
5 10-foot rule. Quote, "The entire three-story portion of the
6 building complies with this regulation," that is that it not
7 extend where the 10-feet past the rear wall, the adjacent wall
8 is. Resuming reading here. "And the only portion which extends
9 past 10-feet is the one-story hallway," closed quote.

10 So that's just not true. And I think the Board should
11 draw one of two inferences from that. Either the signatories of
12 these letters didn't really read this letter and didn't know what
13 they were signing; or, in the alternative, they did read this
14 letter, and they understood something about this proposal is in
15 fact not true at all. There is a three-story structure well past
16 the 10-feet directly contrary to what these letters of support
17 state.

18 So when the Board is considering how much weight to
19 give to these numerous letters of support, I think you should
20 think about what's really in the letter and what representations
21 were made to the signatories.

22 So that's all I have, Mr. Chairman. I'm happy to answer
23 if there are any questions.

24 CHAIRPERSON HILL: Okay. Great. Thanks, Commissioner.
25 Let's see.

1 Does the Board have any questions for the Commissioner?

2 I'll start with one. I have one.

3 Commissioner Eckenwiler, you know -- are you familiar
4 with 628 I Street?

5 COMMISSIONER ECKENWILER: I am not familiar with 628.
6 I Street.

7 CHAIRPERSON HILL: (Audio interference) asking. I
8 think it's (indiscernible), right? Yeah.

9 Ms. Moldenhauer, do you know -- because I'm trying to
10 figure out and understand what is at 628 I and that structure
11 that is actually in the back of that alley there. Are they --
12 there's not a meaningful connection between those. I mean, do
13 you know anything about 618 I?

14 MS. MOLDENHAUER: I believe Mr. Smith can testify.
15 He's been in the property more. He's very much aware of it.

16 Mr. Smith.

17 CHAIRPERSON HILL: Got it.

18 MR. SMITH: Yes. Sure. So that is -- there is no
19 meaningful connection. I believe it is treated as a multifamily,
20 so there are multiple people living in different units, but yeah.
21 That's pretty much the summary of that.

22 CHAIRPERSON HILL: What's in the back? Because that's
23 the big massing that you guys are showing in your existing alley
24 context. What's that gray --

25 MR. SMITH: Those are residential units.

1 MS. MOLDENHAUER: Yes.

2 CHAIRPERSON HILL: And they're alley units?

3 MR. SMITH: They are, yes.

4 CHAIRPERSON HILL: Okay.

5 MS. MOLDENHAUER: It's a three -- sorry, I just pulled
6 up on Rivet or what is it, Redfin. The three-unit condo and that
7 entire rear structure is one unit --

8 CHAIRPERSON HILL: And that --

9 MS. MOLDENHAUER: -- from my understanding --

10 CHAIRPERSON HILL: So they did that --

11 MS. MOLDENHAUER: -- looking online quickly.

12 CHAIRPERSON HILL: Okay. So they did that -- okay. So
13 they did that by right. And I'm asking you, I guess Ms.
14 Moldenhauer, I don't know.

15 MS. MOLDENHAUER: I don't know at the time. It looks
16 -- it says, year built 2016, so it was built in 2016. That means
17 it was permitted probably in 2015 or '14, so it was built before
18 ZR-16 was put into place, so then the answer is yes. It was most
19 likely built by right prior to the ZR-16 change in the RF Zone.

20 CHAIRPERSON HILL: Okay. All right. So I'm back to
21 the -- one more, Commissioner then.

22 So Commissioner, I mean -- by the way, I don't know
23 where we are with all this. And Commissioner Eckenwiler, if you
24 can turn on your camera just for one second. We'll see how it
25 goes. I do think it's kind of a large lot. Like, what do you

1 think that the ANC would like to see done with that lot?

2 COMMISSIONER ECKENWILER: I think I would quibble. I
3 know you'll be shocked to hear me quibbling, Mr. Chairman, but I
4 would quibble at the premise of the question. Remember, this is
5 a constructed lot. It was two lots. It has been two lots for
6 some time, I don't know going back how far, and so this applicant
7 created this condition.

8 CHAIRPERSON HILL: No, I got it. What I'm just trying
9 to say is like --

10 COMMISSIONER ECKENWILER: Can you repeat that sentence?

11 CHAIRPERSON HILL: I'm sorry. I'll state my question
12 another way. It's a large area in the back. The ANC would just
13 like to see nothing happened with that large area in the back.
14 It's just a big yard?

15 COMMISSIONER ECKENWILER: Mr. Chairman, honestly, we
16 haven't had any specific discussions and take a position as an
17 ANC. I can tell you informally, one of my colleagues, the 6C05
18 Commissioner would like to see back there, which is an alley
19 dwelling compliant with the alley dwelling regulations.

20 CHAIRPERSON HILL: Got it. Okay. That answers my
21 question.

22 Okay. Does anybody have any question?

23 Yep. Sure. Mr. Turnbull.

24 COMMISSIONER TURNBULL: Yeah. Commissioner Eckenwiler,
25 if this were trying to minimize impacts of, as you brought out,

1 | the windows looking at the rear of this courtyard that this has
2 | created. If this did follow the Regulations, we're looking at a
3 | 22-foot structure up in the height. Do you think that would
4 | ameliorate some of your concerns?

5 | COMMISSIONER ECKENWILER: Well, it would certainly --

6 | COMMISSIONER TURNBULL: And add some privacy for the
7 | neighbors?

8 | COMMISSIONER ECKENWILER: It would certainly be one
9 | less story of occupancy looking south, so yeah. That is certainly
10 | reducing number of eyeballs, potentially looking at the rear of
11 | those residences. I can't tell you that that gets them to the
12 | goal line, but I think plainly that would reduce the privacy
13 | impacts, yes.

14 | COMMISSIONER TURNBULL: Okay. Thank you.

15 | CHAIRPERSON HILL: Okay. Anybody else for the
16 | Commissioner? Okay. Yeah. I got you Ms. Moldenhauer. I was
17 | just asking the Board first. Anybody else for the Commissioner?
18 | Okay.

19 | Ms. Moldenhauer, do you have any questions for the
20 | Commissioner?

21 | MS. MOLDENHAUER: Thank you, Chairman Hill, and
22 | Commissioner Eckenwiler, for being here today. You quibbled with
23 | the letters of support? Did, in fact, homeowners who had written
24 | letters of support log in in support at two of the ANC meetings?

25 | COMMISSIONER ECKENWILER: (Audio interference) there

1 | were --

2 | MS. MOLDENHAUER: You're --

3 | COMMISSIONER ECKENWILER: -- were some individuals who
4 | I think were letter signatories who attended -- I'm sorry, say
5 | it again?

6 | CHAIRPERSON HILL: Commissioner Eckenwiler. Why don't
7 | you go ahead -- you're saying that can you call in -- how did
8 | you propose we do that?

9 | Okay. Okay. All right. Let him call in. He's calling
10 | in? (Audio interference). Okay.

11 | COMMISSIONER ECKENWILER: Mr. Chairman, can you hear
12 | me now?

13 | CHAIRPERSON HILL: Yes.

14 | COMMISSIONER ECKENWILER: Okay. All right. Very good.
15 | So I apologize. I think my connection dropped out there, and I
16 | don't know if you've heard my full response to Ms. Moldenhauer.

17 | CHAIRPERSON HILL: No, we did not.

18 | COMMISSIONER ECKENWILER: Tell me where we need to pick
19 | up.

20 | CHAIRPERSON HILL: You need to pick up from your answer,
21 | if you remember the question.

22 | COMMISSIONER ECKENWILER: Sure. I think I do. The
23 | answer is yes. Some of the signatories, I think, or at least
24 | two, attended both the committee meeting and then the full ANC
25 | meeting, and I want to say that was back last October. So the

1 answer again, the short version of the answer is yes. There were
2 signatories who attended the ANC meetings last fall.

3 MS. MOLDENHAUER: That were supportive of the project?

4 COMMISSIONER ECKENWILER: Yes. Correct.

5 MS. MOLDENHAUER: And you indicated that you believe
6 the ANC would be more supportive of an alley dwelling structure
7 even though that would be closer to -- is permitted by right to
8 be closer to 620 I Street in the rear?

9 COMMISSIONER ECKENWILER: I think what I said is the
10 ANC has not taken a position. But as I suspect you recall,
11 Commissioner Kelty has, on more than one occasion, expressed a
12 preference for that, yes.

13 MS. MOLDENHAUER: You asked the questions in regards
14 to the shadows study. Did the ANC or anybody in the community
15 prepare any separate shadow studies that would disagree with the
16 shadow study Ms. Rottman presented?

17 COMMISSIONER ECKENWILER: No.

18 MS. MOLDENHAUER: No further questions.

19 CHAIRPERSON HILL: Okay. Great. Thank you. All right.

20 Mr. Young, is there anyone here wishing to testify?

21 MR. YOUNG: Yeah. We have two people signed up.

22 CHAIRPERSON HILL: Okay. Can you bring them in, please?

23 Is it Ms. Robinson --

24 MR. YOUNG: One of them is on the phone. Ms. Hagen is
25 on the phone, so I can only unmute her.

1 CHAIRPERSON HILL: Okay. Let me do Ms. Robinson first.
2 Ms. Robinson, can you hear me?
3 MS. ROBINSON: Yes, I can hear you.
4 CHAIRPERSON HILL: Okay. Great. Could you introduce
5 yourself for the record, please?
6 MS. ROBINSON: Hi. My name is Denika Robinson, and I'm
7 the daughter of Agnes Robinson, 620 I Street N.E.
8 CHAIRPERSON HILL: You're the who, I'm sorry?
9 MS. ROBINSON: The daughter.
10 CHAIRPERSON HILL: Okay. Okay. You want to go ahead
11 and give your testimony, please? You have three minutes and
12 three minutes is on the clock right there.
13 MS. ROBINSON: Okay. First, I want to direct the
14 conversation.
15 I don't know who they're having those conversations
16 with, but they haven't been having the conversations with my mom
17 and I in reference to what they're speaking up today. We haven't
18 discussed anything in reference to the privacy, anything
19 regarding the actual foliage of the building.
20 CHAIRPERSON HILL: Ms. Robinson. Ms. Robinson.
21 MS. ROBINSON: Yes. Yes.
22 CHAIRPERSON HILL: Can you tell me your address, again?
23 I'm sorry.
24 MS. ROBINSON: 620 I Street N.E.
25 CHAIRPERSON HILL: Okay.

1 MS. ROBINSON: 620.

2 CHAIRPERSON HILL: Okay. Great. Thank you. Please
3 continue.

4 MS. ROBINSON: They haven't had any conversations with
5 us regarding anything about the new structure from privacy,
6 foliage, how close it is going to be to her building, to her
7 property, even access to the property. The only conversations
8 that they've had with her from the last time, I suppose, up until
9 a couple of months ago was in reference to the easement.

10 And then when they didn't get their way with the
11 easement, then they told her that she would have to move her own
12 (indiscernible) in order to have access to that alleyway, so she
13 doesn't even know how she's going to have access to the alleyway.
14 The front and the back of the pictures that they've shown to you
15 all today on the PowerPoint is not how the property looks right
16 now.

17 This property is overgrown and now, it's a rodent
18 infestation. They haven't taken care of anything in the front
19 or the back. She has wires -- with her wires onto her like some
20 phone pole and everything to the alley and all of that. The old
21 trees from that property are now hanging on her wires. No one
22 is doing anything in reference to that. The only time that they
23 say that there'll be anything in reference to the property or
24 have any type of discussions about that is if they get a permit.
25 Once they get their permits, then that's when they'll go ahead

1 and start taking -- maintaining the property and things like
2 that.

3 Again, like I said, they never addressed any of her
4 concerns. The only thing that they kept trying to get from her
5 was that extra footage that they wanted so they can build the
6 five units as opposed to the four. I even said to Natasha,
7 because that's who has been discussing with me, I said I've had
8 -- I've been opposed to this project since day one because they've
9 always been rude to her, so that's why they brought Natasha in
10 to talk. That's why I came in because I didn't want them to take
11 advantage of my mom. So now that we are not giving them that
12 square footage to whatever my mom wants, now, they don't have any
13 discussions with her, and nothing will be done until they get
14 their permit.

15 So I don't know who they're having these conversations
16 with. You have been having with people three doors down. The
17 main person that you need to have these conversation --

18 CHAIRPERSON HILL: Ms. Robinson, can you hear me?

19 MS. ROBINSON: -- so that would be right there --

20 CHAIRPERSON HILL: Ms. Robinson, can you hear me?

21 MS. ROBINSON: Yes, I can hear you.

22 CHAIRPERSON HILL: I lost you there for a minute. You
23 started to say, "the main person you should have conversations
24 with" and then you lost it. I guess it's you, right.

25 MS. ROBINSON: Is the owner of 620 I Street. I mean

1 | if she's in her backyard. She's not going to be able to enjoy
2 | her backyard because of the privacy, because of the shadowing,
3 | all of that. She's not going to be able to enjoy her property
4 | anymore. When we had it, we were maintaining the lot. Now, they
5 | don't want to do anything until they get a permit.

6 | CHAIRPERSON HILL: Okay. All right. Ms. Robinson.
7 | Right. Who's Natasha?

8 | MS. ROBINSON: She's with the Menkiti Group.

9 | CHAIRPERSON HILL: Okay. That's another person that
10 | came in to talk to you at some point?

11 | MS. ROBINSON: The first people that came out is with
12 | (indiscernible) and the other guy. When they first came out,
13 | they were very rude. Not (indiscernible), but the other gentleman
14 | was very rude to her when she asked, in reference to like, if
15 | there's a fire, what is she supposed to do, and that's when they
16 | told her the fire truck can use the -- what is that, the fire
17 | hydrant out front. So she didn't even know how she would be able
18 | to get out the back to the alley. They told --

19 | CHAIRPERSON HILL: Got it.

20 | MS. ROBINSON: Yeah.

21 | CHAIRPERSON HILL: Got it. Okay.

22 | So Ms. Moldenhauer, can you hear me? How is that -- I
23 | didn't -- we'll go back in a second. I didn't really understand
24 | that back gate either; like, I just didn't understand it. It
25 | looked as though the back gate went into the next-door neighbor's

1 property again, right. No. Where is it -- or you can tell maybe,
2 Ms. Moldenhauer.

3 MS. MOLDENHAUER: Sure. So one of the questions that
4 was posed by Agnes Robinson back in June of 2020, when she started
5 first talking to both different representatives from the
6 applicant. (Audio interference)

7 CHAIRPERSON HILL: Ms. Moldenhauer, I need -- hold on.
8 I got you. I'm sorry. I'm just trying to -- I understand you're
9 trying to (audio interference). How does the gate -- I'm just
10 trying to ask how the gate was?

11 MS. MOLDENHAUER: Sorry. I was just trying to -- so
12 her property is land-locked, and so she was asking questions
13 about how does she retreat from a fire in the rear. And so we
14 were offering a gate between the rear of her property to gain
15 access --

16 CHAIRPERSON HILL: Into the property.

17 MS. MOLDENHAUER: -- into our property, that would then
18 gain access through the rear of the common hallway for emergency
19 purposes to gain access to the rear alley if she needed to retreat
20 through the back of the house.

21 CHAIRPERSON HILL: I understand. And then I'll -- hold
22 on, Ms. Robinson. And then I'll ask the architect later. I was
23 just curious. When the presentation was going on, I was trying
24 to figure out that gate. That's all.

25 Ms. Robinson, give me one second. Does the Board

1 members -- do any of the Board members have any questions for
2 Ms. Robinson?

3 Commissioner Turnbull.

4 COMMISSIONER TURNBULL: Well, Ms. Robinson, I guess
5 we're just hearing conflicting -- the applicant has testified
6 that they have been in contact with both neighbors, both yourself
7 and the neighbor on the other side. They're inconclusive, and
8 they haven't really come to an agreement, but you're actually
9 saying that you really haven't really had any interaction with
10 them at all?

11 MS. ROBINSON: We've had interaction but it's not in
12 reference to the development of the property, the foliage, the
13 privacy or anything. The only conversation that they've been
14 having from the last meeting was to get the extra square footage
15 from her so they could build the fifth unit as opposed to the
16 fourth. So everything that they were supposed to discuss the
17 last time, they never had those discussions with us.

18 COMMISSIONER TURNBULL: So no real discussions on
19 privacy or the impact on your property from what they're proposing
20 to build?

21 MS. ROBINSON: No conversation of that nature.

22 COMMISSIONER TURNBULL: All right. Thank you so much.

23 CHAIRPERSON HILL: Ms. Robinson, can you hear me?

24 MS. ROBINSON: Yes, I can hear you.

25 CHAIRPERSON HILL: How much square footage -- when you

1 say, "square footage", how much were they trying to get?

2 MS. ROBINSON: I think it was the eight by eight or 16
3 or something like that. It was like I think it was (audio
4 interference) --

5 CHAIRPERSON HILL: Okay. Right. So they can get --
6 okay. I think I can ask that --

7 MS. ROBINSON: Yeah. So that they could get the permit
8 for the fifth unit.

9 CHAIRPERSON HILL: I can ask the applicant later.

10 Okay. Anyone else for Ms. Robinson?

11 Ms. Moldenhauer, do you have any questions for Ms.
12 Robinson?

13 MS. MOLDENHAUER: Ms. Robinson, did you attend a June
14 23rd "GoToMeeting" with your mother that presented the project
15 and allowed any bit of conversation and questions to occur?

16 MS. ROBINSON: I did not attend that meeting with her.

17 MS. MOLDENHAUER: Did she attend that meeting?

18 MS. ROBINSON: Maybe she did, but I know I didn't attend
19 a meeting.

20 MS. MOLDENHAUER: You're saying you did not attend the
21 "GoToMeeting" on June 23rd?

22 MS. ROBINSON: No, I did not.

23 MS. MOLDENHAUER: Did you have an in-person
24 conversation with the applicants and with Ms. -- Natasha back at
25 for (audio interference) on December 24th -- sorry, December 4th,

1 2020?

2 CHAIRPERSON HILL: Ms. Robinson, I'm sorry. Can you
3 hear us?

4 MS. ROBINSON: Yes. She said did I have a meeting with
5 Natasha with (audio interference). Like I said, the only meeting
6 I had with Natasha was in reference to the easement and trying
7 to get that land from her.

8 MS. MOLDENHAUER: But those were open discussions.

9 MS. ROBINSON: But any in reference to the development,
10 no.

11 MS. MOLDENHAUER: I'll redirect with my client. Thank
12 you. No other questions.

13 CHAIRPERSON HILL: Okay. All right.

14 Commissioner Eckenwiler, do you have any questions for
15 Ms. Robinson? Commissioner Eckenwiler?

16 COMMISSIONER ECKENWILER: Can you hear me, Mr.
17 Chairman?

18 CHAIRPERSON HILL: Yeah, I can now. Do you have any
19 questions for Ms. Robinson?

20 COMMISSIONER ECKENWILER: No questions.

21 CHAIRPERSON HILL: Okay. All right.

22 Ms. Robinson, why don't you hang around? Okay. Just
23 I'm going to let you -- I'm going to release you from the room,
24 but do you have time to stick around?

25 MS. ROBINSON: Yes, I do.

1 CHAIRPERSON HILL: Okay. We'll see if they have any
2 further questions for you. Okay.

3 All right. Let's see, the next person, I guess is Ms.
4 Hagen.

5 Ms. Hagen, can you hear me?

6 MS. HAGEN: Yes, I can. Can you hear me?

7 CHAIRPERSON HILL: Yes. Could you state your name for
8 the record and your address?

9 MS. HAGEN: Yes. I'm Danielle Hagen. I'm the resident
10 at 624 I Street N.E.

11 CHAIRPERSON HILL: Okay. Great. Let's see. Okay.
12 Ms. Hagen, you can go ahead and give your testimony. You will
13 have three minutes. The clock is right there on the screen, and
14 you can begin whenever you like.

15 MS. HAGEN: Great. Thank you, Mr. Chairman, and thank
16 you to the Board for allowing me to speak with you all today.

17 As far as my objection to this property and the
18 development is a lightly -- is by all the reasons why the ANC
19 had mentioned earlier. I wanted to note that our engagement with
20 the Menkiti Group actually started in 2019 after we purchased our
21 home, and the home was not maintained. We did extensive research
22 to find out who the property owners were as well as the project
23 managers -- they are not the project managers that are on this
24 call right now -- to deal with the rodent issues, the dumping in
25 the back as well as the trees.

1 These continue to be issues that we are in
2 communication with the Menkiti Group with -- about.

3 Mr. Chairman, our biggest concern, and I'm glad that
4 the 628 I Street property was brought up, because 628 I Street
5 is part of our neighborhood, it is something that does create
6 significant privacy issues. Actually, in fact, the last house
7 or the last owners of the property in the back have often made
8 comments that they can see everything that we're doing in our
9 home even though there are two properties over because of how
10 close it is.

11 It is also our understanding when speaking with the
12 neighbors in the neighborhood, that they did not understand how
13 they could object against that property, and we're not for it in
14 the first place. So that continues to be something that while
15 it's there, doesn't -- isn't in support by most of our neighbors.

16 I do want to note that the Menkiti Group has been in
17 contact with us and has regularly asked us to sign letters of
18 support or (indiscernible)support of the project and has done
19 briefings in the previous year.

20 We continue to object, mainly on the back property, due
21 to the close proximity into our home, and how it will impact the
22 privacy of our main living area as well as into our primary
23 bedroom and bathroom, and we've continued and have not wavered
24 from that objection. We've also shared with them that even with
25 privacy, there was talk of adding some privacy vegetation, et

1 cetera. There is no commitment to what that is actually going
2 to be, as well as how that will be maintained after an HOA were
3 to take over.

4 Our biggest concern is is if we can't get the owners
5 to continue to keep the property up to date, it's very hard to
6 trust that they'll continue to work with us through this entire
7 process. To date, there are two downed trees in the backyard,
8 which as Mr. Smith had noted before, we have been regularly asking
9 him questions about. In fact, when one of the trees came down
10 on our property and the property next door, we had to get a
11 chainsaw to be able to help our neighbor at 626 I Street because
12 she wasn't able to do it herself. So we continue to be against
13 the project, and I look forward to your questions.

14 CHAIRPERSON HILL: Okay. Great. Thank you.

15 Ms. Hagen, so you're testifying again about
16 (indiscernible) about communication that you have had with the
17 property owner. And so right now, you're saying that the property
18 is somewhat in disarray? Is that what you're testifying?

19 MS. HAGEN: That is correct.

20 CHAIRPERSON HILL: Okay. And when you mean "disarray,"
21 or when I say "disarray", what does that mean to you?

22 MS. HAGEN: As Ms. Robinson had noted, there were two
23 fallen trees, as well as a half dead tree that's still standing,
24 that continues to be an issue regarding storms, so branches
25 continue to fall out. And again, these were alerted in 2019 to

1 | the fact that these were nuisance trees, and we were concerned
2 | about what they were going to do. Some had fallen on our fence
3 | as well into our neighbor's yard. And then as I mentioned before,
4 | there are two downed trees in the back that are on wires that
5 | are not handled.

6 | And as recently as last week, which I did notify the
7 | developers, as I regularly do to make sure that there aren't
8 | people that are doing things within their property
9 | (indiscernible), as they're not here regularly, have now begun
10 | dumping into their backyard because the gate is not necessarily
11 | secure. And so now, there's large trash bags full of garbage
12 | and other storm debris that are now in the back.

13 | CHAIRPERSON HILL: Now, how about the front yard?

14 | MS. HAGEN: The front yard, when we ask, they will come
15 | out and they usually have like a clippers that will like cut the
16 | -- anything that's overgrowing. But it's -- I mean it's filled
17 | with leaves. It's not maintained.

18 | CHAIRPERSON HILL: Right. But I mean -- so they are
19 | coming out and doing something to the front yard?

20 | MS. HAGEN: When we ask.

21 | CHAIRPERSON HILL: Right.

22 | MS. HAGEN: When we ask.

23 | CHAIRPERSON HILL: I got you.

24 | MS. HAGEN: And it usually it takes quite a long time.

25 | CHAIRPERSON HILL: I got you.

1 MS. HAGEN: Those are perfect examples. Okay. Thank
2 you.

3 CHAIRPERSON HILL: Nobody's living there right now, so
4 yeah, but --

5 MS. HAGEN: Yes.

6 CHAIRPERSON HILL: Okay. Let's see. Okay.

7 Does the Board have any questions for Ms. Hagen?

8 Mr. Turnbull.

9 COMMISSIONER TURNBULL: Yeah. Thank you for being
10 here, Ms. Hagen.

11 So they are taking care of the front yard, but it sounds
12 like the rear yard is not being maintained?

13 MS. HAGEN: As of right now, as I mentioned, there are
14 multiple downed trees. Usually, the grasses or the weeds will
15 get up to quite a few feet, and we will text and or email and
16 ask that they come out and handle it. The issue is, is because
17 it attracts a lot of animals as well as mosquitoes and other
18 things, it makes it almost impossible. And I know other neighbors
19 feel the same way to be out in the back just because you can't
20 be outside without lots of bird matter happening on you as well
21 as mosquitoes.

22 COMMISSIONER TURNBULL: So it's not just a few inches
23 of growth, it's -- you're saying it's a couple of feet?

24 MS. HAGEN: Yes, it can be at times, yes.

25 COMMISSIONER TURNBULL: So they have to come out with

1 | like weed-whackers and start doing --

2 | MS. HAGEN: Exactly.

3 | COMMISSIONER TURNBULL: -- taking to see --

4 | MS. HAGEN: That's usually what occurs, yes.

5 | COMMISSIONER TURNBULL: Okay. All right. Well, thank
6 | you very much. But you're saying they really haven't addressed
7 | the concerns about privacy with you, and how they're going to
8 | really solve it.

9 | MS. HAGEN: Yes. And that was disheartening to see the
10 | last letter that was submitted where it basically said 624 I
11 | Street is not going to -- is we're not doing anything -- regarding
12 | privacy but did address that 622 would have additional or 620,
13 | excuse me, would have additional privacy. There has been
14 | discussions about that. But again, as much as we would
15 | appreciate more on the privacy side, we need something more. I
16 | wouldn't say in writing at this point, because our concern is
17 | that there is no guarantee that any of this would actually occur,
18 | and then again, be maintained and then continue to be a problem
19 | for us, which is additional cost and effort on our end.

20 | COMMISSIONER TURNBULL: Okay. And because of what's
21 | happened currently, you really have no faith in this owner to
22 | follow through.

23 | MS. HAGEN: We're concerned and mainly, my fiancé is a
24 | civil engineer, and he's very concerned about the trees and the
25 | safety of them right now. There's a lot of -- especially one of

1 | them that's closest to our property has a bit (audio
2 | interference), and we're concerned with the recent storms what
3 | that could essentially mean for not only our home, but our
4 | neighbors as well.

5 | COMMISSIONER TURNBULL: It becomes a life safety issue?

6 | MS. HAGEN: Exactly.

7 | COMMISSIONER TURNBULL: Thank you very much.

8 | CHAIRPERSON HILL: Okay. Anyone else for Ms. Hagen?

9 | Okay. Ms. Moldenhauer, do you have any questions for
10 | Ms. Hagen?

11 | MS. MOLDENHAUER: Thank you, Chair Hill, and thank you,
12 | Ms. Hagen.

13 | You expressed a lot of concerns about the trees, and I
14 | understand that there have been a lot of discussions. Are you
15 | referencing the trees that would be removed if a proposal did
16 | move forward?

17 | MS. HAGEN: I'm referencing not only the -- so there's
18 | two things. There's trees that are not touching our property
19 | that have fallen in the back and I believe that that's what Ms.
20 | Robinson was addressing on her end. But also, the trees that
21 | are -- there are multiple that run along our tree line, not just
22 | our -- or I'm sorry, property line not just our fence line. Our
23 | concern are those trees -- again, they are nuisance trees. So
24 | these are mulberry trees that continuously drop berries and
25 | anybody who's dealt with one of these, you can understand the

1 damage that they can create and have created, and it caused an
2 expense on our end.

3 We understand that as a development group, they're
4 likely not going to take the trees out before any permits or any
5 movement. That has also been communicated to us. However, we
6 are just asking as well is for them to be maintained, for them
7 to be cut back especially the nuisance trees, which I believe the
8 city doesn't require a permit or anything to be able to remove
9 or just significantly cut back so that they aren't causing damage
10 to our property.

11 MS. MOLDENHAUER: You could cut those back too, right,
12 if it's on the property line, it's something that you could
13 maintain and do some work on, right?

14 MS. HAGEN: They are not on our property -- I mean the
15 trees are not on our property line.

16 MS. MOLDENHAUER: They don't hang over your property
17 line. You said that they drop berries and those trees if (audio
18 interference) --

19 MS. HAGEN: They hang over our property line --

20 MS. MOLDENHAUER: Okay.

21 MS. HAGEN: -- but they are on your land.

22 MS. MOLDENHAUER: I have a neighbor that has trees, and
23 like I cut them down so that they don't do that on my side of
24 the house.

25 MS. HAGEN: It's also not -- let me just also address

1 | that we have done what we can to be able to cut back. The issue
2 | is they are so high that there's significant issues as far as
3 | safety for us to be able to maintain it without being able to
4 | bring in an actual full crew to be able to address this. I would
5 | also address that when we had originally worked with the former
6 | project team that they did deal with the concerns in a timely
7 | manner and had a tree service that came out that handled it that
8 | first year that we were here, and we're very grateful for their
9 | cooperation.

10 | MS. MOLDENHAUER: Thank you for those comments.

11 | In regards to some of the specific questions about
12 | privacy, did you have conversations with different members from
13 | the development team about how they could possibly alleviate or
14 | address your concerns on privacy?

15 | MS. HAGEN: Potentially. There were some -- again,
16 | they were rendering those trees that would show how the things
17 | would be potentially covered. Our concern though is that how the
18 | close proximity of that back structure to our structure is so
19 | close that even the privacy measures would -- or even what was
20 | proposed at the time, which were some -- and again, this was --
21 | mind you, this is not from this recent project. The conversations
22 | that we had had about privacy were from the five-unit proposal
23 | that was happening in the past. And both my fiancé and I had
24 | said that those measures were not necessarily enough for us to
25 | feel comfortable, because again, it looks into our entire living

1 space into the back of our home.

2 MS. MOLDENHAUER: But I'm trying to understand if there
3 are measures that would be proposed that would alleviate -- one
4 of the things we've heard from Commissioner Turnbull or how it
5 will -- how can an agreement be made? And I think I'm trying to
6 understand that there were a lot of things that were proffered
7 to you trying to come up with a solution. And in your mind,
8 those just weren't enough. Is that what I'm hearing?

9 MS. HAGEN: Correct. The back house --

10 MS. MOLDENHAUER: And so I just want -- one question.
11 Are there windows on the side of the property that look down onto
12 your lot?

13 MS. HAGEN: Are you speaking about the back --

14 MS. MOLDENHAUER: I don't know.

15 MS. HAGEN: -- the back window.

16 MS. MOLDENHAUER: The rear side. Are there any side
17 windows that look down onto the back of your lot?

18 MS. HAGEN: No. And that's something that the ANC
19 Chairman addressed earlier.

20 MS. MOLDENHAUER: I'm just asking you to make sure I
21 understand. And were you aware that they did set back the third
22 floor so that would limit any visibility into your rear yard.
23 Are you aware of that?

24 MS. HAGEN: Yes, I'm aware.

25 MS. MOLDENHAUER: And do you think that that provides

1 | some level of reduction in visibility?

2 | MS. HAGEN: No. Again, we --

3 | MS. MOLDENHAUER: And are you aware that they had --
4 | you had had a conversation (indiscernible) to actually increase
5 | the height of the connection; is that correct? So that would
6 | provide more privacy than the current fence height that you have;
7 | is that right?

8 | MS. HAGEN: That's not correct.

9 | MS. MOLDENHAUER: That's not correct.

10 | MS. HAGEN: We had a discussion about potentially
11 | increasing the fence height, and we were talking in hypotheticals
12 | about design to ensure that the different levels of that back
13 | property wouldn't necessarily look into ours. However, you have
14 | to understand, Ms. Moldenhauer, I am not a city planner or an
15 | architect or developer. Having researched what a meaningful
16 | connect essentially looks like, that essentially is just a large
17 | wall that's going up. It's not necessarily something so it would,
18 | in some ways increase maybe some privacy for one unit, however,
19 | it's still --

20 | CHAIRPERSON HILL: (Audio interference) -- let me
21 | (audio interference).

22 | Ms. Moldenhauer, do have any other questions?

23 | MS. MOLDENHAUER: No other questions?

24 | CHAIRPERSON HILL: Okay. Great.

25 | All right. Ms. Hagen, if you want to stick around then

1 as well. We'll just kind of put you in a waiting room there,
2 okay, for now. I don't know if we're going to get back to you
3 now --

4 MS. HAGEN: Okay. Wonderful. Thank you so much.

5 CHAIRPERSON HILL: -- but since your next. Thank you
6 for coming out.

7 MS. HAGEN: I appreciate that. Thank you.

8 CHAIRPERSON HILL: Okay. Mr. Eckenwiler.

9 Hold on. Are you still there, Ms. Hagen?

10 MS. HAGEN: Yes, I am.

11 CHAIRPERSON HILL: Commissioner Eckenwiler, do you have
12 any questions for Ms. Hagen?

13 COMMISSIONER ECKENWILER: I do not, Mr. Chairman.

14 CHAIRPERSON HILL: Okay. Great. All right.

15 All right. So Ms. Hagen, we'll just put you in a
16 waiting area. Okay?

17 MS. HAGEN: Wonderful. Thank you very much.

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

19 So it's just like -- I mean Ms. Moldenhauer and just
20 everybody who's listening like -- I forgot, we heard this back
21 in October like this one -- I'm just trying to remember where we
22 started, and so whenever we heard or started or started to hear.
23 And so, I guess what I'm trying to find out from my Board members,
24 what they may want, if anything. I'm kind of -- did I lose Ms.
25 Moldenhauer?

1 Ms. Moldenhauer, are you there?

2 MS. MOLDENHAUER: I am here. I was just having a little
3 bit of -- my computer started buffering.

4 CHAIRPERSON HILL: That's okay.

5 MS. MOLDENHAUER: So I thought at first, it was you
6 Chairman Hill, then I realized it was me, so I turned my screen
7 off. I'm sorry.

8 CHAIRPERSON HILL: That's okay. I just want to make
9 sure you're there. Okay. I got a couple of questions, I guess
10 real quick. All right. Well actually, I'm going to go around
11 to my Board.

12 Mr. Smith, can you hear me?

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

14 CHAIRPERSON HILL: What's kind of your policy for
15 taking care -- I'm just -- taking care of property that you're
16 trying to figure out what you're going to do with. How do you
17 guys kind of overall -- do you go by a check it out or like what's
18 just kind of your policy?

19 BOARD MEMBER SMITH: I think that was -- you meant that
20 to the applicant.

21 CHAIRPERSON HILL: Yeah. Yeah. Not Board Member Smith.
22 I'm sorry. I meant the person -- yeah, the applicant.

23 MR. SMITH: Yes. Sure. Yeah. No, absolutely. So we
24 do drive by our projects pretty frequently. I was there recently
25 as yesterday.

1 In regards to the downed trees, these are more recent
2 downed trees that we are addressing. I have been in communication
3 with the neighbors about my trips out there with our consultant
4 to address them. We were planning to meet yesterday to
5 essentially get a quote and have him move forward with that.
6 Unfortunately, there they had an emergency and never made it, so
7 it has been rescheduled until Friday. When the trees -- because
8 this is a second set of trees --

9 CHAIRPERSON HILL: Mr. Smith. Mr. Smith, I'm going to
10 interrupt you. I was just kind of curious what you guys kind of
11 do --

12 MR. SMITH: Sure. Sure. (Audio interference)

13 CHAIRPERSON HILL: -- overall. You drive by overall
14 and kind of check it out.

15 MR. SMITH: Yes.

16 CHAIRPERSON HILL: But your next-door neighbors don't
17 think -- I mean obviously, there's a difference between somebody
18 living there and somebody who is waiting for the project to go
19 through. But the two next door neighbors don't think it looks
20 that great right now. I'm just letting you know things but --

21 MR. SMITH: Sure.

22 CHAIRPERSON HILL: -- you drove by --

23 MR. SMITH: No. I am fully aware, and I have been
24 (audio interference) --

25 CHAIRPERSON HILL: You drove by there the other day?

1 MR. SMITH: Yesterday.

2 CHAIRPERSON HILL: Yesterday. And how did it look to
3 you?

4 MR. SMITH: It looked like I needed to meet with my
5 consultant and have the trees removed and some trash (audio
6 interference), yes.

7 CHAIRPERSON HILL: Okay. Okay. Just curious.

8 MR. SMITH: Which is something we're trying to do --
9 would have happened sooner, but unfortunately, our consultant had
10 an emergency.

11 CHAIRPERSON HILL: Got it. But Mr. Smith, your
12 consultant didn't have an emergency in 2019, right? You know
13 whenever --

14 MR. SMITH: In 2019, it was a different issue that was
15 addressed and --

16 CHAIRPERSON HILL: Whenever the consultant -- the
17 emergency hasn't gone on for six months?

18 MR. SMITH: No. Well, the tress haven't been down for
19 six months.

20 CHAIRPERSON HILL: Okay. Other than about the trees,
21 there's trash in the backyard. I was just curious what you all
22 do with it. It sounds like (audio interference).

23 MR. SMITH: We have removed trash at different times.
24 So the trash that was dumped was more recently occurred, I believe
25 two weeks ago or -- no, maybe a week ago, and --

1 CHAIRPERSON HILL: Okay. So it's still there?

2 MR. SMITH: It's just -- it's still there. And as I
3 said, I was meeting with the consultant to have everything
4 scheduled to be removed. I think that's --

5 CHAIRPERSON HILL: And you met with him yesterday, Mr.
6 Smith. And you met with him yesterday, correct?

7 MR. SMITH: No, I did not. Our consultant had an
8 emergency and was unable to make it onsite, so --

9 CHAIRPERSON HILL: But you were there yesterday?

10 MR. SMITH: I was.

11 CHAIRPERSON HILL: And the trash is still there?

12 MR. SMITH: That's right.

13 CHAIRPERSON HILL: That's all I want to know. Okay.
14 Let's see. Okay. I don't know what you guys want in terms of
15 hearing from -- getting from the applicant. I mean I'm a little
16 confused as to what I kind of want, and so you guys can kind of
17 tell me maybe what you guys want whatever you -- or if you want
18 anything. I know that I'm a little -- I'm having a hard time,
19 and I'm kind of talking to my Board members right now. And I
20 apologize for this virtual world, which is that there is going
21 to be something asked of you, I think Ms. Moldenhauer, and so
22 I'm just trying to process it through with my fellow Board
23 members.

24 I'm a little confused as to what the matter of right
25 option is, right? Like, I'd be kind of interested in seeing what

1 | the matter of right option is. I mean the ANC, in my opinion,
2 | it is a big piece of property that something needs to be done
3 | with, right? And so I'm just -- and then I saw there was a shadow
4 | study where there was a matter of right option, but I can't
5 | understand what the matter of right option was that the shadow
6 | study is against, so that's something that I guess I'm kind of
7 | interested in.

8 | And then I'm having a hard time with the relationship
9 | or the context of the surrounding neighborhood. I don't know,
10 | Mr. Turnbull or Ms. John, if you remember like Chairman Hood
11 | asked for something, and I was apparently asked for where it kind
12 | of shows the thing of the neighborhood. Does anybody remember
13 | it?

14 | COMMISSIONER TURNBULL: Chairman Hood usually likes to
15 | see a rendering. A view down the alley. Normally, in the Zoning
16 | Commission, there's usually a view down the street, trying -- the
17 | new impact of what's going to be appearing with what's there
18 | already, so that you have a better visual understanding of what
19 | it would really look like.

20 | Right now, you've got these images that are disjointed,
21 | so I think he would probably say, gee, I really want to see a
22 | perspective, a view down the alley perspective to show what this
23 | thing really looks like, to show the heights and the visual, the
24 | context of the alley.

25 | CHAIRPERSON HILL: Perspective. So Ms. Moldenhauer,

1 I'm just trying to get my head around what's kind of there, and
2 I mean -- and I appreciate the architectural drawings and all of
3 the work that has gone into it thus far. Like, I don't really
4 understand how the meaningful connection looks from the
5 neighbor's yards. I guess it's just -- now, I guess I can ask
6 the architect.

7 Ms. Rottman, I mean the meaningful connection, it's
8 running along one of the neighbor's yards, correct, and then
9 there's a fence there or something?

10 MS. ROTTMAN: So if you were to look at sheet 10 in
11 the PowerPoint presentation, that shows that east elevation of
12 what the meaningful connection would look like from the adjacent
13 neighbors. We are still designing the overall scheme of the
14 building but had expressed ways to try to break up the massing
15 by using multiple colors or multiple scales of various sidings.

16 CHAIRPERSON HILL: Got it. Give me a second, Ms.
17 Rottman. I'm looking at the slide you're speaking of. So, right.
18 So that meaningful connection -- and so the building that is in
19 front of your project, is that 624?

20 MS. ROTTMAN: Yes. Yes.

21 CHAIRPERSON HILL: Okay. So that's basically what it
22 kind of looks like in the backyard of 624, correct?

23 MS. ROTTMAN: Yes. Uh-huh.

24 CHAIRPERSON HILL: And so is there a fence that covers
25 that meaningful connection, or you kind of like what --

1 MS. ROTTMAN: There is currently a fence along that
2 line, which is that red dashed line is the existing fence. And
3 it would be with discussion of the neighbor of whether they felt
4 that fence should still stay there, or if they want to just the
5 visual of the building to look like a fence line since it would
6 be along the property line.

7 CHAIRPERSON HILL: Got it. Okay. Okay.

8 So what was the word again, Mr. Turnbull?

9 COMMISSIONER TURNBULL: Perspective.

10 CHAIRPERSON HILL: Perspective. Thank you. So Ms.
11 Moldenhauer -- but I mean I'm just trying to get an understanding
12 of what this thing is going to look like in the context of the
13 block. And if you could kind of show us what the matter of right
14 is, so that we can know at least what could go there without any
15 kind of zoning relief. That's something that I'd be interested
16 in.

17 All right. Ms. Moldenhauer, I do have a question. I
18 know that -- and this makes complete sense to me, so there's
19 nothing wrong with this. Like trying to get more square footage
20 from one of the properties so that you get to the 900-square
21 feet. I'm just curious, like how would that have worked? You
22 guys would have somehow got some of the lot?

23 MS. MOLDENHAUER: There were discussions of acquiring,
24 buying, I think it was about 16-square-feet of land from Ms.
25 Robinson. And then giving an easement back for that land, so

1 | that she would still have use and enjoyment of that 16-square-
2 | feet, but that would then allow for the property to meet the 900-
3 | square feet requirement for that fifth unit, but those
4 | conversations were not executed. They failed after many, many
5 | months of discussions, and so we then removed the variance
6 | requests and are here today for just the four units.

7 | CHAIRPERSON HILL: Okay. I'm just -- every now and
8 | again, I get curious about something, and I appreciate you
9 | answering me. That's a pretty -- that's a good one. I didn't
10 | know about that one. You can sell it, let them use it, and then
11 | you get to claim the land. That's a good -- I'm going to remember
12 | that one. All right.

13 | Let's see. I don't know. Does anybody want anything?
14 | I mean I don't know what to do.

15 | Ms. John.

16 | VICE CHAIR JOHN: This is for Ms. Rottman. And please
17 | remind me what the width of the rear addition would be. Is it
18 | about maybe 40-feet wide?

19 | MS. ROTTMAN: The width of the rear addition goes lot
20 | line to lot line, which is 40-feet.

21 | VICE CHAIR JOHN: Okay. And how close is that structure
22 | to 624 and 620?

23 | MS. ROTTMAN: The structure is 39-feet, I think it's
24 | six and three-quarter inches or something or 40-feet 4-inches.
25 | Let me pull that up right there.

1 VICE CHAIR JOHN: The distance between the two, not
2 from the outside.

3 MS. ROTTMAN: Yes, that's what I'm referring to. The
4 distance between the two is, it was on slide 6. Just turning on
5 the presentation. It is 39 feet, four and three-quarter-inches
6 different -- distance between the rear facade of the adjacent
7 neighbor and the front facade of our rear addition.

8 VICE CHAIR JOHN: Okay. The front facade and the rear.
9 And is that true of both neighbors?

10 MS. ROTTMAN: Yes. Both neighbors are set back the
11 same distance.

12 VICE CHAIR JOHN: Yeah. Because I'm trying to visualize
13 -- and what's the depth of the rear addition?

14 MS. ROTTMAN: The depth of the rear addition is about
15 -- it looks like 39-feet. I don't have to -- I have two-dimension
16 strings for it. I have a dimension string to the third floor
17 and the third floor plus that setback, so (audio interference).

18 VICE CHAIR JOHN: That's a massive structure at the
19 rear of the property. So, yeah.

20 MS. ROTTMAN: Yeah. I understand that. I would say
21 the rear is positioned -- I know it's not what we're looking at
22 as a rule of measurement. But if someone were to be going for
23 rear yard setback relief, I know the minimum separation
24 considered for a standard of privacy is 40-feet. And we're
25 approximately seven-inches short of that as the distance

1 separating between the two portions of it.

2 And then again, we are setback from that alley. Even
3 though it's not in the PowerPoint presentation, in the exhibits,
4 I think its 100-B1, there is a site section that shows that
5 placement of the massing because of how setback it is with the
6 parking. It visually would have minimal impact on the alley. So
7 even though it is a large structure, we were intentional about
8 manipulating the massing in a way to provide best accommodations
9 to both the alley side and the unit side or the court side.

10 VICE CHAIR JOHN: So I'm less concerned about the alley.
11 I'm more concerned about 40 by 40 massing in the middle of the
12 yard, basically with windows, and the windows go from lot line
13 to lot line?

14 MS. ROTTMAN: The windows, if you look at the
15 elevations, the court elevations are shown on sheet 11. We're
16 still looking at the different designs and how we could perhaps
17 modify the design more. But the new intention of the design is
18 that that rear addition is sort of two rowhouse style units.

19 So most of the active spaces or all of the active spaces
20 would be on the first floor and the bedroom units would be on
21 the second and third floor, which I think would help mitigate
22 some of those privacy concerns as well in terms of the use of
23 where people are in opinion. And the windows are not full glass
24 all the way across. They're (indiscernible) openings of windows.

25 VICE CHAIR JOHN: There are windows -- I'm just looking

1 at -- I have the full disclosure. I live in a rowhouse. And so
2 I'm just looking at my rear window now and trying to imagine that
3 structure at the rear of this property and I think that -- so
4 that's my disclosure for anyone who's listening.

5 So let's go back to the gate at the rear of the property
6 as it's shown on the revised plat because I don't see it. But
7 there's supposed to be an emergency action -- I mean emergency -
8 -

9 MS. ROTTMAN: It's shown on the site plan on page 9.
10 There's an arrow gate for emergency use, where we have provided
11 gates in the fence, which would then provide access to the rear
12 yard. And there's an open connection as shown in the elevation
13 of the court and the rear yard where you could continue along
14 that open court or to the rear property.

15 VICE CHAIR JOHN: It's not on the plat, right?

16 MS. ROTTMAN: If it's not on the plat, we can make sure
17 to update the plot. Again, it was a little rushed of asking a
18 bit (audio interference).

19 VICE CHAIR JOHN: All right. Just trying to confirm.

20 CHAIRPERSON HILL: Ms. Rottman, I -- I'm sorry to
21 interrupt you, Ms. John. Just along those lines. Because I'm
22 looking to the gate for emergency use only. And then what the
23 person would go down that -- the trash area there. Like, how do
24 they get out?

25 MS. ROTTMAN: So the pathway is -- that hallway goes

1 underneath the building along the first floor of the building.
2 And then the sidewalk continues to the right where you can pass
3 through the drive aisle between parking space one and two.

4 CHAIRPERSON HILL: Okay. And I apologize, I'm just
5 trying to figure this out. They go into another -- there's
6 another door?

7 MS. ROTTMAN: That just gate -- it would be gate access
8 to keep the individuals off the alley. It wouldn't be
9 preventative from --

10 CHAIRPERSON HILL: No. I'm saying that as that person
11 at 620 was trying to -- that emergency gate, I'm looking at your
12 slide 9.

13 MS. ROTTMAN: Yes, correct.

14 CHAIRPERSON HILL: There's the emergency gate, I see,
15 and then what happens?

16 MS. ROTTMAN: Then they would go to that -- where that
17 sidewalk is leading, there's an open connection along the first
18 floor.

19 CHAIRPERSON HILL: At the bottom. At the bottom of the
20 (indiscernible)?

21 MS. ROTTMAN: Yeah. If you were to look at the court
22 elevations, which is on slide 11, you'll see the opening in the
23 lower left corner. Or if you were to look at the rear and side
24 elevation on slide 13, you'll see that roof connection all the
25 way across both in the west elevation and north elevation.

1 | There's no additional door. It's just an open breezeway.

2 | CHAIRPERSON HILL: Okay. And also. Ms. Moldenhauer,
3 | if I could see some pictures of what the property looks like,
4 | the front and the back, that would be helpful also.

5 | MS. ROTTMAN: Those are shown on slide 4.

6 | CHAIRPERSON HILL: Yeah. No. I'm sorry. I meant just
7 | kind of current photos. I'm just kind of curious what it looks
8 | like now. Is that what it looks like now?

9 | MS. MOLDENHAUER: We'll update you with the pictures.

10 | CHAIRPERSON HILL: Is 4 -- actually, this kind of --
11 | so is 4 -- when were those taken, in slide 4?

12 | MS. MOLDENHAUER: I think those were taken when you
13 | purchased the property. Is that correct, Mr. Smith?

14 | MR. SMITH: I don't know exactly. It looks like we did
15 | some repairs to the front façade, so it was more recent than
16 | that, I believe.

17 | CHAIRPERSON HILL: Okay.

18 | MR. SMITH: Right. Yeah.

19 | CHAIRPERSON HILL: Ms. Moldenhauer, if you could just
20 | show us what Looks like now that would be helpful. Okay. So I
21 | mean -- and I'll just clarify for the Board now what I'm asking,
22 | and then you guys can -- because this has gone on way longer than
23 | I thought to be quite honest. Really, Ms. -- I think (audio
24 | interference). Ms. Rottman like just something that -- I'm just
25 | trying to understand what the matter of right thing is, right?

1 So that's what I'm just trying to understand, right?
2 Be it an alley structure or whatever it is, right, that the
3 applicant could do as matter of right. That's something I'd like
4 to see so I can visually understand what they would get even if
5 they didn't come -- meaning what the neighborhood would get even
6 if they didn't come to us, right?

7 And I would also like to know exactly kind of what that
8 is, like not -- is it two bedrooms? Is it a two-bedroom alley
9 unit? Is it whatever? And so you can talk with your attorney
10 and figure out what you want to put forward, but that's kind of
11 what I would like to see. And then again, I've already forgot
12 the word again. The rendering or whatever it is that kind of
13 gives me some context about that matter of right and/or -- not
14 the matter of right. What you're proposing in relationship to
15 the surrounding block, right.

16 And then just so -- I mean I'm going to look harder at
17 the meaningful connection, because the meaningful connection I'm
18 kind of curious as to what that looks like from either one of
19 the neighbor's sides, right? And I guess that's it for me.

20 Ms. Moldenhauer, does that sound clear?

21 MS. MOLDENHAUER: Yes, Chairman Hill. I understand.
22 I just -- we did not get rebuttal. Typically, we would get to
23 provide rebuttal testimony from testimony provided. We're happy
24 to pull one --

25 CHAIRPERSON HILL: I'll give you rebuttal. I'll give

1 | you a rebuttal. I'm just trying to ensure, of course. I'm just
2 | trying to figure out, before I forget, what kind of I'm interested
3 | in, right?

4 | MS. MOLDENHAUER: No. And I hear you, and I've taken
5 | down notes of the perspective. And I know that what you're
6 | referencing both -- you clarified it and Chairman Turnbull, and
7 | there were some Google images of the existing condition with a
8 | rendering located and I get the context that sometimes Chairman
9 | Hood discusses. We will definitely work on that. I think we
10 | have some images in the record that Ms. Rottman was communicating
11 | with me, but I don't think that they're exactly what you're asking
12 | for, so we will supplement that. And we can definitely supplement
13 | a clear understanding of what would be by right from a structure
14 | perspective that you're seeing in the shadow studies.

15 | CHAIRPERSON HILL: Okay. Great. Thanks. And thank
16 | you. I forgot about rebuttal.

17 | Ms. Cain, can you hear me?

18 | MS. CAIN: Yes.

19 | CHAIRPERSON HILL: Does the ANC get rebuttal? They
20 | don't get rebuttal, right?

21 | MS. CAIN: No.

22 | CHAIRPERSON HILL: Okay. Very good. I'm so glad I
23 | remember all this stuff. All right.

24 | Ms. Moldenhauer, do you want to do rebuttal first and
25 | then a conclusion, and then we'll go through what we think we

1 | might want?

2 | MS. MOLDENHAUER: However, Chairman Hill, however you
3 | would like us to proceed.

4 | CHAIRPERSON HILL: No, that's fine. Why don't you go
5 | ahead and do your rebuttal and then do your conclusion. And this
6 | is the part where I also get -- usually, if it's an appeal, it's
7 | more complicated. I know this is -- so then there's rebuttal.
8 | And Ms. Cain, if you're there, there's rebuttal and then there's
9 | questions on rebuttal, correct?

10 | MS. CAIN: That's correct.

11 | CHAIRPERSON HILL: Okay. And then there's conclusion,
12 | right?

13 | MS. CAIN: Yes.

14 | CHAIRPERSON HILL: Okay. All right. Okay. I'm not a
15 | lawyer, not a lawyer. All right.

16 | Okay. Ms. Moldenhauer, you want to go ahead and give
17 | your rebuttal?

18 | MS. MOLDENHAUER: Sure. And just for the note, we are
19 | happy to hold conclusions after we supplement the record on some
20 | of these documents as well. That might speed up the process
21 | today, is all I'm trying to say, depending on how the Board wants
22 | to proceed.

23 | So on rebuttal, I just asked Ms. Rottman. The decision
24 | to move the building over to the side, lot line to lot line, does
25 | that get closer to our supporting -- an individual that we have,

1 a letter of support from?

2 MS. ROTTMAN: Yes. We moved the building closer to the
3 lot edge where the adjacent neighbor did provide a letter of
4 support, if that's what you're asking.

5 MS. MOLDENHAUER: Yes, that is what I'm asking. And I
6 know we'll kind of get into this a little more in some of the
7 supplemental documents that the Chair was asking for, but the ANC
8 indicated that they would maybe but not officially be more
9 supportive of an alley dwelling, and then Board member John asked
10 about the distance. If you did an alley structure, wouldn't that
11 be closer by right than the 39-foot separation that we currently
12 have?

13 MS. ROTTMAN: Yes, that's correct.

14 MS. MOLDENHAUER: And in looking at these different
15 options, do you believe that what's proposed is an attempt to try
16 to create the least amount of impact on abutting property owners?

17 MS. ROTTMAN: Yes. And this option, what was also nice
18 is it provides an IZ unit in the area as well. The other option
19 would be at three units, which would not provide IZ.

20 MS. MOLDENHAUER: Thank you.

21 And Mr. Smith, I know there's been a lot of
22 conversations about this -- all these discussions you've had with
23 the neighbors and the various options. Can you -- Ms. Robinson
24 testified that she had no opportunity to discuss the project and
25 that she had no opportunity to kind of have that opportunity?

1 Can you discuss kind of what you first started off the
2 conversation about, because there was a period in which you were
3 talking about the acquiring of square footage? How did you first
4 start the conversation and kind of describe that to the Board,
5 please?

6 MR. SMITH: Sure. So we have documented the
7 conversations that we had. We initially had a conversation back
8 in June of last year, which was on the front porch. We walked
9 through the plans of the project and showed the design, very
10 similar to what you have seen today at least in terms of what
11 was presented, and then we went into asking for support. We then
12 decided or were asked to have another meeting; this one was
13 virtual. We had our architect available to walk through in more
14 detailed the design with Ms. Robinson as well as her daughter,
15 so we did have time to sort of walk through. And during that
16 time, we were really trying to get a sense of their -- any
17 concerns that they had.

18 During our multiple conversations, because again, there
19 were multiple aside from that via email as well as in person and
20 virtual, we did ask, and it was brought up that there was a
21 concern of access, understanding that their lot is land-locked,
22 but also hearing their concern about being able to access that
23 rear alley if there were emergencies, and that prompted us to add
24 that door to access the rear for any sort of emergency reasons.

25 So we have had extensive conversations aside from that,

1 as we started to address concerns of privacy that weren't
2 necessarily brought up in conversation, we did amend and change
3 our drawings.

4 But going back to the second part of the question, or
5 really the first, the conversations again did start to go towards
6 acquiring a piece of their property. But prior to that, there
7 were extensive conversations about the project and the project's
8 design.

9 MS. MOLDENHAUER: Thank you. And would you say the
10 same is true with Danielle Hagen at 624 I, that you asked the
11 question of what can we do, how can we address some of your
12 concerns about privacy, and were ideas and mitigation options
13 floated?

14 MR. SMITH: Yes, we did. We discussed, and as Ms.
15 Hagen did mention, we did offer the option of additional plantings
16 to sort of shade, what were their concerns, were eyes on their
17 property. We also had conversations about the height of the
18 meaningful connection. We also had extensive conversations of
19 materiality, the materials used on that rear structure as well
20 as meaningful connection. We had conversations about adding
21 greenery to that as well. We've gone through quite a few options
22 to try to, I guess, address their concerns of privacy.

23 MS. MOLDENHAUER: Thank you. And then last, in Mr.
24 Eckenwiler's testimony, he asked the Board to kind of look closely
25 at the letters of support. Can you talk a little bit about the

1 level of detail and conversation you had with the individuals
2 that signed the letters of support?

3 MR. SMITH: Absolutely. Again, a lot of these
4 conversations were on the porch prior to the pandemic, some
5 during, but in each conversation, we provided them with the
6 drawings, essentially a set, showing the layout of the project
7 as well as the massings to get them comfortable with what we were
8 building. So we talked to great extent as to what we were
9 planning to build.

10 We then transitioned to the conversation about their
11 lives, how long they've been in the neighborhood. We talked
12 about safety concerns of the rear alley, which I mentioned
13 earlier. And we've also heard that prior to the acquisition of
14 this lot, that lot was used as a dumping ground and it was not
15 maintained, and that's something that we've been fighting to
16 continue.

17 But most of these conversations again, we've learned
18 who the oldest person on the block is, we've learned who's lived
19 there the longest. We've heard stories about the neighbors and
20 their relationships. We've met someone by the last name of Pizza,
21 which I didn't think I would ever do. But we've really been
22 given an opportunity to get to know the neighborhood. Both Ryan,
23 my colleague, and I would either drive there, I would bike there
24 sometimes, but we're really trying to get to know the neighborhood
25 and their concerns so that we could address those and really try

1 to develop them within their image or with their input.

2 MS. MOLDENHAUER: And is it your understanding that if
3 you were to condition the property on the evergreen hedges and
4 the six-foot trees as well as some of the canopy requirements,
5 the wood trellis, that those would be obligations that you would
6 ensure are maintained not just at the time of CFO, but in
7 perpetuity as would be required?

8 MR. SMITH: Without a doubt. Whether it's maintained
9 as a condo building or a residential rental building. Again, we
10 would make sure that there were requirements in place to maintain
11 everything.

12 MS. MOLDENHAUER: Thank you very much. Obviously, Mr.
13 Smith, if you wanted to add anything, you can, but I think that
14 we've kind of -- (indiscernible) all the questions I wanted to.

15 MR. SMITH: Sure. Thank you.

16 MS. MOLDENHAUER: Mr. -- Chairman Hill, that concludes
17 my rebuttal.

18 CHAIRPERSON HILL: Okay. Great. Thanks.

19 Okay. Mr. Eckenwiler, do you have any questions about
20 the rebuttal? Commissioner, can you hear me?

21 COMMISSIONER ECKENWILER: No questions, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. Thank you. Let's see. So
23 one more thing, Ms. Moldenhauer. If you wouldn't mind putting
24 together like whatever the proposed conditions are. I know
25 they're in the record, and I forget exactly where they are, but

1 I know where they are.

2 But if you could just -- when you submit all of this
3 stuff, and I might let you go ahead and have a conclusion here
4 because I don't know whether we're going to first find out whether
5 my Board -- or you can write the conclusion, I guess if you want
6 to submit them for the record -- whether my Board members think
7 that we're going to need a -- first of all, is there anything
8 else anybody wants to add or need, and if so, what is it -- and
9 are we going to do a continued hearing or a decision? And I'll
10 start with Ms. John.

11 VICE CHAIR JOHN: Mr. Chairman, I would just like to
12 clarify the question I asked. So maybe I'm mistaken. I believe
13 there was a discussion with the neighbor 620 about emergency
14 egress. And what I was looking for was whether there was a way
15 -- there was a door at the rear or at some point, someplace in
16 that property where that neighbor could have emergency egress.
17 Is that true or not? I'm confused about that.

18 MS. ROTTMAN: Yeah. I'm sorry. Go ahead.

19 MS. MOLDENHAUER: It is true. If Mr. John (sic) could
20 bring up slide 9 to the PowerPoint. Just let me know. I'm
21 buffering. Sorry.

22 CHAIRPERSON HILL: No, you're good.

23 MS. MOLDENHAUER: Okay. Thank you, Mr. John.

24 So if you look at the bottom here. In person, we used
25 to be able to kind of circle things, but then I think the other

1 day, I circled something, and I had to end up adding something
2 to the record, so I won't circle it. But the building to the
3 south of ours, or at the bottom of this image, is Ms. Agnes
4 Robinson's property. You can see that there is an arrow with a
5 small half circle that says, "gate for emergency use only here".
6 And that is the access point that is being provided to then go
7 to the property and exit out to the alley.

8 VICE CHAIR JOHN: Okay. All right. Thank you. That's
9 all.

10 MS. MOLDENHAUER: And that door would be available for
11 use in case of a fire or any other emergency. And right now,
12 this is a separate legal lot that she doesn't have access to.
13 And so this is providing something beyond what is currently
14 existing in regards to an existing condition.

15 VICE CHAIR JOHN: Okay. Thank you. I didn't see it.
16 Thank you.

17 MS. MOLDENHAUER: No problem. Thank you, Mr. Young for
18 bringing that up.

19 CHAIRPERSON HILL: Okay. I'm going to go around the
20 table again with my questions, which is that -- is there anything
21 else anybody wants? And do we want a continued hearing or a
22 decision? And I'm going to start with Mr. Smith.

23 BOARD MEMBER SMITH: I don't need any additional
24 information beyond what you requested. I think it would be great
25 to get some context within the alley. So some form of a rendering

1 or perspective along the alley just to show the size and scale
2 of the proposed rear addition beyond the connection. So I don't
3 need anything else. If we want to continue it to a decision
4 hearing in the future, I'm okay with that.

5 CHAIRPERSON HILL: Mr. Smith -- and I'm just trying to
6 get your -- are you -- if you get that information, will you be
7 able to make a decision, or do you need to continue hearing?

8 BOARD MEMBER SMITH: I'll be able to make a decision.

9 CHAIRPERSON HILL: Okay. Ms. John?

10 VICE CHAIR JOHN: I don't really need anything beyond
11 what you've asked for. Yeah, I can make a decision.

12 CHAIRPERSON HILL: Okay. Mr. Turnbull. Commissioner
13 Turnbull.

14 COMMISSIONER TURNBULL: Yeah, Mr. Chair, I'll just add
15 -- I'm probably not going to be here (audio interference). But
16 let me bring up some points. At least I don't think I will -- I
17 don't think it's going to work.

18 But one of the things -- I mean, first of all, I don't
19 think it's ready to be set. As much as Ms. Moldenhauer talked
20 about in her rebuttal that they talked, they did this, they did
21 that, there's conflicting reports. I mean we've heard both
22 neighbors talk that they really haven't had a good session where
23 a list was put together, things were noted down. And here's a
24 list of the some of the items that we feel are wrong, this is
25 what you ought to do.

1 Somebody ought to write all this down. And really,
2 it's up -- we talked about this. There was a concern about the
3 trees. Well, we're going to put up some bushes, we're going to
4 put up this. And then the question came up, well, who's going
5 to maintain them. So then you need to have something in the
6 record that says, "we will maintain this for a period of five
7 years," whatever, something.

8 The other thing that came up, and I think it was
9 Commissioner Eckenwiler that talked about. Well, the other big
10 issue is now you've got this three-story building, which forms a
11 courtyard at the rear above the existing house, which those
12 windows look out into their backyard, but they also look into the
13 backyards and the windows of the two rowhouses adjacent to this
14 project. And I want -- to me, I'm not going to design this
15 project. To me, one thing you could do, when you look at that
16 facade, and say, what can we do to avoid -- first of all, it
17 would be nice to get this thing down to 22-feet. That would be
18 one help to lessen the impact onto the adjacent properties.

19 But the other thing is, to do something with the façade.
20 Wingwalls, taper the building. Do something to lessen the effect
21 of the windows looking directly backward, to look mainly inward
22 at their own property, and not at the other properties. So there
23 are some architectural features that might be able to be done to
24 lessen the impact, rather than just a flat black wall. I know
25 the architects said well, but they're not -- they're punched

1 windows, they're not continuous. But still, you can do things
2 with those windows or with that whole facade to articulate it in
3 such a way that minimizes the impact on the adjacent property.
4 Just throwing it out as an option.

5 I agree with your perspective, maybe even perspective
6 looking into this backyard. What does this thing really look
7 like? But I'm in agreement with your perspective, looking down
8 at the alley is what would be needed to help get a better idea.
9 I think a lot of the people who have looked at this project are
10 looking at these massing drawings. A lot of people don't
11 understand massing drawings. You look at these big shadowy boxes
12 and people look at it and go, it that really (indiscernible)?
13 I think a more picture, or like a rendering, is better to be able
14 to do it. So a perspective view is a lot more telling than
15 just a massing drawing of it. So I agree with you; I think you
16 need some of that.

17 But I think the other thing is the rear facade of this
18 addition, this rear structure needs to be worked on to lessen the
19 impact. Just my thoughts.

20 CHAIRPERSON HILL: So Commissioner Turnbull, you're not
21 going to be here, right?

22 COMMISSIONER TURNBULL: Most likely, yeah. I'm going
23 to be gone at the end of August.

24 CHAIRPERSON HILL: Okay. Let me ask this question.

25 Mr. Smith, would you be ready to deliberate today, or

1 no?

2 BOARD MEMBER SMITH: Yes, I can deliberate today.

3 CHAIRPERSON HILL: You can deliberate today?

4 BOARD MEMBER SMITH: Yeah, we can deliberate today.

5 CHAIRPERSON HILL: Ms. John, would you be able to
6 deliberate today?

7 VICE CHAIR JOHN: Yes.

8 CHAIRPERSON HILL: Mr. Turnbull, would you be able to
9 deliberate today?

10 COMMISSIONER TURNBULL: Sure.

11 CHAIRPERSON HILL: Wow. Okay.

12 Ms. Moldenhauer?

13 MS. MOLDENHAUER: Given the fact that you had asked for
14 a document that we think would be persuasive, we would obviously,
15 would like to be able to provide those. All the other Board
16 members, up until just a moment ago, indicated those would be
17 helpful to understand. And so given the fact that the record is
18 not closed yet, we would obviously ask for the ability to
19 supplement the record and provide those documents.

20 CHAIRPERSON HILL: Okay. All right.

21 VICE CHAIR JOHN: Mr. Chairman.

22 CHAIRPERSON HILL: Yeah. Ms. John.

23 VICE CHAIR JOHN: I always put my cards on the table.
24 Ms. Moldenhauer, I'm not happy with the massing at the rear. I
25 am looking through my window and I can visualize what 40-foot

1 wide, 30-foot -- no 39-foot-high structure looks like from my
2 rear window, and I have real difficulty with that.

3 I'm sort of where Mr. Turnbull is, that maybe a 22-
4 foot wide, I mean high building, which is a little narrow with
5 some dogleg next to the neighbor. I mean, I could live with
6 that, but I'm really having a lot of difficulty with it. And I
7 put myself and I'm looking -- I mean this is a six-foot fence
8 here, maybe seven-foot fence.

9 I mean I don't need any pictures to tell me what it
10 would look like, or where the shadow would fall. So I know the
11 regulations allow these dimensions, but at some point, we kind
12 of have to look at the neighbors and think about what we're doing
13 for them. I mean I was being polite earlier, and I wanted to
14 agree with my Chairman, but I'm really having difficulty with
15 this massing.

16 CHAIRPERSON HILL: Okay. I don't want to have a
17 deliberation on this. It's okay. And I'm going to leave -- and
18 I am kind of curious now, meaning we'll go ahead and leave the
19 record open, meaning we'll go ahead and get what we're going to
20 get, because I'm on the fence. I don't know whether you guys
21 are or not, so it seems like maybe you're not. But I'm on the
22 fence, so I want more information. So we'll go ahead and get
23 more information. And unfortunately, I guess we'll get a new Mr.
24 Turnbull for the vote.

25 Mr. Smith, you were about to say something; you had

1 | your hand up.

2 | BOARD MEMBER SMITH: So I'm (indiscernible) deliberate,
3 | but just to Ms. Moldenhauer's -- what she brought up. I am
4 | feeling more or less comfortable with what you submitted in the
5 | record. I can see in slide 15, that I had asked the size and
6 | the scale of the building along the alley. I don't think a new
7 | rendering would necessarily change that along the alley. It may
8 | supplement what's there, but the masses is the mass. So that's
9 | the reason why I was comfortable with saying that I can deliberate
10 | today. And again, I was being deferential to my Chairman, who
11 | may need some additional information. But to me, the record
12 | shows everything that I need to see.

13 | CHAIRPERSON HILL: Okay. Mr. Smith, can you -- Mr.
14 | Turnbull, you were about to say something?

15 | COMMISSIONER TURNBULL: No, I'm good.

16 | CHAIRPERSON HILL: Okay. All right. So let's go back
17 | to this.

18 | Ms. Moldenhauer, I'm going to go ahead and let you give
19 | a conclusion, and then you can supplement the record the way you
20 | want to supplement the record. And then -- I'm sorry. You can
21 | supplement the record the way I've asked and the way, I guess
22 | everybody kind of has asked, and then were going to set a date
23 | for decision. So you can go ahead and give your conclusion now,
24 | if you'd like.

25 | MS. MOLDENHAUER: Thank you, Mr. Chair.

1 I would just go back and look at our PowerPoint image
2 and presentation Exhibit 78, which was our prior submission back
3 in October 26, 2020. In that image, you can see some of the
4 original windows. And the fenestration on the rear addition were
5 quite large and had less, I guess, recognition of privacy. They
6 had more floor to ceiling type of structures.

7 We had been proposing a rooftop deck area on the
8 project. And we had windows also facing the property at the rear
9 of 620 I along that side because we had been set back. So we
10 had windows on three sides of the building originally rather than
11 just simply two sides of the building.

12 We feel as though over the course of this time, we have
13 been listening to the Board, the Board's comments and listening
14 to what the ANC would tell us, which was limited.

15 And we have also been listening to what the applicant
16 had heard from individuals in the neighborhood, that was that
17 they were supportive of a project, that they would like to see
18 something on this large alley lot and this house that had not
19 been kept up by the prior owner, and that they would like to see
20 some proposal here.

21 We then reduced the project and pulling it further away
22 from the Board's comments at the last hearing, pulling it back
23 away from Ms. Robinson and Ms. Hagen's home. And then also
24 reduced the windows on the side by having it be a property line
25 to property line conditions, that there would no longer be windows

1 facing other individual's homes. We had, as well, as that
2 provided images in our submission of fenestrations and window
3 options similar to what Mr. Turnbull proposed. Those were in our
4 package, architectural package of ways to try and mitigate
5 concerns. And we are willing to obviously, as we submit our
6 proffers, provide additional conditions on mitigation for those
7 abutting property owners.

8 The distance here, while we understand is something
9 that the Board has been discussing, this is a special exception,
10 and we believe that under the special exception standard, we do
11 meet that requirement. In regards to being in harmony with the
12 general intent of the Zoning Regulations, as we are compliant
13 with the height. We do believe that it is in keeping with the
14 character and context. We do understand that these are hard
15 decisions, that these are hard questions of how close is this
16 kind of -- Board Member John's comments and being able to look
17 out of her house. But this is 39-feet in distance, 39-feet in
18 distance to another structure in the city, especially in the city
19 is quite a far ways. That is more than a rear yard requirement.
20 That is more than what would be proposed in a by right structure.

21 We also think that there's nothing in writing from the
22 two neighbors, from Ms. Robinson in specific saying what their
23 concerns were, or from Ms. Hagen saying exactly what their
24 concerns were in writing in the record. There are no letters of
25 opposition, zero in the record that specifically say, I oppose

1 | this project. There's a letter from Ms. Robinson giving her
2 | authorization. But we have obtained letters of support from the
3 | community because the community is supportive of seeing something
4 | happen here.

5 | We have had extensive discussions, as Mr. Smith
6 | testified to, over 20 conversations or emails or meetings or
7 | Zooms with Ms. Robinson, and over 15 meetings with the Hagens.
8 | There was specific letters in writing sent to Ms. Hagen about how
9 | we can provide again, fenestration giving them the -- literally,
10 | the ability to choose the materials and materiality as Mr. Smith
11 | stated, discussions about providing a green wall, discussions
12 | about providing additional fencing.

13 | But we had just -- I mean it's really hard to pull
14 | teeth if someone doesn't want to provide you with comments. And
15 | I think that if they're not that -- we've given a lot of options.
16 | And I think that we've been trying to then obviously come up with
17 | these proffered conditions. The Office of Planning in their
18 | report and Ms. Elliott testified, I think in detail and answered
19 | a lot of the Board's questions about how she believes that we
20 | have satisfied the special exception standard.

21 | And the proffered conditions here, in regards to
22 | putting in writing and putting in proper conditions of a fence,
23 | putting in the specific height of that fence, putting in specific
24 | conditions of evergreen or canopy trees, those are terminologies
25 | that the zoning regulations have to try to ensure that they are

1 trees that will provide shade full year-round and the specific
2 height of those. We identified the height. We were trying to
3 be very specific here. Trees, no less than seven feet tall when
4 planted, and that they would be planted and maintained. And
5 those were all things that we were trying to do to address these
6 concerns, and we're happy to elaborate on those, if necessary.

7 Additionally, the wood trellis, providing more
8 protection visually from the back half of the structure onto the
9 rear of that property owner, and the removal of the Juliet
10 balconies. At the prior hearing, there was concerns about the
11 heat impact that, I think Mr. Eckenwiler had testified to, and
12 so we then proffered the anti-glare or anti-glare film on the
13 back of the building as well.

14 We are happy to provide the additional documentation
15 to the Board.

16 There were questions about reducing the height. This
17 is a four-unit project, which the fourth unit would be the IZ
18 unit. There were many discussions about removing that fourth
19 unit and asking for three units, which would then be an
20 opportunity to reduce the density, but that's something that the
21 applicant felt we were within the height requirement, that in
22 order to do that, we would obviously then be able to provide that
23 fourth IZ unit. We know that that was something that we felt
24 was sufficient given the fact that Office of Planning was
25 supportive and did find that we had satisfied the special

1 | exception conditions, and that we weren't asking for a variance
2 | here. We felt that under the special exception requirements that
3 | since we were staying within the height limit, and we were pulling
4 | it back, again 39-feet from the abutting property owners, that
5 | we satisfied the standard.

6 | CHAIRPERSON HILL: Okay. Thank you, Ms. Moldenhauer.

7 | All right. Okay. So Mr. Moy, if we wanted to get this
8 | information from the applicant and then had it set for decision,
9 | when would we be able to do that?

10 | MR. MOY: One second, Mr. Chairman. I was trying to
11 | walk and chew gum at the same time. Let's see. So considering
12 | the circumstances, the -- it sounds like the Board was moving
13 | towards scheduling a decision meeting. And if that's true, then
14 | I think -- or even if it was a continued hearing. I would suggest
15 | even though September -- the dates in September are not -- are
16 | very heavy given the circumstances, I would suggest setting this
17 | for September the 15th, which is the first hearing after the
18 | Board's August recess. And then if Mr. Eckenwiler can confirm
19 | for me, I believe the ANC is meeting in September is that second
20 | week on Wednesday, which would be September the 8th for any (audio
21 | interference).

22 | COMMISSIONER ECKENWILER: Mr. Moy.

23 | MR. MOY: Yes.

24 | COMMISSIONER ECKENWILER: Mr. Moy, can you hear me?

25 | MR. MOY: Yes, yes.

1 COMMISSIONER ECKENWILER: We meet on the 9th in
2 September, a link to a religious holiday.

3 MR. MOY: Okay. Okay. Well, that still works for me.
4 But let me let me lay this out for you, Mr. Chairman. So if we
5 go backwards and we set a decision -- schedule a decision meeting
6 on September the 15th, the ANC response as soon as they can after
7 their meeting on September the 9th, maybe they can submit by the
8 10th, or that Monday September 13th. And if the applicant can
9 get their filings by the end of August, which would be August
10 the 31st, that will give them ample time, then I think this time
11 could work.

12 CHAIRPERSON HILL: Okay.

13 Ms. Moldenhauer, do you have any questions about that?
14 Okay.

15 Mr. Eckenwiler, Commissioner Eckenwiler, you got any
16 questions about anything?

17 COMMISSIONER ECKENWILER: I could just use some clarity
18 on what the deadline would be for the ANC's submission.
19 Certainly, the 13th would be more beneficial.

20 MR. MOY: September the 13th. I'm fine with that, if
21 the Board is fine with that.

22 CHAIRPERSON HILL: That's fine.

23 MR. MOY: Okay. September 13th is a Monday.

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: And the decision meeting would be September

1 the 15th.

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: That's it. Unless I'm missing anything else,
4 Mr. Chairman.

5 CHAIRPERSON HILL: Okay. I'm only smiling. This almost
6 went as long as an appeal, and so we were on three hours now.
7 Okay. Well, there you go.

8 Thank you all very much for all of your participation
9 and your testimony. I'm going to go ahead and close the hearing
10 and the record.

11 Ms. Moldenhauer.

12 MS. MOLDENHAUER: So I'm just -- the record is open for
13 us to supplement those images and provide a written statement.
14 I just want to make sure.

15 CHAIRPERSON HILL: That's right. That was just the
16 next statement. I'm going to go ahead and close the hearing and
17 the record except for the items that we requested from the
18 applicant and the dates with the -- and the date that we requested
19 from the applicant, and we'll see you back on the 15th. I'm
20 going to excuse everyone and thank you all very much.

21 Mr. Turnbull, if you could stick around for a minute.
22 Actually, before I can barely -- Mr. Turnbull, if you can be here
23 for the 15th, if you can get permission. No, I'm just saying
24 for the decision, that'd be great. We'll do it first.

25 COMMISSIONER TURNBULL: They got to pay me.

1 CHAIRPERSON HILL: Okay. You can do one decision after
2 20 odd years or whatever it is.

3 COMMISSIONER TURNBULL: Yeah. We'll see what we could
4 do.

5 CHAIRPERSON HILL: Okay. Great.

6 All right. Thank you all very much. Bye-bye.

7 MR. SMITH: Thank you.

8 CHAIRPERSON HILL: Okay. So Commissioner -- Mr. Moy?

9 MR. MOY: Go ahead and do what you're going to do then
10 I'll speak.

11 CHAIRPERSON HILL: (Audio interference) chance, I
12 didn't realize this is going to be what it was. I mean so --

13 MR. MOY: Well, before you say anything next, Mr.
14 Chairman, to help your process, please look at where I
15 communicated to you by taking --

16 CHAIRPERSON HILL: Yeah. I got you. I got you.

17 MR. MOY: -- the commissioner. Okay. Okay.

18 CHAIRPERSON HILL: One of our Commissioners has to
19 leave by 1:30, and which number was that, Mr. Moy?

20 MR. MOY: Two cases are -- I had it right here. 20440
21 of Green and 20469 of Daniel Hogenkamp.

22 CHAIRPERSON HILL: Okay. All right.

23 Well, unfortunately, this is going to get weird. All
24 right. Can you -- I think the next case will go very quickly
25 with Mr. Miller. And then we can take a break. Can you all

1 manage like another 10 minutes or so? Is everybody nodding, yes?

2 Okay. Well, Mr. Turnbull if we don't see again, I've
3 said goodbye now on four different Zoom calls, and every single
4 time it's been a pleasure, and so it has been a pleasure. I
5 think I'll speak for the whole Board at this point, or you all
6 can speak up and if you want to, raise your hand. But I want to
7 wish you the best. And hopefully, we're going to see how the
8 15th, and we get to say bye one more time.

9 COMMISSIONER TURNBULL: Yeah. Well, then by Monday, I
10 think the only -- I was joking about being paid. The only issue
11 is I don't think if I'm working for the -- I can legally represent
12 the Architect of the Capitol. If I'm really done, so that's the
13 only issue. It's just the legality of being able to represent
14 them when I no longer work there.

15 CHAIRPERSON HILL: Can you write a letter? Can you
16 write a letter?

17 COMMISSIONER TURNBULL: I don't know. I'd have to find
18 out. I'm having a virtual going away party on the 17th with the
19 AOC, so I can -- I got to go in to bring -- they want me to come
20 in for that, so we'll see. But this last case is a perfect case
21 for Commissioner Miller, Vice Chair.

22 CHAIRPERSON HILL: That's right. That's right. You
23 would just be another Commissioner. (Audio interference).

24 COMMISSIONER TURNBULL: I just got in trouble with the
25 Vice Chair. I can see her shaking her head.

1 CHAIRPERSON HILL: Commissioner Miller, that's right.
2 Actually, now think about the whole ZC is on this call, so we're
3 okay. I forgot. It doesn't have to be the Architect of the
4 Capitol. It can be one of the other ZCs.

5 COMMISSIONER TURNBULL: I didn't mean that, Vice Chair.

6 COMMISSIONER MILLER: I've said -- if I say goodbye to
7 you today that will be the third time, which might be the charm,
8 so I'm not going to say goodbye today.

9 CHAIRPERSON HILL: All right. Okay.

10 COMMISSIONER TURNBULL: Well, it's been wonderful
11 working with all you guys, and I didn't get to know Mr. Blake
12 that well yet, but he is fitting in quite well, and I'm sure
13 he'll do an excellent job. And I'll miss Mr. Smith and, of
14 course, I'll miss the Vice Chair, Ms. John. So it's been a
15 pleasure working with all of you, especially you, Mr. Chair. So
16 good luck, take care, and I hope your day doesn't go too long.

17 CHAIRPERSON HILL: Thank you, Commissioner.

18 VICE CHAIR JOHN: It's been --

19 CHAIRPERSON HILL: Ms. John. Ms. John.

20 VICE CHAIR JOHN: It's been a pleasure, Commissioner,
21 and I've learned a lot from you, and I'll miss having your wise
22 counsel in these hearings.

23 COMMISSIONER TURNBULL: Well, you can take my word for
24 today, however, you want to go. I mean it's kind of a crazy
25 case, so --

1 VICE CHAIR JOHN: Yeah.

2 COMMISSIONER TURNBULL: -- there's pluses and minuses
3 to it.

4 VICE CHAIR JOHN: Thank you.

5 COMMISSIONER TURNBULL: All right. Well, take care.

6 VICE CHAIR JOHN: Okay. Bye.

7 CHAIRPERSON HILL: Bye Commissioner.

8 BOARD MEMBER SMITH: Take care.

9 CHAIRPERSON HILL: All right. Mr. Moy, if you could
10 call our next decision meeting.

11 MR. MOY: Okay. And I believe this is the one with
12 Commissioner Rob Miller participating.

13 CHAIRPERSON HILL: Yep.

14 MR. MOY: All right. So this would be the application
15 for decision-making, this is Application No. 20143 of Grand
16 Realty, LLC. And I said on the other companion, I don't want to
17 say companion piece, but at the -- again, Application No. 20143
18 of Grand Realty, LLC. At the Board's meeting session on June
19 23rd, the Board on its own motion rescinded its vote and reopened
20 the record and sent its decision -- its deliberation and decision
21 for today, August the 4th.

22 CHAIRPERSON HILL: Okay. Great. Thank you.

23 All right. So we rescinded our vote and asked for
24 additional information on this particular case. The applicant
25 has submitted revised plans and a self cert which would remove

1 the need for any relief for the accessory structure and provide
2 all three proposed units in the main building, thereby addressing
3 the concerns about the conversion regulations.

4 I reviewed the record, in particular the explanation
5 in Exhibit 57. And I would agree with the applicant's
6 justification and the analysis of the Office of Planning's
7 recommendation on how they are now meeting the requirements of
8 the U-322.2, and I will be voting to approve.

9 Is there anything anyone would like to add? Mr. Smith.

10 BOARD MEMBER SMITH: I don't have anything else to add.
11 I do agree with you, Mr. Chairman. I do believe the proposed -
12 - the proposal still meets the conditions for us to be able to
13 approve it. I would say that the applicants revised their
14 submission where they are extending the building an additional
15 three feet towards the rear, but it is within the terms of the
16 matter of right, the scope of the matter of right. So I don't
17 believe it would have any adverse impact on the neighbors, but
18 with that, I fully support it.

19 CHAIRPERSON HILL: Commissioner Miller.

20 COMMISSIONER MILLER: Thank you, Mr. Chairman.

21 Yes. I agree that the -- I agree with you both that
22 the -- and with the applicant, that the revised plans meet the
23 special exception criteria. I, of course, since I was the lone
24 dissenter of reopening this case that was decided 18 months ago,
25 originally, disagreed just for the record, saying it again, with

1 the Board's concerns that the application as approved did not
2 meet the special exception conversion criteria, which OP also
3 thought it met -- the previous application met the special
4 exception criteria as did the applicant.

5 And I think the zoning -- there's documentation that
6 the zoning administrator also agreed that there was a plausible
7 interpretation that that previous applicant met it. But I agree
8 the revised plan clearly meets the special exception criteria as
9 well, and so I'm prepared to support this project today again.

10 CHAIRPERSON HILL: All right. Thank you.

11 Vice Chair John.

12 VICE CHAIR JOHN: I'm in support of the project as
13 amended. And I would just maybe add a condition that the
14 accessory structure will not be used as a principal dwelling unit
15 but will be used as additional space for one of the main units.
16 It's shown in the plan, but perhaps the order should state that
17 as well.

18 CHAIRPERSON HILL: Okay. I saw Mr. Smith nodding yes.
19 Is anyone opposed to Ms. John's motion? I don't see anyone saying
20 no. Okay.

21 Can you tell me that again, Ms. John?

22 VICE CHAIR JOHN: So the order, and I'm sure OAG can
23 come up with the right words. So the carriage house accessory
24 building will be used only for ancillary space for one of the
25 units in the main building.

1 CHAIRPERSON HILL: Okay.

2 VICE CHAIR JOHN: It's stated in the application. We're
3 just clarifying in the order that what the applicant has
4 represented is what will happen.

5 CHAIRPERSON HILL: Okay. All right.

6 Mr. Smith -- I mean, Mr. Blake.

7 BOARD MEMBER BLAKE: Yes. I would agree that the
8 conditions have been met and with the inclusion of Ms. John's
9 statement as well.

10 CHAIRPERSON HILL: Okay. Great.

11 I'm going to make a motion to approve Application No.
12 20143 as captioned and read by the Secretary. And also including
13 the condition that the carriage house will be used for extra
14 space for the main building. And the OAG can go ahead and help
15 with that order, and ask for a second, Ms. John.

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: The motion has been and seconded.

18 Mr. Moy -- Mr. Miller, Commissioner Miller.

19 COMMISSIONER MILLER: I just wanted to also -- I meant
20 to say because of the 18-month --over 18-month lag in us getting
21 an order out on this application, I think we had previously
22 indicated that you would try to get -- and OAG has indicated that
23 they could get an expedited order out with that, including the
24 condition that Ms. John -- Vice Chair John referenced. So if we
25 could just get that expedited order so we can put this project

1 to bed.

2 CHAIRPERSON HILL: Yes. I agree, Mr. Miller, and thank
3 you for bringing -- Commissioner Miller, and thank you for
4 bringing that up. So that being the case, again, I've made the
5 motion including the condition and Mr. -- Commissioner Miller has
6 stated the urgency of the order and ask for a second, Ms. John.

7 VICE CHAIR JOHN: Second.

8 CHAIRPERSON HILL: The motion has been made and
9 seconded.

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

11 MR. MOY: When I call each of your names, if you would
12 please respond with a yes, no, or abstain to the motion made by
13 Chairman Hill to approve the amended application along with the
14 condition language to go into the order. The motion was seconded
15 by Vice Chair John, also in support of the motion.

16 Zoning Commissioner Rob Miller.

17 COMMISSIONER MILLER: Yes.

18 MR. MOY: Mr. Smith.

19 BOARD MEMBER SMITH: Yes.

20 MR. MOY: Mr. Blake.

21 BOARD MEMBER BLAKE: Yes.

22 MR. MOY: Vice Chair John.

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Hill.

25 CHAIRPERSON HILL: Yes.

1 MR. MOY: Staff would record the vote as 5-0-0 and this
2 is made on the -- this is the vote on the motion made by the
3 Chairman to approve; seconded by Vice Chair John in support.
4 Also in support of that motion is Zoning Commissioner Rob Miller,
5 Mr. Smith, Mr. Blake. The motion carries on a vote of 5-0-0.

6 CHAIRPERSON HILL: Okay. Great. Okay.

7 Commissioner Miller, is that it for you today? Bye-
8 bye.

9 COMMISSIONER MILLER: See you later. Have a good
10 August.

11 CHAIRPERSON HILL: Thank you. You as well.

12 COMMISSIONER MILLER: Thank you.

13 CHAIRPERSON HILL: All right. Mr. Moy. Mr. Moy, I was
14 so excited about my vacation and now, I'm just tired again. Let's
15 see.

16 So you said that Commissioner May's cases are 20440,
17 correct? Right. And then the other one --

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: And then the other one is 20469,
20 correct?

21 MR. MOY: Yes, sir.

22 CHAIRPERSON HILL: Okay. So I say we take a break, you
23 guys, and try to do those two. Okay. Because that's Commissioner
24 May, right? Then I think we should go ahead and do the remand
25 because I have to leave at 3. I'm just kind of throwing all this

1 out. Let's take a quick break, then Commissioner May, do his
2 two cases, and then maybe we take lunch, or I don't know, we have
3 a snack. Because the Vice Chair is going to have to handle the
4 last two if we don't get to them. One of which is a time
5 extension, right, and meaning that's okay. And then the other
6 is -- I don't know what the other is, really quick. Anyway, I'm
7 just trying to throw it all, okay, I'm doing my best, right. So
8 quick break. It's 12:42. Let's say 12:50. Basically, we're
9 going to the bathroom (audio interference) okay.

10 COMMISSIONER MAY: Please.

11 CHAIRPERSON HILL: Okay.

12 COMMISSIONER MAY: I have to leave at 1:30.

13 CHAIRPERSON HILL: I got you. I got -- we all got
14 needs, you know what I'm saying? Okay.

15 COMMISSIONER MAY: I understand.

16 CHAIRPERSON HILL: Okay. All right. Let's go take
17 care of our stuff and we'll get right back.

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

20 CHAIRPERSON HILL: I'm sorry.

21 VICE CHAIR JOHN: It's okay.

22 CHAIRPERSON HILL: Okay. Mr. Moy, could you go ahead
23 and call our next case, please?

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

25 The Board is back in session and the time is at or

1 about 12:54 p.m. The next case before the Board for decision is
2 Application No. 20440 of GREEN 2336, LLC. Captioned and
3 advertised for a special exception under the new residential
4 development requirements of Subtitle U, Section 421.1. This is
5 going to raze, R-A-Z-E, the existing principal dwelling unit and
6 construct a new detached three-story with penthouse, 14-unit
7 residential building, and combine three record lots into one
8 record lot in the RA-1 Zone. The property is located at 2336
9 Green Street, S.E., Square 5754, Lots 38, 39 and 64.

10 As the Board will recall, the Board last heard this at
11 its hearing on June 30th; heard testimony and requested
12 supplemental information, and set this decision to today, August
13 4th. Let me think -- two preliminary matters before the Board.
14 One is a filing from Councilmember White last night, so that's
15 being held for the Board to consider allowing it into the record.

16 Second, there is a filing from ANC 8A under Exhibit 71
17 dated August the 2nd, two days ago, to strike -- it's their motion
18 to strike Exhibit No. 64, and that is in the record. Okay.

19 CHAIRPERSON HILL: Okay. Great. Thank you.

20 Let's address these two issues first for preliminary
21 matter.

22 I have had an opportunity to look at the letter from
23 Councilmember White, and so I would like to admit that into the
24 record.

25 Mr. Moy, if you could please do that right away so that

1 the Board can take a look at that.

2 And then the other, the motion to strike, I guess I was
3 looking at the motion to strike and also speaking with OAG, that
4 the person who was submitting the motion to strike is an ANC
5 Commissioner and not the actual ANC, and the actual ANC is a
6 party. And the only people that can submit motions are party
7 status individuals. So this would just be someone who's not able
8 to submit a motion to strike. And I'm going to ask for
9 clarification on that from OAG in one second. And that,
10 regardless, even if we were to accept that motion to strike, I
11 mean the whole -- we're not really kind of whether somebody is
12 or isn't, whether the signature is or isn't one way another,
13 that's not really something that's within our purview. So I'm
14 just going to go ahead and disregard that motion, because by
15 someone who's not actually a party status who can actually submit
16 a motion. Is that correct, Mr. Rice?

17 MR. RICE: Yes, sir. It appears, after reviewing the
18 motion, that the motion was made on by Chair Muhammad on behalf
19 of (indiscernible) self and Commissioner Clark in a personal
20 capacity and not on behalf of the ANC itself.

21 CHAIRPERSON HILL: Okay. So we're just going to
22 disregard that request unless the Board has any issues with it,
23 and if so, please raise your hand. No. Okay.

24 So now, we're here -- we've dealt with those two
25 preliminary matters and now, we're here for the deliberation on

1 | this particular case. I've been talking a lot today. So if I
2 | could ask our Commissioner to begin with the deliberation that
3 | would be helpful.

4 | COMMISSIONER MAY: Okay. I'm happy to kick things off.
5 | We had a pretty thorough hearing last time around and requested
6 | some additional submissions. The applicant submitted the fence
7 | that we requested, the sun shading study, the CM plan that they
8 | were trying to get to agreement with the ANC, as well as the
9 | answer to questions on the condenser enclosure and brick colors.

10 | I've reviewed this information in the supplemental ANC
11 | report. And of course, considering everything that we had heard
12 | before and everything was in the record before. I'm in favor of
13 | granting the special exception. This is a case in the zone
14 | (indiscernible). It is designed to handle a variety of housing
15 | types including small apartment buildings like this, what has
16 | been described, despite the some of the assertions that are in
17 | the record.

18 | I do believe that this is generally consistent with the
19 | forms of housing that are envisioned under this zone. And the
20 | applicant has demonstrated how the building can fit into the
21 | context and the Office of Planning is supporting it.

22 | I appreciate that the ANC has concerns and the abutting
23 | neighbors have concerns, but this is a neighborhood that has a
24 | fair amount of breathing room. They're not -- we're not talking
25 | about inserting a very large building into a very tight context

1 with small buildings around it. I mean there are small buildings
2 that are around it, but they're actually fairly separated because
3 of the nature of the zone and the setbacks.

4 I think we see from the sun shading study that there's
5 not going to be a substantial impact on the abutting properties.
6 And yeah, I mean it's unfortunate, there isn't greater agreement
7 on the CM plan. But that's also not critical to the relief that
8 we're granting at this point, right. I mean this is -- that's a
9 nice thing to have, but it's not an absolute necessity in order
10 to grant the relief.

11 So based on what the applicant has submitted, I am
12 inclined to vote in favor of this and give the applicant
13 flexibility to choose the brick colors, work with the Office of
14 Planning to choose brick colors from among the range that they've
15 had suggested. That's all I have to say.

16 CHAIRPERSON HILL: Okay. Thank you. Mr. Smith.

17 BOARD MEMBER SMITH: The request before us is for a
18 special exception for under the new residential development
19 standards. And first, I want to recognize the concern of the
20 neighborhood especially regarding -- I think some of the things
21 that came up was about the amount of rentals that are along the
22 block and some issues and security concerns. And I truly want
23 to state that I do understand and hear your concerns.

24 But the question is the use of it being an apartment
25 building is allowed for the zone. And along that block and within

1 the zone, apartment buildings are allowed. And there are a number
2 of apartment buildings of the size and scale within the close
3 vicinity of this proposed building. That doesn't mean that this
4 building will stay apartments. It can be condos as -- a condo
5 is not a use, so it could potentially become condos in the future
6 if the developer decided to condo it. But I do understand that
7 concern, but the use is allowed within the zone.

8 Some of the concerns that I had when we last heard it
9 was about shadowing especially in light of the fact that there's
10 -- where this building is located further up the hill on how
11 shadowing may affect the buildings to the west of the property.
12 And based on the shadow study that was presented, it looks like
13 it will be a fairly negligible effect on the row homes on the
14 same side of the street as this particular development.

15 When it comes down to parking, and I recognize that
16 that was also a concern of the ANC. The zoning regulation state
17 that they're required to have three parking spaces. The applicant
18 is proposing to have seven parking spaces. One handicap, five
19 standard and one compact. So they are exceeding their minimum
20 parking requirement for the zoning regulations. And based on
21 that, we can't really require them to go even more beyond that.
22 They are meeting their apartment requirement and then some. If
23 you believe that it should be higher, that's something that's
24 outside of the purview of the BZA that is deliberated by the
25 Zoning Commission, so they are meeting the minimum parking

1 requirement.

2 And based on the record of what we briefly heard and
3 also what was submitted into the record for us to deliberate on
4 today, I do believe that the applicant has sufficiently mitigated
5 any adverse impacts that this type of -- this particular
6 development would have to a measurable degree, and I will support
7 the special exception.

8 CHAIRPERSON HILL: Thank you, Mr. Smith.

9 Vice Chair John.

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

11 So as my fellow Board members have said, there is a lot
12 of information in the record. And I wanted to commend the
13 applicant for reducing the massing to 14-units.

14 And I also agree that by providing more parking than
15 is normally required, the applicant will help to mitigate some
16 of the serious concerns that the residents have about parking and
17 that there should be some mitigation there.

18 So because the building meets the development
19 standards, as Mr. Smith and Commissioner May have said, it's
20 allowed in the zone, and so it's not something that would not be
21 allowed to go forward just because of the current massing.

22 ANC is still opposed to the application based on the
23 issues of congestion. And while there is some congestion, DDOT
24 does not object to the project or to the addition of the excess
25 parking spaces.

1 Although the ANC's presume -- the response from the ANC
2 Single District Commissioner, Single Member Commissioner but
3 can't speak today. I read his concerns, but I believe that they
4 are addressed in the record. And I recognize he's speaking in -
5 - and he's not speaking on behalf of the ANC.

6 And I also would like to thank Councilmember White for
7 his submission. But I also believe that the Board has addressed
8 the issues of congestion and -- that some of the actions taken
9 by the developer in terms of security lights will help with the
10 issue of crime, which is something that the Board does not get
11 terribly involved in, because the crime is not something that the
12 Board is responsible for or it's within our jurisdiction. So to
13 the extent that the developer is adding security lights, we think
14 that will help.

15 So based on the record and the representations during
16 the testimony, I am able to support this application because I
17 believe it meets the special exception criteria.

18 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

19 Mr. Blake.

20 BOARD MEMBER BLAKE: Yes. I agree that the project
21 meets the use and dimensional requirements for development in the
22 RA-1 Zone. I do think that the steps that the applicant has
23 taken to mitigate the issues that were brought up, the concerns
24 were addressed largely. I do think it's important that -- because
25 I've seen some implementation things have slipped a little bit,

1 | that the critical elements of the design changes that were made
2 | are, in fact, incorporated in the order such as the security
3 | cameras, the exterior finishing. There seems to be some
4 | optionality, but I've seen sometimes people can stray far from
5 | the conceptual design. And certainly, the seven parking spaces,
6 | which do mitigate a lot of risk. All that said, I'm prepared to
7 | support.

8 | CHAIRPERSON HILL: Did you -- and I'm sorry, Mr. Blake.
9 | Did you say that you wanted something added as a condition?

10 | BOARD MEMBER BLAKE: No. I just wanted to make sure
11 | that the critical elements of the design that the applicant has
12 | made, the adjustments are reflected in the order. As I've noted,
13 | in some instances where the implementation and final design
14 | sometimes strays from the design presented and the conceptual.

15 | CHAIRPERSON HILL: Got it.

16 | Mr. Rice, did you hear that?

17 | MR. RICE: Commissioner Blake, if he could repeat the
18 | critical elements. When he was speaking the first time, he broke
19 | up a little bit.

20 | BOARD MEMBER BLAKE: There were several --
21 | specifically, I noted the HVAC screening, which was a noise issue;
22 | the security cameras, which was a security issue, which he
23 | committed to. I know that Commissioner May had talked about the
24 | exterior finishing and options. That was an issue that was going
25 | to deal with the character. so that it did fit in better

1 recognize, of course, that apartment buildings of this sort are
2 certainly normal for the -- not necessarily for the square, but
3 for the overall area. But that was a matter that just helped it
4 blend in a little bit better. And the seven parking spaces was
5 an important consideration because it lessened the issues and
6 concerns of the neighbors of the congestion.

7 CHAIRPERSON HILL: You got that, Mr. Rice?

8 MR. RICE: Yes, sir. I've noted them.

9 CHAIRPERSON HILL: Great. Okay.

10 VICE CHAIR JOHN: Mr. Chairman?

11 CHAIRPERSON HILL: Yes. Go ahead, Ms. John.

12 VICE CHAIR JOHN: I meant to add that this is a self-
13 certified application, and I just noticed that the applicant is
14 not seeking relief for the penthouse. So I don't know if the
15 order should mention that the penthouse is not included in the
16 request.

17 CHAIRPERSON HILL: Okay. No, I appreciate that. You
18 guys are helping to keep me on my toes as well. The penthouse
19 is still there. I think the penthouse was still there, and then
20 we are confirming that the applicant does not need a variance for
21 the penthouse. And so Mr. Rice, you can note that in the order;
22 is that correct?

23 MR. RICE: I think the Board previously determined that
24 the applicant would need to go to the BZA to determine what relief
25 he would need for the penthouse.

1 CHAIRPERSON HILL: Okay. So we're just clarifying --

2 MR. RICE: And the Board --

3 CHAIRPERSON HILL: -- the discussion.

4 VICE CHAIR JOHN: In my view, we're just clarifying
5 that we're not approving the penthouse as part of this order,
6 because I don't see any analysis of the penthouse.

7 CHAIRPERSON HILL: Okay, I agree.

8 MR. RICE: Yeah. We can make that note.

9 CHAIRPERSON HILL: I agree. Okay. All right. So I
10 will agree with -- I mean you guys, I appreciate everything that
11 you said and thank you so much for all of your comments. I agree
12 with all the deliberation, I mean the discussion. I believe that
13 they are meeting the criteria, I mean for us to kind of have to
14 grant it, right. I mean like they're meeting the zoning criteria.
15 This is something that is meant for the zone. The part that I
16 have this -- I'm discouraged about or disappointed about is that
17 the community is so concerned about this development, right. I
18 guess, I kind of get it on both hands.

19 I mean I really appreciate the input that Councilmember
20 White has submitted in terms of the record. And he, in his letter
21 also says that he's going to stand with his constituents and hope
22 the BZA gives voice to their constituent's concerns. And I do
23 believe we have.

24 Unfortunately, we can't -- I think unfortunately,
25 they're meeting the standard for us to grant this relief, right.

1 And there are these other things that have been put forward in
2 terms of the lighting, the security for the bicycles, different
3 things that they've done. And I'm hopeful that perhaps if there's
4 a new development there, that might actually somehow help the
5 crime or help -- the area will get -- will have a new apartment
6 building there. Or as Mr. Smith just spoke to, they might decide
7 to make condos, right, and then they'll just have homeownership
8 there.

9 So unfortunately, I'm going to have to agree they've
10 met the standard and also vote in favor of the application. So
11 I'm going to make a motion to approve Application No. 20440. And
12 again, before I do, I do want to again thank everyone who came
13 out. And you really were heard, and your voices were heard, and
14 the ANC was heard, and we really wish the best for the community
15 on this project.

16 I'm going to make a motion to approve Application No.
17 20440 as captioned and read by the secretary including the
18 flexibility that was spoken about for the brick coloring work
19 with the Office of Planning, as well as some of the items that
20 were mentioned in the -- that will be mentioned in the order that
21 my colleagues have put forward, and ask for a second, Ms. John.

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Motion been made and seconded.

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

25 MR. MOY: When I call each of your names, if you would

1 please respond with a yes, no, or abstain to the motion made by
2 Chairman Hill to approve the application for the relief along
3 with a statement attached to the Chairman's motion, which was
4 seconded by Vice Chair John.

5 Zoning Commissioner Peter May.

6 COMMISSIONER MAY: Yes.

7 MR. MOY: Mr. Smith.

8 BOARD MEMBER SMITH: Yes.

9 MR. MOY: Mr. Blake.

10 BOARD MEMBER BLAKE: Yes.

11 MR. MOY: Vice Chair John.

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill.

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Staff would record the vote as 5-0-0, and
16 this is on the motion made by Chairman Hill to approve and
17 seconded by Vice Chair John in support as well. Also, in support
18 of the motion to approve is Zoning Commissioner Peter May, Mr.
19 Blake, and Mr. Smith. The vote is 5-0-0. The motion carries.

20 CHAIRPERSON HILL: Thank you. Let's see. Okay. I am
21 not on the next one. So Ms. John, I know -- or Vice Chair John
22 I should say, I'm sorry. Commissioner May has to leave at 1:30,
23 so I will come back when you all are done. Bye-bye.

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

25 So the Board heard this case on June 30th and scheduled

1 | it for decision today. The applicant submitted --

2 | MR. MOY: Madam Vice Chair. Sorry to interrupt. May
3 | I read the caption into the record?

4 | VICE CHAIR JOHN: You may, Mr. Moy.

5 | MR. MOY: Thank you.

6 | VICE CHAIR JOHN: I was --

7 | MR. MOY: I was fine. I was fine also the other way,
8 | but I thought we should have it on the transcript.

9 | VICE CHAIR JOHN: I was so concerned that I have 15
10 | minutes to get this done before Mr. Moy -- Mr. May leaves.
11 | Apologies.

12 | MR. MOY: No worries, no need.

13 | Okay. So the next case for the Board for decision is
14 | Application No. 20469 of Daniel Hogenkamp, and the requested
15 | relief as amended for area variances from the lot occupancy
16 | restrictions of Subtitle E, Section 304.1; rear yard requirements
17 | of Subtitle E, Section 306.1; lot area requirements of Subtitle
18 | E, Section 201.1, to construct a three-story with roof deck and
19 | cellar, semi-detached flat on an unimproved, substandard non-
20 | alley lot in the RF-1 Zone. The property is located at 1502 3rd
21 | Street, N.W., Square 521, Lot 46. And as the Board will recall,
22 | this was last heard at the Board's hearing on June 30th.

23 | VICE CHAIR JOHN: Thank you, Mr. Moy.

24 | So the Board heard this case on June 30th and scheduled
25 | it for decision today. The applicant submitted an updated self-

1 certification requesting relief for lot width at Exhibit 50. And
2 unless the Board objects, I am inclined to waive the filing
3 deadline.

4 The Board also requested a letter of authorization from
5 Lance Gaines, an adjacent neighbor, to allow testimony from
6 Vincent Ford on his behalf, and this is now in the record at
7 Exhibit 48 and 49.

8 As amended, the application requests variance relief
9 for lot occupancy, rear yard, lot area and lot width to construct
10 a semi-detached three-story flat in the RF-1 Zone.

11 I believe the applicant has met the burden of proof for
12 all three prongs of the variance test and I credit the applicant's
13 burden of proof statement as well as slide 17 and 18 of Exhibit
14 45.

15 Essentially, the lot has an unusual shape. It is 11-
16 feet wide at the front of the property for the first 27-feet and
17 larger in the rear, and this requires the bulk of the building
18 to be located at the rear of the lot, which is not as deep as
19 other properties on the block.

20 I also agree with OP's analysis, and I don't believe
21 there's any detriment to the public good as the overall footprint
22 is similar to surrounding rowhouses. The building would only
23 extend three feet beyond the rear wall of the property to the
24 north and meet other development standards. There's also no
25 impairment of the Zoning Regulations because this relief will

1 allow construction of new housing and a two-unit flat which is
2 similar to others in the surrounding neighborhood.

3 I will note that Mr. Gaines, the property owner at 305
4 P Street is mainly concerned about storm water runoff on his
5 property. And I believe this issue is not something that the
6 Board can address, and it should be or will be addressed during
7 the permit and construction stage. However, I would also
8 encourage the applicant to enter into a construction agreement
9 with Mr. Gaines. The ANC is not in support, although they are
10 please that the applicant has secured the support of the Bates
11 Area Civic Association and the ANC's Zoning Advisory Committee.
12 The ANC's concern is basically because of the issues raised by
13 Mr. Gaines. So I would support the application.

14 I also note that DDOT is in approval, and I would like
15 to hear what the other Board members think.

16 Commissioner May.

17 COMMISSIONER MAY: Thank you, Madam Vice Chair. I
18 completely agree with everything that you summarized, and I don't
19 think I really have anything to add. I'm in support of the
20 application. It's unfortunate that we have objections that are
21 raised about what's essentially a construction issue, which is
22 outside our domain, but I'm completely comfortable moving forward
23 based on the case that's been presented to us.

24 VICE CHAIR JOHN: Thank you. Board member Smith.

25 BOARD MEMBER SMITH: Thank you, Ms. John.

1 I think you have sufficiently summed up my thoughts on
2 this particular project. So with that, I would again, just
3 reiterate same as you, I am in support of the special exception
4 -- I'm sorry, it's not a special exception -- of the variances,
5 of these three variances for this residential dwelling.

6 VICE CHAIR JOHN: Board member Blake.

7 BOARD MEMBER BLAKE: Yes. I do also support the
8 variance relief for this project. My interpretation of the ANC's
9 position was more in support having been satisfied by the Bates
10 Area Civic Association and the ANC Zoning Advisory Committee. So
11 I actually interpret them as being in support for the satisfied.
12 That said, I feel that the -- I would be comfortable supporting
13 this request.

14 VICE CHAIR JOHN: Thank you, Mr. Blake.

15 So I will just go ahead then and make a motion to
16 approve Application No. 20469 as read and captioned by the
17 Secretary and asked for a second.

18 COMMISSIONER MAY: Second.

19 VICE CHAIR JOHN: Thank you.

20 Mr. Moy, would you please take a roll call?

21 MR. MOY: When I call each of your names, if you would
22 please respond with a yes, no, or abstain to the motion made by
23 Vice Chair John to approve the application for the relief
24 requested. The motion to grant was seconded by Zoning
25 Commissioner Peter May.

1 Mr. Smith.

2 BOARD MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake.

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Zoning Commissioner Peter May.

6 COMMISSIONER MAY: Yes.

7 MR. MOY: Vice Chair John.

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: And we have a member who has not participated
10 and not present on this decision. Staff would record the vote
11 as 4-0-1. And this is on the motion to grant relief to the motion
12 made by Vice Chair John, seconded by Zoning Commissioner Peter
13 May. Also, in support of the motion to approve is Mr. Smith and
14 Mr. Blake. The motion carries on a vote of 4-0-1.

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

16 And Commissioner May, I have seven minutes left.

17 COMMISSIONER MAY: Thank you very much. I appreciate
18 it.

19 VICE CHAIR JOHN: You're welcome.

20 COMMISSIONER MAY: All right. Bye-bye. Have a great
21 summer.

22 VICE CHAIR JOHN: Thank you. Happy vacation.

23 COMMISSIONER MAY: You, too.

24 VICE CHAIR JOHN: Thank you.

25 COMMISSIONER MAY: All right. Bye-bye.

1 VICE CHAIR JOHN: Thank you.

2 Chairman Hill, are you there?

3 CHAIRPERSON HILL: Yeah. Can you guys hear me or see
4 me?

5 VICE CHAIR JOHN: Thank you.

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

7 Mr. Moy -- okay. So I think that we're trying to do a
8 (audio interference). I have a hard stop at 3 o'clock, right,
9 and we have to do the remand. And then after the remand, there
10 is a time extension. Okay.

11 Mr. Moy, is the time extension -- is that meeting --
12 or is that a meeting session or is that --

13 MR. MOY: The time extension, Mr. Chairman is a meeting
14 session.

15 CHAIRPERSON HILL: Okay.

16 MR. MOY: And of course, there is one other hearing
17 case, which is the (audio interference) 20525.

18 CHAIRPERSON HILL: Yeah. Yeah. And Chairman Hood now
19 -- Oh, God, Chairman Hood is at the dais also. Chairman Hood
20 with us also, right. Okay. So all right.

21 Okay. So Chairman Hood, you're with us now, correct?

22 CHAIRMAN HOOD: Yes. And let me just say, listening
23 to you all -- I know you all worked real hard this morning, but
24 listening is even harder sometimes. Trust me.

25 CHAIRPERSON HILL: I'll tell you what, I'd like to

1 switch roles whenever you want. Okay.

2 CHAIRMAN HOOD: Actually, being active is better than
3 listening. Trust me.

4 CHAIRPERSON HILL: Maybe that's true. I guess that's
5 true too. Well, you're welcome to come do this job, buddy,
6 anytime you want to take over for me. Let's see.

7 Okay. So I'm just trying to gauge where we are. It's
8 1:25. I definitely think we should do the time extension real
9 quick. right. And then depending on you all food (audio
10 interference) like I'm actually kind of okay. So if we can take
11 kind of a mini break and get a snack after the time extension
12 and then do the remand, right. I'm sorry. And then take a mini
13 break and have a little snack, do the remand and then if you lose
14 me, you lose me, and then Ms. John gets WMATA. Does that sound
15 kind of good? Okay. All right.

16 So Mr. Moy, could you call 20056A, as in apple, please?

17 MR. MOY: Yes. Thank you, sir.

18 So the next case before the Board in its meeting session
19 is Application No. 20056A, as in alpha, of Children in Safe Hands,
20 LLC. This is a request for a time extension from BZA Order No.
21 20056.

22 This would extend an additional two years BZA order,
23 once again, 20056 for a special exception under the use provisions
24 of Subtitle U, Section 203.1(g) to permit a child development
25 center for 40 children in the R-2 Zone. The property is located

1 at 5216 Astor Place, S.E., Square 5308, Lot 27 and 28.

2 CHAIRPERSON HILL: Okay. Great. Thank you.

3 Okay. So are we all ready? Okay. So I went through
4 the whole record, or I'm sorry, I went through this request for
5 the time extension, and I really didn't have any issues with it.
6 I mean it was -- the funding was suspended due to COVID and not
7 really sure about the outcome that's related to the pandemic. I
8 read through again the applicant's reason for the time extension.
9 I also read over the Office of Planning's report, and they agree
10 with the applicant's justification, and also that the zoning
11 relief is not being changed. I do not have an issue with the
12 time extension, and again, would agree with the applicant's
13 reasoning and the analysis of Office of Planning and vote to
14 approve.

15 Is there anything you would like to add, Mr. Smith?

16 No. You're shaking your head, no.

17 Vice Chair John. No. You're shaking your head, no.

18 Chairman Hood.

19 CHAIRMAN HOOD: No. I don't have anything to add.

20 CHAIRPERSON HILL: Mr. Blake.

21 BOARD MEMBER BLAKE: I have nothing to add to that.

22 CHAIRPERSON HILL: Okay. I'm going to make a motion
23 then to approve Application No. 20056A, as in apple, as captioned
24 and read by the Secretary, and ask for a second, Ms. John.

25 VICE CHAIR JOHN: Second.

1 CHAIRPERSON HILL: The motion had been made and
2 seconded.

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

4 MR. MOY: When I call each of your names, if you would
5 please respond with a yes, no, or abstain to the motion made by
6 Chairman Hill to approve the request for a time extension for
7 another two years. The motion was seconded by Vice Chair John.

8 Zoning Commissioner Anthony Hood.

9 CHAIRMAN HOOD: Yes.

10 MR. MOY: Mr. Smith.

11 BOARD MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake.

13 BOARD MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John.

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Chairman Hill.

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: Staff would record the vote as 5-0-0, and
19 this is on the motion made by Chairman Hill to grant the time
20 extension for an additional two years, seconded by Vice Chair
21 John to approve. Also, in support of the motion to approve is
22 Zoning Commissioner Chair Anthony Hood, Mr. Smith, and Mr. Blake.
23 Motion carries on a vote of 5-0-0.

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

25 Okay. So the other thing is that I think that on the

1 remand case, I'm going to be interested in having an emergency
2 meeting with OAG at the beginning, so we're going to try to do
3 that.

4 So that's why I'd say let's -- I mean, if possible,
5 let's just go ahead and take 10 minutes, right. And just do
6 whatever we can and come on back, and then we'll see what happens.
7 Okay. Is that fair? Okay. All right. Thank you all. See you
8 in a little bit.

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

11 CHAIRPERSON HILL: Mr. Moy, are you there? Now, Mr.
12 Moy. Okay. Chairman Hood.

13 CHAIRMAN HOOD: Yes, sir

14 CHAIRPERSON HILL: I joke about this job and that like
15 you can do it whenever you like. I like this job.

16 CHAIRMAN HOOD: I know you do.

17 CHAIRPERSON HILL: And I do thank the City and the
18 Mayor for the opportunity.

19 CHAIRMAN HOOD: I know you do.

20 CHAIRPERSON HILL: (Audio interference.)

21 CHAIRMAN HOOD: You always --

22 CHAIRPERSON HILL: Just saying, because I joke a lot.

23 CHAIRMAN HOOD: Yeah. You always make a contribution
24 back to where you live and that's what it's all about.

25 CHAIRPERSON HILL: Just don't -- I make a lot of jokes.

1 | If I really didn't want to do it, I don't have to.

2 | CHAIRMAN HOOD: Same here.

3 | CHAIRPERSON HILL: Thank God.

4 | CHAIRMAN HOOD: So I'm not using the background and why
5 | I decided to protest.

6 | CHAIRPERSON HILL: It's up to you. I mean it's up to
7 | you.

8 | CHAIRMAN HOOD: So when I vote up a year, I only had
9 | one vote on the Zoning Commission, you know with my --

10 | CHAIRPERSON HILL: Commissioner -- Vice Chair Miller
11 | said no. And so after he said no, I got more guts. But Mr.
12 | Smith doesn't usually have a background anyway, so one
13 | background, another background, it doesn't matter.

14 | CHAIRMAN HOOD: No, I like it though. It's nice, and
15 | we should all be unified.

16 | CHAIRPERSON HILL: I mean it makes sense, but I don't
17 | like that -- like your hand disappears, your shoulder disappears.
18 | There's a halo. I just can't do it.

19 | VICE CHAIR JOHN: But actually, I prefer this to my
20 | Target room divider that I've invested in for this very purpose.
21 | It has no other purpose.

22 | CHAIRPERSON HILL: No, I got it. And like if I didn't
23 | have to -- I mean I move around. If I didn't have to talk so
24 | much, I could maybe do it. But the fact that I move around so
25 | much, it's too much.

1 Okay. Mr. Moy, can you call us back in real quick?

2 MR. MOY: Yes. Thank you, Mr. Chairman. So the Board
3 is back in session and the time is at or about 1:47 p.m.

4 CHAIRPERSON HILL: Okay. Thank you.

5 As Chairperson of the Board of Zoning Adjustment
6 District of Columbia in accordance with Section 407 of the
7 District of Columbia Administrative Procedure Act, I move that
8 the Board of Zoning Adjustment hold a close emergency meeting on
9 8/4/2021 for the purpose of seeking legal advice on Case No.
10 19027. Deliberate upon but not vote on Case No. 19027, and the
11 time will be around 1:48 p.m. Is there a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: Mr. Moy, could you please take a
14 roll call vote?

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

16 So when I call your names, would you please respond
17 with a yes or no to the motion made by the Chairman to reconvene
18 an emergency closed meeting.

19 Zoning Commission Chair Anthony Hood.

20 CHAIRMAN HOOD: Yes.

21 MR. MOY: Mr. Smith.

22 BOARD MEMBER SMITH: Yes.

23 MR. MOY: Mr. Blake.

24 BOARD MEMBER BLAKE: Yes.

25 MR. MOY: Vice Chair John.

1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill.

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: The motion carries on a vote of 5-0-0. This
5 is on the motion made by Chairman Hill to reconvene an emergency
6 closed meeting. The motion was seconded by Vice Chair. Also,
7 in support of the motion is Zoning Commission Chair Anthony Hood,
8 Mr. Smith, Mr. Blake, Vice Chair John, and the Chairman.

9 CHAIRPERSON HILL: Okay. So since the motion is passed,
10 I hereby give notice that the Board of Zoning Adjustment will
11 recess this proceeding on this date 08/04/2021 at 1:49 p.m. to
12 hold a closed emergency meeting pursuant to the District of
13 Columbia Administrative Procedure Act. A written copy of this
14 notice will be posted in the Jerrily R. Kress Memorial Hearing
15 Room at this time. Okay, guys. I'll see you over in the other
16 room. Thank you.

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

19 MR. MOY: Yes, sir.

20 CHAIRPERSON HILL: Do you want to call the decision?

21 MR. MOY: Yes, with pleasure.

22 The Board is back in session, and the time is at or
23 about 2:04 p.m. And before the Board is the remand of Appeal
24 No. 19027 of Rima Calderon and William Sawicki. And let's see.

25 This remand goes to the appeal, which was the appeal

1 from a March 19, 2015, decision of the Department of Consumer and
2 Regulatory Affairs to issue a building permit, which is building
3 permit No. B1504436 to renovate a hotel in the D.C./R-5-D
4 District. The premise is 1731 New Hampshire Avenue, N.W., Square
5 154, Lot 829. That's it.

6 CHAIRPERSON HILL: Right. Okay. Thank you, Mr. Moy.

7 All right. So this appeal was brought under the 1958
8 Zoning Regulations to challenge a building permit issued in
9 connection with interior renovations at a hotel. The Board's
10 initial order granting the appeal was appealed to D.C. Court of
11 Appeals by both the appellants and the owner of the hotel. The
12 Court remanded the case to the Board to address certain questions.

13 I've taken a fresh look at the record. And I'm now -
14 - and have reviewed all the record, and I was around for part of
15 it. But I am completely familiarized with the case and I'm able
16 to participate.

17 May I also just get a confirmation for each of the
18 members that this is also the -- that you have reviewed the case
19 and are prepared to move forward. Mr. Smith.

20 BOARD MEMBER SMITH: Yes, Mr. Chairman. I have
21 sufficiently reviewed the case, and I am able to participate in
22 this deliberation.

23 CHAIRPERSON HILL: Ms. John.

24 VICE CHAIR JOHN: Yes, Mr. Chairman. I have reviewed
25 the case, including the transcripts and the record, and I am

1 prepared to move forward.

2 BOARD MEMBER BLAKE: Mr. Blake.

3 BOARD MEMBER BLAKE: Yes. I have reviewed the record,
4 and I'm prepared to take action.

5 CHAIRPERSON HILL: Chairman Hood.

6 CHAIRMAN HOOD: Yes, Mr. Chairman. I have re-reviewed
7 the record. I was here previously for the case. I looked back
8 over again to try to recollect our conversation. I'm looking
9 forward to continue. Thank you.

10 CHAIRPERSON HILL: Okay. Thank you.

11 There are five questions that the Court of Appeals was
12 interested in us taking a more closer look at. The first four
13 questions regarding -- were whether the renovations allowed by
14 the building permit increased the total area of the hotel devoted
15 to commercial adjunct, which from now on I'll refer to CA, and
16 a function room, which I will now refer to as FR, space in
17 violation of 58-ZR 350.2(e) and 351.2(a).

18 And the last question from the Court of Appeals was
19 whether the Zoning Administrator erred by approving plans to move
20 the point of visibility for the hotel's ground floor restaurant
21 and meeting room.

22 So the questions on remand specifically concern the
23 baseline date used to estimate how much space in the hotel was
24 devoted to CA/FR on May 16th, 1980, or whether that's the baseline
25 date.

1 Number two, uses in the cellar and whether DCRA
2 properly classified those uses.

3 Question three, whether six meeting rooms on the ground
4 floor should have been classified as guestroom space instead of
5 CA/FR.

6 Question four, recalculation of the cap on CA/FR, that
7 is the area in the hotel devoted to CA/FR on May 16th, 1980,
8 which is now the maximum area that the hotel may use as CA/FR.

9 And question five was the visibility of commercial
10 adjunct space.

11 So I'm going to go over these questions one by one and
12 kind of give you my thoughts on these, and then we can go through
13 the choices, right.

14 So the first one, the baseline date. To determine
15 whether the building permit allowed too much CA/FR space in the
16 hotel, we need to first decide on the cap of the CA/FR cap.
17 What's the size of the area of the CA/FR that existed on May
18 16th, 1980.

19 Before approving the permit, the Zoning Administrator
20 gathered information about past uses inside the hotel and talked
21 to the owner, who bought the hotel from the company that operated
22 it in 1980. The Zoning Administrator's analysis relied on the
23 owner's 2012 permit plans to estimate the maximum amount of CA/FR
24 space allowed in the hotel. The appellants used December 12th
25 2012, when the owner acquired the hotel as the baseline date, but

1 | also proposed certain adjustments. The initial order used
2 | December 2012 as a proxy. Upon further reflection on the record,
3 | I think that the Zoning Administrator's method resulted in an
4 | appropriate estimate of the baseline uses inexistence in the
5 | hotel on May 16th, 1980, considering all of the different
6 | information available at that time.

7 | On remand, it's now my opinion that the Board should
8 | use the pre-renovation plans as a starting point for
9 | determination of the CA/FR space that existed in the hotel on May
10 | 6, 1980, with adjustments, when necessary and possible, based on
11 | reliable evidence of previous uses.

12 | Now, this is where we're going to have to get down to
13 | an eventual number. But I think that the May 16, 1980, date is
14 | the baseline date after reviewing this record. I think that's
15 | kind of where -- which is a starting point, and this is now a
16 | change from the initial order. So if you all follow along with
17 | all that, I hope so that's good, or at least kind of know, and
18 | you can just either agree with me, or have other some kind of
19 | comments, and I'm going to start with Mr. Smith.

20 | BOARD MEMBER SMITH: Chairman Hood (sic), based on my
21 | reading of the record, I do agree with your estimation, I think
22 | that that's the proper course to use that recorded date from May
23 | 16th, 1980.

24 | CHAIRPERSON HILL: Okay. Great. Thank you. And
25 | Chairman Hood laughed because you called me Chairman Hood. And

1 | so you know, and so let's see. Vice Chair John.

2 | VICE CHAIR JOHN: Yes. I agree with that decision or
3 | recommendation because based on the testimony of DCRA as to how
4 | the baseline was arrived at, I believe it's reasonable. Because
5 | the DCRA looked at the plans submitted by the owner and talked
6 | to other people and came up with a reasonable estimate of the
7 | space that would have been available in May 1980, so I thought
8 | that that was reasonable.

9 | CHAIRPERSON HILL: Okay. Mr. Blake.

10 | BOARD MEMBER BLAKE: I'm sorry. I couldn't find my
11 | unmute button.

12 | I agree that -- I think December is the appropriate
13 | baseline date for a proxy to reflect what happened on May 16th,
14 | 1980, when the rule was passed. That's because the first date
15 | that we have real information for and that's based on the plans
16 | that were provided for the pre-renovation and demolition, so that
17 | gives us the best date.

18 | And also, with the consultation that the Zoning
19 | Administrator had with the owners, he got a pretty good
20 | understanding of what was actually the uses of that space as best
21 | they could at that time. So, in looking at it, I do believe
22 | that's a good date to -- as a starting point with the adjustments
23 | based on reliable evidence of previous uses.

24 | CHAIRPERSON HILL: Right. You're agreeing with May
25 | 16th, 1980?

1 BOARD MEMBER BLAKE: No, no. The base date, I believe
2 that the base date would have -- well, the starting point -- the
3 base date is 1980, but there's no information available for that.
4 So the actual base date would actually be December 2012 as a
5 proxy. The plans are -- or what we have for that were designed
6 slightly after that, but that would be the time frame which we
7 begin as a starting point, and then making any adjustments to
8 that based on the reliable data we have that would say we deal
9 with certainty, this is what it should be.

10 CHAIRPERSON HILL: Okay. I'm nodding yes. Because
11 you've helped clarify my thoughts in a better way.

12 Ms. Nagelhout, are you following along with all that?

13 MS. NAGELHOUT: Yes, I am.

14 CHAIRPERSON HILL: Okay. Thank you. Chairman Hood.

15 CHAIRMAN HOOD: I don't have much to add. But I would
16 agree with the available information, as Mr. Blake so eloquently
17 put it. We had to have a point of reference and as I remember
18 the discussions back then, I think that was -- even though we
19 might have come up with some different conclusions, but I think
20 that, at some point, we had to have a starting point, and I think
21 you all have captured that, so I don't have anything else to add.

22 CHAIRPERSON HILL: Okay. So then question number two
23 was uses of the cellar.

24 VICE CHAIR JOHN: Can I have a question?

25 CHAIRPERSON HILL: I mean --

1 VICE CHAIR JOHN: I have a question, Mr. Chairman?

2 CHAIRPERSON HILL: Sure. Go ahead.

3 VICE CHAIR JOHN: So would we be using the measurements
4 on the permit because that's what we're looking at whether or not
5 the permit impermissibly allowed more CA/FR space than the cap.
6 So we would be looking at the DCRA's decision as recorded on the
7 permit.

8 CHAIRPERSON HILL: That's why I didn't --

9 VICE CHAIR JOHN: The technicality is that DCRA relied
10 on the drawings and then did his assessment and then transposed
11 those measurements onto the permit, which is what we're looking
12 at.

13 CHAIRPERSON HILL: I got you. And that's where I kind
14 of wanted to walk through this a little bit because it kind of
15 all made sense to me if I walked through it all at one time. But
16 when it kind of gets broken up, then I get a little bit more
17 confused, right?

18 VICE CHAIR JOHN: Go ahead and do it your way, Mr.
19 Chairman.

20 CHAIRPERSON HILL: No, no, no, no. What I'm saying is
21 that because I'm a little because -- I think the permit -- right.
22 The whole thing with the 11,435 square feet, right, which was an
23 estimate of what was in the hotel in May of 1980. But we were
24 using now, the first question was, what are we going to use as
25 baseline date? And what we're talking about again and what Mr.

1 Blake just clarified, was that December 2012, we're using as a
2 proxy date, which is when the Zoning Administrator did all this
3 discussion and figured out stuff, that this is what he thought
4 was going on in May of 1980. So that's my first question, if -
5 - I think I'm saying that right. Correct, Ms. Nagelhout?

6 MS. NAGELHOUT: I think so. The 1980 date comes from
7 the Regulations. So the question here is since the parties lacked
8 information about what was going on in 1980, how do we come up
9 with a substitute for that? And the appellant chose December
10 2012 because that's when this owner acquired the hotel. But the
11 ZA did his own analysis based on drawings, based on talking to
12 the owner, based on trying to find old CFO's that don't exist.
13 I mean he did a whole analysis. And so the question is did the
14 Zoning Administrator properly have a basis for making his
15 assessment of what might have existed in 1980? And I think you're
16 all saying it in a slightly different way, but I do see some
17 consistency in -- (indiscernible) know what you're saying.

18 CHAIRPERSON HILL: Okay. Okay. All right. Let me do
19 this. I'm going to read through what I think I'm going to read
20 through. And then you all can ask the questions, and we can
21 figure it out with Mary, right. Because I kind of understood
22 this in my head when I was processing this.

23 So the next was then uses in the cellar, right. So
24 evidence showed, I guess that May 16th, 1980, the use in the
25 hotel cellar included more than 3,000 square-foot of commercial

1 office space. In deciding how much CA/FR space the hotel would
2 have, DCRA classified that space as commercial adjunct. The
3 Board disagreed with DCRA and reversed the ZA's decision. It's
4 now my opinion, that the Board should now reiterate that
5 commercial office space uses that are unrelated to the operation
6 of the hotel should have been considered commercial adjunct
7 space.

8 The Zoning Administration's determination should be
9 reversed in this respect.

10 The second thing was the gym. The plan renovations
11 including the creation of a gym in the cellar. The initial order
12 said that the gym should have been classified as commercial
13 adjunct. However, looking back on it, I believe the DCRA properly
14 classified the gym as guestroom space, because in keeping with
15 the Zoning definition of the hotel, because the gym will be used
16 limited to hotel guests, the gym will not be a business open to
17 the public. So this is again, a change from the initial order.
18 And now, I am going to go around the table, I guess individually
19 because at least now, I understand more clearly as I'm speaking
20 it about the cellar my thoughts.

21 Mr. Smith, do you agree, or do you have anything to
22 add?

23 BOARD MEMBER SMITH: I do agree with your
24 interpretation based exclusively on the various definitions of
25 hotel spaces. And the definition for commercial adjunct space

1 is for retail and service establishments customarily incidental
2 and subordinate to hotel use. So if that commercial office space
3 that was in the cellar has no relation to, or is unrelated to
4 the operation of the hotel, then it shouldn't be considered
5 commercial adjunct space, so I do agree with the reiteration.

6 And on the question of the cellar. And again, it goes
7 back to the definitions of different spaces within a hotel. So
8 guestroom areas are areas devoted to guestrooms and suites,
9 including individual bathrooms -- and I won't go down on the line
10 --but it can include areas for purposes of prorated (audio
11 interference) residential and non-residential different uses in
12 applicable zones, and any other space directly supportive of
13 guestrooms, so that, to me, is the key. Any other space directly
14 in support of guestrooms. So, to me, a gym is directly supporting
15 -- is a space that is limited to the hotel guests directly
16 supporting the hotel guests. So, to me, I agree with your
17 analysis that it should be classified as a guestroom space.

18 CHAIRPERSON HILL: Ms. John.

19 VICE CHAIR JOHN: So I appreciate Mr. Smith's attention
20 to the definitions because I think they're important. And so
21 based on the definition of commercial adjunct, I agree that with
22 3,000 -- what was (audio interference) room, 3,192 square feet
23 of office space should not have been commercial adjunct because
24 they were completely unrelated to the hotel. So I think the DCRA
25 was correct in that case.

1 As to the gym, the issue with the gym was that the
2 Board said that, I believe the Board said that the hotel could
3 charge for the use of the gym when there was no testimony that
4 there was going to be any charge for the use of the gym, so I
5 agree with Mr. Smith's analysis in that case. So DCRA was
6 correct, I think, to exclude it from the CA/FR calculation.

7 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

8 Mr. Blake.

9 BOARD MEMBER BLAKE: Yeah. I would agree with the
10 analysis that Mr. Smith and Vice Chair John put forth regarding
11 the use of that -- the classification of that commercial office
12 space in the basement. It was used at one point -- according to
13 the testimony, it was used at one point for the hotel office
14 functions, but it doesn't take up that much space. And there
15 were some other uses that may have taken place down there. But
16 as it looks at that, they were not -- they had no permits to
17 operate down there, any CFOs that said there were some commercial
18 spaces or anything like that down there. So there's no reason
19 to believe that it would be classify anything other than guestroom
20 space as you have only a few possible categories. And this would
21 qualify best, I think, for that and not as commercial adjunct.
22 We would have had some type of CFO or some type of record of it,
23 if it was legally there and operating.

24 As it relates to the gym in the reclassification of
25 pre-renovation, it's pretty clear -- at least, the initial

1 decision that it was part of the commercial adjunct space is
2 isn't -- is probably not correct. Because the testimony provided
3 by the owner of the hotel said that there was no charge, it was
4 for guest use, so that would definitely fit into the definition
5 of guestroom space. So in that case, I do agree that it was
6 improperly defined -- it is more properly defined as guestroom
7 space.

8 CHAIRPERSON HILL: Thank you, Mr. Blake.

9 Chairman Hood.

10 CHAIRMAN HOOD: Well, I would agree with -- looking
11 back at this about the -- actually, my phone is ringing right
12 now. But I would agree about the commercial office space as
13 alluded by Board Member Blake. But one of the things I do recall
14 -- if I remember correctly, and this is scary, some of the
15 drawings that we had -- actually didn't have any measurements,
16 so at least it wasn't measured accurately. So that was probably
17 some of the problem. Again, we had a lot of -- no. I'm not
18 trying to be defensive but -- of what was being done, but we had
19 a lot of things that were moving in different ways.

20 And I remember the conversation about the gym. And
21 looking back at it, I don't know how we included the gym in the
22 commercial adjuncts' definition. So I was trying to figure out
23 how did we get to that point, but having a revised look at it, I
24 believe that the gym, as we know now, even though back then, the
25 discussion was a hidden cost in the hotel and I stated -- I guess

1 we might have read a little more into it than what we possibly
2 should have. So I'm in agreeance with all discussions of my
3 colleagues that they had. Thank you, Mr. Chairman.

4 CHAIRPERSON HILL: Thank you.

5 VICE CHAIR JOHN: Mr. Chairman, if I could add one
6 thing. There was testimony from the owner that when they
7 purchased the property, all of the information in the records
8 relating to the operation of that commercial office space in the
9 basement were removed by the prior owner. So there were -- in
10 other words, he was saying that there was no connection at all
11 to the hotel.

12 CHAIRPERSON HILL: Okay. Okay.

13 All right. So then, can I move on to the next question?

14 VICE CHAIR JOHN: Yes. That's it.

15 CHAIRPERSON HILL: Okay. So the next question I got
16 is this ground floor, right. The appellants argue that DCRA
17 improperly classified six meeting rooms as CA/FR when the area
18 should have been considered guestroom space. In its initial
19 order, the Board agreed with DCRA that this was guestroom space
20 as per the Regulations.

21 On remand, I continue to believe that based on all the
22 available evidence, the ZA properly classified the six meeting
23 rooms as CA/FR. I was not persuaded that the meeting rooms were
24 converted from guestroom use in violation of the Zoning
25 Regulations. Some of the disputed rooms cannot be used legally

1 as guestrooms.

2 The appellant's contention that differences in two of
3 the hotel's past certificates of occupancy, which reflected a
4 reduction of nine guestrooms necessarily meant that six guest
5 rooms had been converted to function rooms. Any conversion before
6 1980 would have not been illegal. So that's my thoughts on
7 question number three.

8 Mr. Smith, do you have anything to add?

9 BOARD MEMBER SMITH: I don't have anything to add on
10 that. I do agree with your analysis on the meeting room spaces.

11 CHAIRPERSON HILL: Vice Chair John.

12 VICE CHAIR JOHN: So I agree with your statement. I
13 think the court was concerned that there was conflicting
14 evidence, and the Board did not clearly state how it would resolve
15 in that conflict. And so I agree with you that even though there
16 was testimony, the Board, as I am now, would credit the testimony
17 that says that these rooms could not have been guestrooms because
18 they didn't meet the code, so they could not have been guestrooms.
19 So I would just add that little bit of clarification to my
20 thoughts.

21 CHAIRPERSON HILL: Okay.

22 VICE CHAIR JOHN: So (audio interference), I'm just
23 saying that one of the criticisms was that the Board didn't
24 explain how it resolved the conflicting evidence.

25 CHAIRPERSON HILL: Got it. Thank you, Vice Chair John.

1 Mr. Blake.

2 BOARD MEMBER BLAKE: Sure. In reading the testimony
3 and the record, it did look like the rooms were defined as
4 functioning rooms. Now, the configuration of the room and layout
5 suggests that it could have potentially been used for something
6 else in the past, such as a guestroom, but it's not clear when
7 that might have occurred. It could have occurred way back in
8 1950, 1940. It's unclear when that could have happened. But
9 it's possible that those rooms could have used -- been configured
10 and used as a guestroom.

11 That said, the testimony that we received in that
12 document suggest -- it was more like that was done in
13 (indiscernible), maybe, I think I saw that. It wasn't convincing
14 and satisfied that you read -- they were sure that was the case.
15 What we do know is that receipts were presented that those units
16 were used as function rooms.

17 Now, if I were to differentiate a function room from a
18 guestroom, I cannot operate a guestroom as a function room, but
19 I can operate a function room as a function room, so it sounds a
20 little crazy. But if you look at it, if this was a multi-purpose
21 room, even if in some incarnation when it wasn't in violation of
22 the zoning laws, it had to be a function room. It couldn't be -
23 - it could only be a function room and a guestroom, but if it
24 was a multi-purpose room, it was a function room. Other
25 guestrooms could not be function rooms.

1 So in that sense, I see it as a function room.
2 Additionally, as Vice Chair John pointed out, the zoning codes
3 would not allow certain of these rooms to be function room --
4 anything other than function rooms anyway, with no windows,
5 doors, and things like that. So realistically, they are, and as
6 the previous owner testified, they were used as function rooms.
7 So we don't have any reliable testimony that says they weren't
8 guestrooms. So I'm going to err in the side saying that they
9 were, based on the testimony presented, that they were function
10 rooms.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Blake.

12 Chairman Hood.

13 CHAIRMAN HOOD: Yeah. I think again -- I'm not really
14 clear. I wasn't -- I didn't follow all of what Board member
15 Blake said, but again, this is like déjà vu. We're having the
16 same kind of discussion we had that we had then, which is
17 sometimes can be very confusing. But as you stated, I think the
18 Board -- I think to my point, I want to reiterate what the Board
19 and make conclusions based on the available evidence that the ZA
20 properly classified as six meeting rooms as commercial adjuncts
21 and function rooms. So that's kind of where I am with that.

22 I want to reaffirm what was already done. And I don't
23 know if that's the same exact thing that Board Member Blake was
24 alluding to, but if it is, I follow it and I'm with it. But
25 again, this is like déjà vu. Same conversations that went on

1 and on; it was going this way and that way. But again, as the
2 Vice Chair mentioned, the concern of the court was, for the most
3 part, that some of that discussion was not memorialized properly,
4 and some of it that we had might have gotten misconstrued. So
5 that's all I have. I know that's not helping the situation, but
6 that's where I am. Thank you, Mr. Chairman.

7 CHAIRPERSON HILL: Okay. Thank you, Chairman Hood. I
8 think it's very helpful.

9 So recalculation of the CA/FR cap. Question number
10 four. On remand, I think that we're still concluding that the
11 building permit did impermissibly allow an increase in total
12 CA/FR space in the hotel, although not to the extent alleged by
13 the appellant. In approving the building permit, the ZA relied
14 on permit plans that reflected an estimate that the hotel
15 contained a total of 11,435 square feet of CA/FR space on May
16 16th, 1980.

17 The permit plans were an appropriate proxy, but the
18 Board does not agree with all of DCRA's decisions and how to
19 categorize the various uses in the cellar. The area formerly
20 used as commercial office space unrelated to the hotel should not
21 have been classified as a commercial adjunct. So DCRA's estimate
22 of total permitted CA/FR must be reduced by 3,192 square feet,
23 reflecting the size of the commercial office use. Therefore, the
24 maximum permitted CA/FR space in the hotel is 8,248 square feet,
25 the difference between 11,435 square feet and 3,192 square feet.

1 The building permit authorized a total of 8,552 square feet of
2 CA/FR space, and therefore, exceeded the maximum permitted CA/FR
3 by 309 square feet.

4 So does anybody have any comments about anything I
5 said, or if you agree, please let me know. Mr. Smith.

6 BOARD MEMBER SMITH: Mr. Chairman, I agree with your -
7 -

8 CHAIRPERSON HILL: I'm sorry. Yeah. Mr. Smith. Sorry.

9 BOARD MEMBER SMITH: Mr. Chairman, based on my -- well,
10 what we have decided as of -- one of my previous questions,
11 previous question two, I do agree with your analysis that based
12 on how we're calculating CA/FR space within the hotel that the
13 total maximum amount that should be allowed is 8,243 square feet,
14 just simply based off the estimates. Let me make sure I got that
15 right, yep, 8,243.

16 CHAIRPERSON HILL: No. It's fine --

17 BOARD MEMBER SMITH: The maximum permitted. Sorry.

18 CHAIRPERSON HILL: Can you repeat the number?

19 BOARD MEMBER SMITH: 8,243.

20 CHAIRPERSON HILL: Yes, yes. Yeah. No. Thank you.

21 BOARD MEMBER SMITH: So based on the building permit
22 within the record, I do agree with your analysis that the space
23 does exceed the maximum permitted by about 309 square feet.

24 CHAIRPERSON HILL: Got it. Okay. Vice Chair John.

25 VICE CHAIR JOHN: So if I could just confirm the figures

1 again, it would be 11,435 square feet.

2 CHAIRPERSON HILL: That's where we started.

3 BOARD MEMBER SMITH: That's where we started.

4 VICE CHAIR JOHN: Yes. That's fine, which will give
5 us 8,243.

6 CHAIRPERSON HILL: Yes.

7 VICE CHAIR JOHN: So the math is correct.

8 CHAIRPERSON HILL: Yes.

9 VICE CHAIR JOHN: Okay. Thank you.

10 CHAIRPERSON HILL: Mr. Blake.

11 BOARD MEMBER BLAKE: Yeah. I agree with the analysis
12 given the fact that the baseline established by the Zoning
13 Administrator was 11,435. And we defined the commercial office
14 space of 3,192 is not fitting in that and felt comfortable that
15 the other disputed space, which was the ground floor space was
16 fine. The proper adjustment to the 11,435 is the 3,192 feet,
17 which does result in a permitted CA/FR space of 8,243.

18 CHAIRPERSON HILL: Okay. Chairman Hood.

19 CHAIRMAN HOOD: I don't have any more to add. I think
20 the math has been done especially with different findings and
21 clarifications, which would have given the building to authorize
22 a total of 8,515 of the CA/FR space. And I think as you stated,
23 Mr. Chairman, we do exceed by a 309 square feet, so I will concede
24 to that. I don't have everything else, Mr. Chairman.

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

1 So now, the last question is CA visibility from the
2 sidewalk. So the building permit authorized the owner to relocate
3 and expand the hotel's bar/restaurant on the ground floor,
4 relocating some CA visibility from the sidewalk in the process.
5 The hotel has two large windows on the ground floor, one on the
6 north side and one on the south side. The windows are the same
7 size. Before the renovations, the hotel had CA space visibility
8 from the sidewalk through the north window, a function room
9 occupied by space visibility through the south window.

10 Relocation of the bar/restaurant to the south side
11 meant that some ZA -- I'm sorry -- some CA would be visible
12 through the south window replacing the function room visibility.
13 The former CA space visible through the north window would be
14 replaced by a function room. The ZA allowed the relocation of
15 CA visibility from the sidewalk because the amount of visibility
16 would not increase because the windows were the same size, and
17 no new visibility CA would be created. The existing CA and FR
18 spaces basically switch sides. And I say that, because I've
19 changed my opinion on this.

20 The appellants argued that the reconfiguration would
21 violate 351.2(c), because the prohibition against the visibility
22 of commercial adjunct did not apply only to new CA space, instead,
23 any building undergoing significant renovations must comply with
24 current requirements and must be brought up to current codes.
25 The initial order reversed the ZA's decision, our initial order.

1 But on further consideration or reflection, I now think that the
2 ZA reasonably approved the relocation of a commercial adjunct
3 visibility from a sidewalk to another location in a way that did
4 not increase its visibility or otherwise contravene zoning
5 requirements. So this is again a change from the initial order.

6 The reconfiguration of the ground floor would not
7 result in any new or increased visibility of CA space from the
8 sidewalk because the windows were the same size, the
9 reconfiguration merely moved the visible CA from one side of the
10 building to the other, the CA previously visible on the north
11 side was eliminated and now replaced with FR. The Zoning
12 Regulations applicable to a hotel in the R-5-D Zone allowed an
13 existing hotel use to continue subject to certain limits. The
14 Regulation also provided a significant degree of flexibility to
15 allow within a hotel building including that a hotel may be
16 renovated and remodeled.

17 In my opinion, the Zoning Regulation did not prohibit
18 this sort of change, meaning moving the visibility as -- the
19 visibility was not increased, it was just moved. Given the degree
20 of flexibility in the Zoning Regulations, the ZA reasonably, I
21 believe, allowed a remodeling of the existing hotel building in
22 a manner that changed the location of visible CA but without
23 increasing the amount of CA space visible from the sidewalk.
24 Yeah. So that's what I think about the visibility issue or the
25 visibility question.

1 Mr. Smith, do you have anything additional to add?

2 BOARD MEMBER SMITH: No. I agree with your
3 interpretation. I believe that the Zoning Administrator took
4 care to not increase what I would think in the stance of this
5 commercial adjunct being visible from the sidewalk. It was a
6 non-conforming -- almost like a non-conforming use. So what the
7 Zoning Administrator took care to do is not to increase that non-
8 conforming use. Non-conforming use continued to exist. And the
9 use had -- the overall use hadn't gone away, the hotel hadn't
10 closed. The commercial adjunct, I mean that was visible, was
11 essentially like a non-conforming use. What the Zoning
12 Administrator took care to do was to -- the non-conforming use
13 did not grow, it was just relocated in its current size to a
14 different location within the building.

15 So I agree with that interpretation that -- because the
16 windows are the same size, the reconfiguration just merely moved
17 the visible CA space from one side of the building to another,
18 and the CA previously visible on the north side was eliminated.
19 I do agree with your interpretation that the ZA reasonably
20 approved the remodeling of the commercial adjunct space in the
21 facility.

22 CHAIRPERSON HILL: Okay. Thank you. Vice Chair John.

23 VICE CHAIR JOHN: So the court said that the Board's
24 decision was based on a -- I'm sorry. Yeah, a conclusory
25 statement, and that the Board did not explain itself properly,

1 | by saying that the visibility of the first-floor restaurant was
2 | increased by moving it due to expansion of the restaurant in its
3 | new location and the windows located along the first-floor wall.
4 | So there was no explanation of why the Board thought that there
5 | was increased in visibility, and the court went to talk about the
6 | different options that could have been present. So the issue was
7 | really that the Board didn't really explain itself and show how
8 | it came to that conclusion.

9 | And so I believe that Mr. Smith, in mentioning the size
10 | of the windows, really gets to the point. If the windows were
11 | the same on both sides, the front and the sidewalk, then there
12 | would be no increased visibility unless there's something special
13 | about the sidewalk, and there's nothing like that in the record.

14 | So if you look through the front windows or the sidewalk
15 | windows, you would have the same expanse of vision. I'm not an
16 | expert on these things, but you would see the same area. So I
17 | agree with Mr. Smith's analysis that there was no increased
18 | visibility because you're looking through windows of the same
19 | size.

20 | CHAIRPERSON HILL: Okay. Thank you, Vice Chair John.

21 | Mr. Blake.

22 | BOARD MEMBER BLAKE: I would agree with the analysis
23 | that we've talked about so far, in that the amount of visibility
24 | did not increase and the window was the same size and all that.
25 | It's my understanding that the hotel has the right to allocate

1 | its space however it wants to so long as it doesn't go beyond
2 | what is allowed to do, and it did do that in this case. One of
3 | the arguments that the appellant has made is that it had to be
4 | consistent with the current Zoning Regulation, which would have
5 | been prohibited it from doing that. I don't think that's the
6 | case. So I agree with the analysis that the Zoning Administrator
7 | did and the analysis that we've talked about today to support
8 | that.

9 | CHAIRPERSON HILL: Thank you. Chairman Hood.

10 | CHAIRMAN HOOD: I kind of agree with -- I agree with
11 | everything I've heard. And I also want especially agree with the
12 | Vice Chair's comments. When I also read the -- what the court
13 | said, and they remanded the back. It said the conclusionary
14 | statement is not satisfactorily explained. And I would tell the
15 | court, I can understand it was not satisfactorily explained
16 | because it was a lot -- this actually, I think, if I recall, the
17 | visibility took the longest about moving this way and moving back
18 | to the other side. I remember this, the statement, because it
19 | took us a while to explain and I guess as we -- I can be a Monday
20 | morning quarterback all the time, but as we were going through
21 | this for the first time, it was rather confusing trying to figure
22 | out where all the pieces were. But I think with all that said,
23 | and this time with another bite of the apple, I think the ZA
24 | reasonably approved the remodel of an existing hotel building and
25 | (indiscernible) changed the location of visible CA but without

1 increasing the amount of CA space visible from the sidewalk. So
2 I would uphold with the ZA. Looking back -- being a Monday
3 morning quarterback, I would concur with the ZA at this time.
4 Thank you, Mr. Chairman.

5 CHAIRPERSON HILL: Thank you.

6 Ms. Nagelhout, can you hear me?

7 MS. NAGELHOUT: I can.

8 CHAIRPERSON HILL: Did you follow along with
9 everything?

10 MS. NAGELHOUT: I did, yes.

11 CHAIRPERSON HILL: Okay. All right.

12 Okay. Then if that's the case, I believe we've
13 addressed everything that was put before us. Then I'm going to
14 make a motion that we should revise the Board's decision as we've
15 just discussed during the meeting. And I'm going to leave it -
16 - I believe that we -- I'm not going to go over each and every
17 item again. My motion again, is that we should revise the Board's
18 decision as discussed during this meeting.

19 Ms. Nagelhout, are you able to follow that?

20 MS. NAGELHOUT: Yes. That's fine.

21 CHAIRPERSON HILL: Okay. So once again, I'm making a
22 motion to revise the Board's decision based on our discussions
23 during this meeting and ask for a second, Ms. John.

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: The motion has been made and

1 seconded.

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

3 MR. MOY: Yes.

4 When I call each of your names, if you would please
5 respond with a yes, no, or abstain from the motion made by
6 Chairman Hill to revise the Board's decision. This motion was
7 seconded by Vice Chair John.

8 Zoning Commissioner Chair Anthony Hood.

9 CHAIRMAN HOOD: Yes.

10 MR. MOY: Mr. Smith.

11 BOARD MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake.

13 BOARD MEMBER BLAKE: Yes, to the motion.

14 MR. MOY: Vice Chair John.

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Chairman Hill.

17 CHAIRPERSON HILL: Yes, to the motion.

18 MR. MOY: Staff would record the vote as 5-0-0, and
19 this is on the motion made by Chairman Hill. The motion was
20 seconded by Vice Chair John. Also, in support to the motion --
21 others in support of the motion is Mr. Smith, Mr. Blake, and
22 Zoning Commission Chair Anthony Hood. The motion carries on a
23 vote of 5-0-0.

24 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Moy.

25 Ms. John, I apologize. I don't know -- I can't do it

1 in 15. We're not going to finish in 15 minutes, but I don't
2 think it's necessarily going to go that long. So you're -- I'll
3 put it in your capable hands. Okay. And once again, just an
4 absolute pleasure to work with everyone here. You all have a
5 nice August. I'll see you in September. I don't know what we're
6 going to do with all that time we now have. Okay.

7 VICE CHAIR JOHN: Enjoy, Chairman Hill. Have a great
8 time.

9 CHAIRPERSON HILL: Thank you. You all as well. Have
10 a lovely, lovely break.

11 VICE CHAIR JOHN: Thank you. We're going to try.

12 CHAIRPERSON HILL: Bye-bye. Bye-bye

13 VICE CHAIR JOHN: Thank you.

14 So does anybody want a break? I don't.

15 BOARD MEMBER BLAKE: No.

16 VICE CHAIR JOHN: Okay.

17 So Mr. Moy, would you call the next case? Give me one
18 second to switch gears, please.

19 Okay. Go ahead, Mr. Moy.

20 MR. MOY: All right.

21 The next and final case before the Board in today's
22 docket is Case Application No. 20525 of the Washington
23 Metropolitan Area Transit Authority. This is an application
24 requesting area variance from the minimum required previous --
25 pervious surface requirements of Subtitle E, Section 204.1. This

1 | would construct a new rear addition to an existing detached
2 | industrial building in the RF-1 and NC-8 Zones. The property is
3 | located at 3670 New Hampshire Avenue, N.W., Square 2898, Lots 47
4 | and 21. And that's all I have, Madam Vice Chair.

5 | VICE CHAIR JOHN: Thank you. Thank you.

6 | Mr. -- let's see. Mr. Powers. Mr. Powers, can you
7 | turn on your (audio interference).

8 | MR. POWERS: Yes. Can you hear me now?

9 | VICE CHAIR JOHN: Yes. I can see you, and I can hear
10 | you. Can you introduce yourself, please?

11 | MR. POWER: Yes. I'm Stephen Powers. I'm a Senior
12 | Program Manager with WMATA. And we're here today to talk about
13 | our groundwater facility treatment building addition to our New
14 | Hampshire Avenue chiller plant. I have Janean McCalla with me
15 | to give a presentation and show what we're doing with the
16 | building. And we're here for the special variance of the driveway
17 | out back on Rock Creek Church Road.

18 | So with that, I'd like to turn it over to Janean.

19 | MS. MCCALLA-DUNSTON: Good afternoon. (Audio
20 | interference). Of course, my apologies. Good afternoon. My
21 | name is Janean McCalla-Dunston, and I'm an architect from AECOM.
22 | And I'm also the design lead for this project. I have -- I sent
23 | Mr. Young the presentation, if he could pull that up. It's
24 | actually in two parts because of the file size.

25 | Thank you, Mr. Young.

1 VICE CHAIR JOHN: Thank you.

2 MS. MCCALLA-DUNSTON: So I would like to start off with
3 giving a brief overview of our project, and then lead to the
4 request for the variance that we're requiring -- requesting.

5 Next slide, please. So the site is currently located
6 at the corner of New Hampshire Avenue and Rock Creek Church Road.
7 The existing facility functions to cool the nearby underground
8 Metro Rail Station. Within the existing structure, there is a
9 small cooling tower on the roof and there's also mechanical and
10 electrical equipment within the structure itself.

11 Next slide, please. This property is also designated
12 as a historic landmark and that's due to the historic firehouse
13 facade that's located at the front of the building. We are --
14 during design, we've met with Historic Preservation because any,
15 I'm sorry. Any addition or new construction that's placed on the
16 site must comply with the Historic Preservation requirements and
17 to ensure the historic integrity of the site.

18 Next slide, please. As far as existing conditions,
19 prior to WMATA purchasing the property, there was an existing gas
20 station that occupied the lot. And with this gas station, there
21 was underground gas tanks. And it was believed that these gas
22 tanks are the components that were leaking, contaminating fluids
23 into the site that led to the contaminated groundwater and also
24 the VOC vapors. Based on this, the Department of Energy AND
25 Environment requested that WMATA, once they purchased the

1 property, to start pulling samples from the site to test to
2 determine the contamination of the site. And once it was
3 determined and finalized that it was contaminated, the DOEE
4 directed WMATA to remediate the contaminated groundwater and the
5 VOC vapors from the site.

6 Next slide, please. Thanks. WMATA hired AECOM and
7 together -- no, go back one. Thank you. In collaboration between
8 WMATA and AECOM, there were two remediation systems that were
9 proposed that would remove the contaminated groundwater from the
10 site. During the design, the design team did survey the existing
11 structure within the chiller plant to see if there's any available
12 space that we could put the proposed equipment that's needed for
13 the remediation system.

14 However, due to the existing mechanical and electrical
15 equipment within the building, we just didn't have enough space
16 to put the equipment in the building, which is a two-story
17 structure. So with that said, we designed an addition that will
18 strictly hold the new equipment for the remediation system. And
19 again, as I stated previously, any new structure that's placed
20 on the site because the historic had to be submitted to the
21 Historic Preservation Office for review and approval, which we
22 did through the design process. And so they did approve our
23 design that we presented to them

24 Next slide, please. The addition will function similar
25 to the existing structure in regards to it will be primarily

1 unoccupied space with weekly maintenance from the WMATA crew for
2 testing and looking at -- maintaining the equipment that's placed
3 in the addition. In addition to the addition, what we also tried
4 to do was make sure that to limit the obstruction to the green
5 space on the lot. So the corner green space that's at the corner
6 of New Hampshire Avenue and Rock Creek Church Road will remain
7 in place in addition to the trees that are in that area.

8 And again, we tried not to disturb any of the property
9 as we could for the building. In addition to the site work that
10 was done, we also worked with DDOT and Public Space Committee
11 with the streetscape enhancements along New Hampshire Avenue.
12 And this was a new scope that was added to our project where we
13 met with PSC chief to come up with designs to enhance the
14 streetscape off of New Hampshire Avenue.

15 Next slide, please. So the actual new building itself
16 will be a masonry structure with exterior masonry walls with
17 auger pile and grade beam foundation. We will try to incorporate
18 the -- to make sure that the new brick that we were using match
19 the existing brick to make it look like a complete structure.
20 But in addition to that, because of the size of the addition and
21 the location of the sidewalk, we tried to incorporate a precast
22 water table along the exterior wall as well that would pull colors
23 from the front facade of the building to break up the masonry
24 massing in that addition.

25 In addition to the installing the -- or constructing

1 addition as far as the extensive site work that's performed,
2 there is underground trenching that we had to install based on
3 the remediation system. In addition to the underground
4 trenching, we had to do the monitoring walls as well and a
5 concrete driveway that runs along the addition on the side that
6 allows for maintenance and access to the addition. The sidewalk
7 along Rock Creek Church Road will remain in place. And in our
8 original design, we did have a curb cut to access the driveway.
9 However, after meeting with DDOT, we replaced the curb cut with
10 actual roll up curb and extend the -- or maintained the sidewalk
11 in that location at the end of the driveway.

12 Next slide, please. This is just an existing site plan
13 of the chiller plant and the adjacent properties and showing the
14 road on New Hampshire Avenue and Rock Creek Church Road. And
15 the two pictures on the side are the existing elevations, side
16 elevation and rear elevation of the chiller plant at the corner
17 of Rock Creek and New Hampshire Avenue, just to show the existing
18 conditions at the property and site.

19 Next slide, please. As far as the demo work for the
20 project, there's going to be minimum demo work for the existing
21 facility. We're only removing the existing exterior concrete
22 stair and landing. And in regards to the site work, we'll be
23 removing the trees in the rear of the building. The rear building
24 for the addition and we will also be relocating some of the
25 existing equipment for construction.

1 Next slide, please. This is the cycling of the new
2 work where the addition is actually shown as a gray hatched with
3 the round hatched shapes being the monitoring walls and the
4 stipple hatch is actually concrete driveway. This site plan has
5 been revised based on the pervious area, we tried to minimize
6 impervious surfaces on the property, so we cut back on the
7 driveway and also removed some of the concrete padding, concrete
8 slabs on the site. But this is a general overview of the addition
9 and existing facility on the site.

10 Next slide, please. This is the first-floor addition
11 and partial first floor of the existing chiller plant. As you
12 can tell, I thought it was important that we show this plan so
13 you could see the extent of what's putting -- what's going into
14 the first floor and the second floor. And so as you see, the
15 upper-level portion of the floorplan is taken up by the stairwell.
16 And this is the egress stair from the existing building as well
17 and connects to the existing building on one level.

18 In addition to the egress stair, we also have space
19 that's designated for the equipment. So all the circles that you
20 see and the shapes that you see in the floor plan are the
21 equipment itself. And so that leaves little room for circulation.
22 We provide the code requirement for egress around the equipment,
23 but that's pretty much it, in addition to the electrical room in
24 the back of the addition. There's also two main exits from this
25 floor, that egress out, and also the roll up door on the side

1 with a concrete ramp.

2 Next slide. On the second floor, we have the same
3 layout as far as equipment and we have a floor hatch for access
4 for maintenance.

5 Next slide, please. These are the elevations that we
6 show for the addition in the existing facility. The west
7 elevation is the actual elevation that faces the neighboring
8 property. And the rendering, it shows the main doors as well
9 and it's a corner view of the addition in the existing building.

10 Next slide. The east elevation and the northeast
11 elevation are all -- are views from Rock Creek Church Road of
12 the existing and the addition. And again, there's no openings
13 aside from the two main doors and the rolling door for this
14 addition.

15 Next slide, please. This is the rear elevation that's
16 off of Rock Creek Church Road as well. In this elevation, the
17 rendering, I'm sorry, it doesn't show the existing fence that
18 runs along New Hampshire Avenue, but that fence will remain in
19 place and will continue on to the back of the building for
20 security purposes, and it will be the same black grated fencing.

21 Next slide. And as I mentioned earlier, we did work
22 with DDOT and Public Space Committee on the streetscape
23 enhancements for New Hampshire Avenue. And the scope of work
24 included the reducing the curb cut off of New Hampshire Avenue
25 to our chiller plant, and also extending the sidewalk. And in

1 | doing that, we were able to replace some of the concrete paving
2 | for green space. And we also replaced some of the concrete paving
3 | adjacent to the building with green space as well. Unfortunately,
4 | we couldn't include this green space in our calculations for
5 | pervious area because it was -- it's not within our property lot.
6 | But we did work with DDOT to try to enhance the streetscape off
7 | of New Hampshire Avenue.

8 | Next slide. The pervious area, what we're trying to
9 | work with our request, at this point, is the area variance for
10 | the pervious area requirement for the residential zone lot on our
11 | property. Currently, we can't meet that requirement, which is
12 | 50 percent. As you can see, as this plan shows you, our lot is
13 | actually divided into two separate lots. So the front lot, which
14 | faces New Hampshire Avenue is Lot 47 and that's the lot, that's
15 | the commercial Zone NC-8, which doesn't have a pervious area
16 | requirement. The rear lot which is Lot 21 is the residential
17 | zone requirement and that's the RF-1 Zone for that.

18 | And so, with our pervious area calculations, we were
19 | able to combine both the lot areas to get the total square
20 | footage. However, we had to use the most stringent zoning, which
21 | is the residential 50 percent requirement for the pervious area.
22 | What this site plan shows you is the green shaded area on the
23 | site is the pervious area that we are proposing, whereas the blue
24 | is the impervious area.

25 | Again, because of the extensive site work that we had

1 to perform, as far as the underground trenching and the monitoring
2 walls and the concrete driveway, in addition to the existing
3 building footprint and our new building footprint and the
4 sidewalk, we can only achieve a pervious area count of 63.60 --
5 I'm sorry, impervious area count of 63.60.

6 We cannot reduce the foot building footprint because
7 as you can see, it's tight already in regards to what we're
8 putting into it. There's no wiggle room to -- that we can provide
9 additional space or -- I'm sorry, reduce the space because we're
10 trying to fit the equipment within the addition and provide
11 circulation throughout. And so with our proposed impervious
12 63.60 percent, we are only providing a pervious area of 36.40.

13 In our calculations, we did account for any
14 construction unforeseen issues, so we did do a contingency of
15 0.40 percent which knocks us -- or provides a pervious area
16 percentage of 36 percent that we could provide. And so that's
17 what the area of variance that we are requesting is to accept
18 that 36 percent instead of the 50 percent that's required for the
19 residentially zoned lot on our property.

20 Next slide. This is just a simple site plan to show
21 you a portion of the site work that's being done for the
22 remediation. And so the red dashed lines indicate the underground
23 trenching that will be placed within the site. And the circled
24 hatched areas are the actual monitoring walls that will be placed
25 on the site in addition to the retaining wall. So this just

1 gives you an idea of -- as far as site constraints on what we're
2 working with. And also, with this, you'll see that we did shorten
3 the concrete driveway as well to try to get back some of that
4 pervious area. However, what I didn't mention is that during
5 design, we did look into replacing the concrete driveway with the
6 pervious pavers. However, because of the VOC vapors at the site,
7 the concrete material is better with encapsulating the vapors and
8 so we went ahead and maintain -- or kept the concrete driveway
9 instead of the pervious pavers. But we did investigate that to
10 see if we can gain additional pervious area percentages.

11 Next slide, please. As far as the traffic plan, we are
12 not closing any of the -- there won't be any road closures for
13 the site. We will be narrowing the Rock Creek Church Road;
14 however, we won't be closing it off. We will just be narrowing
15 it to accommodate construction site along the rear portion of our
16 property. The sidewalk along Rock Creek Church Road will be also
17 closed in front of our property but we will provide a detour on
18 the opposite side of Rock Creek Church Road for pedestrian
19 traffic. For the enhancements, we're doing a partial sidewalk
20 closure as well; however, we will provide a detour around the
21 construction site.

22 Next slide. My apologies I'm trying to beat the clock.
23 As far as community benefits, this modernization project is
24 funded through the Metros Capital Improvement Program, and it
25 does invest in the system safety and reliability of the region's

1 economy. And just these are some of the items that we're doing
2 to try to achieve that.

3 Last slide. Next slide, please. Since the beginning
4 of our design -- or since our design, we have been meeting with
5 the ANC group to present the project to them and to give them
6 updates on any changes that may occur during the permitting
7 process that we're in now. We did offer them information for
8 the project, which is offered on WMATA's website, which also
9 provides updates for any project changes that occur with that.
10 And so we've been in with conversation with ANC and in particular,
11 Commissioner Mansaray as well to make sure that we meet their
12 goals that or their concerns that they may have for construction.
13 And with that, I will conclude the presentation.

14 VICE CHAIR JOHN: Thank you. Thank you.

15 Does the Board have any questions? Mr. Blake.

16 BOARD MEMBER BLAKE: I have one quick question. In
17 terms of this solution, is it a permanent -- it's a permanent
18 building, but does this remediation process require a permanent
19 solution?

20 MR. POWERS: Yes, it is. We've been doing groundwater
21 treatment of this property since the '90s when it was condemned
22 and given to WMATA. We spent over \$10 million remediating the
23 groundwater and it's a continuous process. The equipment that
24 we've been using is now 25 years old, and we've been cited to
25 put in updated 21st Century equipment to that monitoring to go

1 forward, so this is a permanent solution to go forward.

2 BOARD MEMBER BLAKE: Okay. Thank you.

3 VICE CHAIR JOHN: Okay. Thank you.

4 Are there any other question?

5 BOARD MEMBER SMITH: I have one.

6 VICE CHAIR JOHN: Mr. Smith, and then Commissioner
7 Hood.

8 BOARD MEMBER SMITH: Okay. My question relates to the
9 amount of impervious -- the level of your request to relief.
10 Have you -- has WMATA considered other alternatives such as like
11 a green roof or a pervious driveway? That way, you wouldn't have
12 to request as much relief. Just a general question.

13 MR. POWERS: Janean, I'll let you answer that because
14 that was pretty extensive, so I'll let the design speak to that.

15 MS. MCCALLA-DUNSTON: Yes. So during design, we did
16 look into replacing the concrete driveway with the pervious paver
17 system. However, because of the VOC vapors that are emitting
18 from the site, the concrete would be better for encapsulating
19 that during the remediation process, so we tried to keep that in
20 place. We did look at doing -- I'm sorry, a green roof; however,
21 because of the structure of the addition, during design, we felt
22 that it wouldn't be beneficial to put that vegetation roof on the
23 addition itself.

24 BOARD MEMBER SMITH: Okay. All right. Thank you.
25 That's the only question I had.

1 VICE CHAIR JOHN: Commissioner Hood.

2 CHAIRMAN HOOD: Okay. Thank you for your presentation.
3 The only question I had. You mentioned the ANC, and I know this
4 project is a sense of urgency, especially with the VOCs and
5 everything. So the ANC chose not to write a letter of support,
6 or did I just overlook it? I don't see it in the file.

7 MR. POWERS: Well, no. We went to the ANC in April
8 and got their support. And then we also went back to them last
9 month and the Chairman -- there was a vote and a letter of
10 support. That should have been in our package as well and our
11 Government Relations Officer who was getting that information so
12 that we should have that in the submission.

13 CHAIRMAN HOOD: Okay.

14 MR. POWERS: Janean, did that -- is that not the case?

15 MS. MCCALLA-DUNSTON: They didn't -- the ANC sends it
16 to the Board. And I was under the assumption that it was already
17 submitted, that she was going to submit the report.

18 CHAIRMAN HOOD: It could be, and I'm just overlooking
19 it, because I've looked for that first and I don't see it. I'm
20 sure my colleagues will tell me where it is. I don't see it.
21 Thank you. Thank you, Madam Chair.

22 MR. POWERS: No. But if it is missing, then we should
23 probably get that in there.

24 VICE CHAIR JOHN: So I'm checking now. I don't see
25 anything from the ANC. So if it comes in, then that would be

1 good. We can leave the record open for you to submit it.

2 MR. POWERS: Okay. We'll make sure it's in there.

3 VICE CHAIR JOHN: All right.

4 So I had a question for the residential section of the
5 site, the large green area. What is the percentage of pervious
6 surface in that area?

7 MS. MCCALLA-DUNSTON: If we can pull up the slide
8 presentation --

9 MR. POWERS: And I think it's important to note at this
10 point too, WMATA has gone through an eight-month process to
11 consolidate those lots, and they will no longer be looked at as
12 two lots. That's all been approved. We're right now waiting
13 for the final two signatures from the surveyor's office. And
14 what's the other one we're waiting on, Janean. The --

15 MS. MCCALLA-DUNSTON: The zoning.

16 MR. POWERS: Zoning. Yeah. The zoning. So Taxation
17 and Historical Preservation, and a couple other offices have
18 signed off on that lot consolidation.

19 VICE CHAIR JOHN: Thank you. I was just following up
20 on your presentation.

21 MS. MCCALLA-DUNSTON: Sure. And I can show you in
22 slide 17. There you go. Yep. So the big port -- the big
23 triangle or trapezoid in the front, that's actually the lot NC-
24 8. That's the commercial zoning there. And a small piece of
25 that is the residential, the RF-1 there.

1 VICE CHAIR JOHN: Okay.

2 MS. MCCALLA-DUNSTON: And so you can see that it's
3 taken up by a portion of the existing sidewalk, our concrete
4 driveway. There's two monitoring -- one monitoring wall and then
5 our addition and the existing building footprint. So that's the
6 small -- those two small pieces of pervious area within that one
7 zone.

8 VICE CHAIR JOHN: Okay. (Audio interference).

9 MS. MCCALLA-DUNSTON: And we tried to divide the spaces
10 up or divide the lots up too and account for just the Lot 21
11 itself, and it didn't work as well. We got a higher percentage
12 rate by combining both lots. And this is something that we had
13 originally presented options to Mr. LeGrant, the Zoning
14 Administrator, to see if we could get to the 50 percent, but this
15 is the closest we could get when we combined both the Lot 21 and
16 47.

17 VICE CHAIR JOHN: Okay. Thank you. I was confused in
18 the lot, so this is 21.

19 MS. MCCALLA-DUNSTON: Exactly.

20 VICE CHAIR JOHN: Thank you.

21 Does the Board have any other questions? Then I'll go
22 to the Office of Planning.

23 BOARD MEMBER BLAKE: One quick question.

24 VICE CHAIR JOHN: Sorry.

25 BOARD MEMBER BLAKE: It's just that -- we sent (audio

1 | interference). The zone wants to combine the two lots, they'll
2 | be considered still a split zone or (audio interference)?

3 | MS. MCCALLA-DUNSTON: Yes.

4 | BOARD MEMBER BLAKE: Okay.

5 | MS. MCCALLA-DUNSTON: Yes. We tried everything. We
6 | tried everything. Originally, we thought if we consolidate the
7 | lots that we would be able to absorb the NC-8 Zone because it's
8 | the larger portion. However, even though we're consolidated the
9 | lots, it's still going to be zoned two different properties, RF-
10 | 1 and NC-8.

11 | BOARD MEMBER BLAKE: Thank you.

12 | MR. POWERS: Great question.

13 | VICE CHAIR JOHN: So I'll go to the Office of Planning.

14 | Hello. Is the Office of Planning here? Let's see, who
15 | do we have.

16 | CHAIRMAN HOOD: We have Mr. Mordfin, Vice Chair.

17 | VICE CHAIR JOHN: Mr. Mordfin.

18 | Can you hear me, Mr. Mordfin?

19 | MR. MORDFIN: I don't hear it. Okay. Sorry about
20 | that. I'm Stephen Mordfin with the Office of Planning. And the
21 | Office of Planning is in support of this application and stands
22 | on the record and is available for any questions. Thank you.

23 | VICE CHAIR JOHN: Thank you, Mr. Mordfin. Can you just
24 | talk briefly about how you evaluated the variance request?

25 | MR. MORDFIN: Absolutely.

1 Okay. So for this application, which is a variance,
2 we went through the criteria for the -- to increase the minimum
3 pervious surface that's permitted in the zone. And what's
4 extraordinary or exceptional in this case is we thought that --
5 the property is used by WMATA, who is the applicant, as a chiller
6 plant for Metrorail, and the previous owner of the property had
7 installed underground storage tanks for gasoline, which
8 apparently are currently leaking and contaminating the soil.

9 So the applicant proposes to construct an addition to
10 the existing building, but the existing building was not designed
11 to accommodate both those uses. What's there today was designed
12 to accommodate the chiller plant. So because of that, an addition
13 has to be made to this building in order to be able to accommodate
14 this second use to the property that was not -- for which it was
15 not designed. The exceptional practical difficulty we find that
16 the building was not designed to accommodate the two uses, the
17 dual phase remediation treatment system for the groundwater, and
18 the applicant is now aware of the existence of these underground
19 storage tanks and the environmental need to address this
20 situation.

21 So to require the applicant to accommodate the required
22 remediation treatment system within a building for which it
23 wasn't designed, in addition to the uses that the building was
24 designed for, results in an exceptional practical difficulty for
25 the applicant as the structure is not of sufficient size to

1 accommodate both of those uses at the same time. We didn't see
2 that there would be any substantial detriment to the public good
3 because what this does is this -- although, the pervious surfaces
4 on the site will increase beyond what is permitted by the zoning
5 on that smaller piece portion of the site, the ability of the
6 soil to absorb rainwater and excess rain and excess runoff is the
7 purpose of the pervious surface requirement.

8 However, in this case, what we've got are underlying
9 factors of contaminating groundwater and the groundwater quality.
10 So therefore, we find that the reduction in pervious surface that
11 has been requested by the applicant is actually the minimum
12 necessary in order to accommodation or remediation. And so
13 therefore, we don't see that there would be a detriment to the
14 public good.

15 And finally, for substantial impairment to the intent,
16 purpose, and integrity of the Zoning Regulations as I said, the
17 purpose of this regulation is to improve the environmental
18 quality of the soil. However, in this case, to improve the
19 quality of the soil, the applicant needs to go through and
20 facilitate the removal of these contaminants from the soil. And
21 so therefore, the area variance would not substantially impair
22 the intent of the Zoning Regulations. And based on that, the
23 Office of Planning recommends approval of the requested area
24 variance.

25 VICE CHAIR JOHN: Thank you.

1 Does the Board have any questions for Mr. Mordfin?

2 Does the applicant have any questions for Mr. Mordfin?

3 MS. MCCALLA-DUNSTON: Not at this time. No.

4 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

5 Mr. Young, is there anyone here from the ANC? I have
6 to ask even though I didn't see anybody listed.

7 MR. YOUNG: We do not.

8 VICE CHAIR JOHN: Is there anyone signed up to testify?

9 MR. YOUNG: There is not.

10 VICE CHAIR JOHN: Okay. Does the Board have any other
11 questions?

12 Okay. So I will excuse the applicant. Are we ready
13 to deliberate?

14 Thank you for your testimony, Mr. Powers and Ms.
15 McCalla.

16 So I believe the Board is ready to deliberate, are we?
17 Yes, no.

18 Okay. So does anyone want to start? I can get us
19 started.

20 So I thought that this is a fairly straightforward
21 application. I don't think that there is a significant request
22 for a reduction in the pervious -- well I don't think the amount
23 is significant. And I think that the applicant has shown why
24 the variance is needed based on the extent of the remediation
25 necessary and the constraints of the lot. And I thought both

1 the applicants and OP did a good job in explaining the
2 extraordinary condition and the practical difficulty that the
3 applicant would experience in having to meet the pervious
4 requirement.

5 And also, the ANC is apparently in support, although
6 we don't have anything in the file. And depending on how this
7 goes, we should leave the record open for the ANC to submit a
8 statement.

9 So I would like to open it up to the other Board members
10 at this point to add anything that they would like to add. Hello.

11 Mr. Smith or Mr. Blake.

12 BOARD MEMBER SMITH: I will. So I agree with your
13 analysis, Vice Chair John. I do believe that the applicant --
14 both the representatives for the applicant and OP did a great job
15 of sufficiently demonstrating how they have met the criteria for
16 us to be able to grant the area variances.

17 Extraordinary exceptional situation. WMATA is required
18 to mitigate the contaminants coming into this building. And the
19 only way to really mitigate those contaminants is to build some
20 form of an addition that would reduce the pervious surface on the
21 property. So I do believe that they have met the extraordinary
22 situation test.

23 Practical difficulty. Again, the existing building
24 wasn't designed to accommodate that new addition, and also it is
25 it's a historic landmark. So they wouldn't be able to really

1 make substantial changes to the existing exterior of the existing
2 building in order to accommodate the size of the -- what is
3 essentially required for them to mitigate, the vapors in essence,
4 because the vapors towers will be taller than the existing
5 facility.

6 I did bring up a question about pervious surface that
7 they attempted to mitigate their requests for variance by
8 reducing it whereby, they put in some kind of pervious driveway
9 or some type of green roof because I also -- because of its status
10 as a historic landmark that does create some level of a hindrance
11 with them to be able to put on a green roof. They didn't really
12 speak to that, but I know that that would be some form of a
13 hindrance to putting in a sizable green roof.

14 And also, perviousness, as Mr. Mordfin stated, works
15 against the greater good here being that the groundwater is
16 contaminated. So the best option is to reduce the amount of
17 pervious surface at the site for the greater good of the site
18 and for the environment and for the surrounding community. So
19 with that -- in that particular statement, I think that that
20 sufficiently has demonstrated that they meet the criteria of the
21 other prongs for variance. So with all of that stated, I do
22 stand on OP's -- I give great weight to OP's staff report and I
23 would recommend approval of the variance. And I also agree with
24 you that we should leave the record open for the ANC to be able
25 to respond.

1 VICE CHAIR JOHN: Thank you. Commissioner Hood.

2 CHAIRMAN HOOD: Madam Vice Chair, I'd like for the
3 Board members always to go first when I'm around. So I'm going
4 to yield to Board Member -- well, I'm just a visitor. I'm only
5 here once every five weeks.

6 VICE CHAIR JOHN: I had forgotten, Commissioner Hood.
7 So Board Member Blake?

8 BOARD MEMBER BLAKE: Yeah. No. I think that between
9 -- you have certainly Ms. John, Vice Chair John and Mr. Smith
10 have laid out the case very well. That in fact, the variance
11 test is met fully in this. This is the most practical and
12 efficient mechanism to deal with the improvement in the soil,
13 which is the intent of the regulation. The only thing that we
14 didn't address was the concern of the neighbor with about pest
15 control and blockage of street during construction, but that's
16 certainly beyond the purview of the Board. So I think that
17 overall, I'm pleased to support what's been said and will be
18 comfortable supporting the request made.

19 VICE CHAIR JOHN: Thank you. Thank you, Mr. Blake.
20 And Commissioner Hood.

21 CHAIRMAN HOOD: Yes. Madam Chair, I would say that I
22 think specifically it meets the variance tests as my colleagues
23 have already mentioned. I believe that the prongs have been met.
24 I think the analysis of the Office of Planning, as mentioned by
25 Board Member Smith being incorporated as well, I think it makes

1 the case. And not just that, I think the applicant verbally made
2 their case, so I want to make sure I state that on the record.

3 As far as the ANC, I believe 4C, we'll leave it open,
4 but I think we're taking a vote. I'm sure if 4C had a problem,
5 we would have known, so I'll just leave it at that. Thank you.
6 I'll be voting in favor of this. Thank you, Madam Chair.

7 VICE CHAIR JOHN: Thank you, Mr. Hood. So let me ask
8 you, should we leave the record open or not, because it seems to
9 be fairly straightforward, but it's always good to have
10 information from the ANC. And if the applicant is still
11 listening, I think it would be good for the applicant to
12 coordinate with the ANC in terms of the issue with the Rock Creek
13 Church Road and pedestrian access as well as the construction
14 issues, although that would not be included in the order.

15 Chairman Hood, Commissioner Hood.

16 CHAIRMAN HOOD: I'm just curious if we take a vote, how
17 does that -- because I know we've been through this before. I
18 just can't remember. If we take a vote -- I know sometimes we
19 do on Commission, we take a vote and the ANC is able to supplement
20 it even though we voted, but I don't know. Maybe Board Member
21 Blake was going down those lines. I'm just trying to figure out
22 how do we do that and are we legally technically sufficient of
23 doing it that way. Take the vote -- it sounds like we're going
24 to take a vote today and leave the record open just for the ANC's
25 letter.

1 VICE CHAIR JOHN: Yes. I think we've done that in the
2 past, and OAG is free to chime in.

3 CHAIRMAN HOOD: Okay.

4 VICE CHAIR JOHN: And we're doing it as a courtesy to
5 the ANC just -- so that there's something in the record because
6 we've had no communication with them, and the applicant is
7 representing that they're not opposed.

8 So Mr. Rice, did you have a comment?

9 MR. RICE: It's certainly possible to take a vote and
10 you would just basically be leaving the record open to receive
11 the ANC report. And in the event the ANC report was different
12 than what was representative today, you would then consider
13 reopening the record and altering your decision if necessary.

14 VICE CHAIR JOHN: Okay. Thank you.

15 CHAIRMAN HOOD: Thank you. Thank you, Madam Chair.
16 Because I can tell you, over 20 years, I've gotten different
17 advice on that, but I agree. I wanted to make sure we got ANC,
18 and I appreciate Mr. Rice clarifying that. That's what we're
19 going by right now. But I'd like to get the information from
20 the ANC as well, so thank you.

21 VICE CHAIR JOHN: Thank you.

22 So I think we've already deliberated -- Mr. Moy.

23 MR. MOY: Just to add something, Madam Vice Chair, if
24 this would make you feel more comfortable, what I can also do is
25 to hold the order until I receive the ANC report. And if the

1 ANC report, is as the Board is anticipating, it would stay, then
2 I can move forward with the order. If anything other than that,
3 then I'll come back to the Board.

4 VICE CHAIR JOHN: So Mr. Moy ordinarily, I would agree
5 with you, but I understand that this is an expedited project
6 because of the condition of the contamination. So I wouldn't
7 want it to be on our doorstep that we're preventing this work
8 from going ahead. But I think by the time -- I think the ANC
9 should be able to get something to us before the order is actually
10 issued, I would think, so which is normally a few days, right?
11 What's --

12 MR. MOY: Yeah. Well, I would do so. I'll connect
13 with the applicant to see what I can do to expedite their
14 coordination with the ANC.

15 VICE CHAIR JOHN: Okay. Thank you.

16 So then I will make a motion to approve Application No.
17 20525 as read and -- as captioned and read by the Secretary and
18 ask for a second, Mr. Smith.

19 BOARD MEMBER SMITH: Second.

20 VICE CHAIR JOHN: Mr. Moy, would you please take a roll
21 call?

22 MR. MOY: When I call each of your names, if you would
23 please respond with a yes, no, or abstain to the motion made by
24 Chairman -- Vice Chair John to approve the application for the
25 relief requested. And the motion was seconded by -- I'm sorry,

1 I missed that -- was it Mr. Smith, Mr. Blake, or --

2 VICE CHAIR JOHN: Mr. Smith.

3 MR. MOY: Seconded by Mr. Smith.

4 All right. Zoning Commission Chair Anthony Hood.

5 CHAIRMAN HOOD: Yes.

6 MR. MOY: Mr. Blake.

7 BOARD MEMBER BLAKE: Yes.

8 MR. MOY: Mr. Smith.

9 BOARD MEMBER SMITH: Yes.

10 MR. MOY: Vice Chair John.

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: And we have a Board member not present, not
13 participating. Staff would record the vote as 4-0-1, and this
14 is on the motion of Vice Chair John to approve, seconded by Mr.
15 Smith. Also, in support of the motion to approve is Mr. Blake,
16 Zoning Commission Chair Anthony Hood, and Board member not
17 present. The motion carries on a vote of 4-0-1.

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

19 So Mr. Moy, I believe that concludes our hearing today,
20 and we have nothing more on the agenda until September 17th,
21 15th, what date?

22 MR. MOY: 15th, 15th.

23 VICE CHAIR JOHN: And so all that's left is for me to
24 wish you all an amazing vacation. See you in September.

25 CHAIRMAN HOOD: Goodbye. See you all in September.

1 Stay safe.

2 VICE CHAIR JOHN: Stay safe and be well.

3 BOARD MEMBER SMITH: Thank you.

4 CHAIRMAN HOOD: All right. You, too. Take care.

5 VICE CHAIR JOHN: Bye-bye.

6 (Whereupon, the above-entitled matter went off the
7 record at 3:31 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 08-04-21

Place: Teleconference

was duly recorded and accurately transcribed under my
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Donna M. Jenkins

DONNA JENKINS